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PROCEEDINGS AND DEBATES OF THE 105th CONGRESS, FIRST SESSION

SENATE—*Wednesday, July 30, 1997*

The Senate met at 9:30 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear Father, the best that can happen today is that we will experience deep fellowship with You and enjoy You. The worst that can happen is that we might become so busy or distracted by life's demands that we would miss this privilege of friendship with You. This puts into perspective our secondary goals for today or the glitches in our plans that might occur.

This is the day You have made. We will rejoice and be glad in You, not just in another day. You alone are the source of the joy of any day.

You have taught us that the secret of a truly great day is that You will show the way. You have plans for us today. We don't want to miss them. Make us sensitive to the surprises You send our way. So help us not to forget that You are with us and want to have a moment-by-moment dialog with us throughout the day about the crucial issues before us. Thank You for Your grace and guidance. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator GRASSLEY, is recognized.

SCHEDULE

Mr. GRASSLEY. Mr. President, on behalf of Senator LOTT, the majority leader, I will make this announcement.

We announce that this morning, following morning business, at 10:30 a.m., the Senate will begin consideration of S. 39. That is the tuna-dolphin bill. Under a previous agreement, there will be 30 minutes for debate. It will be on that measure. Then it will be followed by a vote on the passage of S. 39.

Also under the order, a vote on the passage of S. 1048, the Transportation appropriations bill, will follow the tuna-dolphin vote. Therefore, Senators can anticipate two rollcall votes this morning. Hopefully that would be around 11 a.m.

As Members are aware, the House did file H.R. 2015, the conference report to accompanying the Balanced Budget Act of 1997; therefore, the Senate will hopefully begin consideration of that measure today at noon. Under the statute, there are 10 hours for debate on that conference report. And as always, Members will be notified as to when that rollcall vote can be expected.

Senator LOTT thanks our colleagues for their attention.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. INHOFE). Under the previous order, there will now be a period of morning business until the hour of 10:30 a.m., with Senator DASCHLE or his designee in control of 30 minutes, and Senator GRASSLEY or his designee in control of 30 minutes.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

THE INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT

Mr. GRASSLEY. I have the privilege this morning, with our outstanding colleague, Senator KERREY of Nebraska, to announce my intention to introduce a piece of legislation, the Internal Revenue Service Restructuring Act, that is a product of the National Commission on Restructuring the IRS. That commission functioned for approximately 12 months. The success of the commission is a result of the leadership of Senator KERREY and Congressman ROB PORTMAN of Ohio.

As a member of the Commission on Restructuring the IRS, also as a current senior member of the IRS Oversight Subcommittee on the Finance Committee, and as the chief Senate sponsor of previous legislation that has been called the Taxpayers Bill of Rights I and the Taxpayers Bill of Rights II—and of course I am a taxpayer myself—I have been involved in several ways for many years in an effort to finally reach this point that we will make substantial changes, hopefully passing legislation, that will make substantial changes in the IRS and how it functions.

Congress is on the verge of a very major shift in power from the Federal Government to the people. The recommendations of this commission are a blueprint for the transfer of power. Understandably, there is much anxiety within the Federal Government at this moment. It is in anticipation of this loss of power. The anxiety is at the highest levels in the executive branch that I have seen it.

The American taxpayers have waited a long time for this to happen. They have suffered through decades of encounters with an agency that has been unaccountable, unresponsive, misleading, arrogant, and even abusive. The IRS has been granted enormous powers that at times seems to disrespect, even to undermine, civil liberties. The responsibilities to our citizens that go along with such power was not exercised by that agency.

Furthermore, IRS management seemed to have taken a vacation. Billions of dollars have been wasted. Performance failures were not met with discipline. Questionable activities were covered up by secrecy, mostly by abusing the authority of what we would all recognize as section 6103, the so-called privacy provisions. Congressional oversight of the IRS has been rendered all but impotent because of absurd 6103 restrictions. These restrictions make the Pentagon's highly secret and highly restrictive Joint Chiefs of Staff vault seem like a Freedom of Information office.

I urge my colleagues to seize the moment. IRS reform is long overdue and is very vital.

Mr. President, I want to highlight just a few important issues recommended by the commission.

To restore accountability to the taxpayers, the commission has made several recommendations.

● 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

The one attracting the greatest attention has been the commission's proposal for an independent board to oversee the IRS. The commission's belief is that an independent board will provide an infusion of talent from the private sector to set appropriate performance measurements and reward or discipline managers who either meet or fail to meet these performance measures.

In private meetings, the administration appears to be divided on another proposal, the proposal for an independent board to run the IRS. But it appears unfortunate that some who oppose this proposal are doing so only because it signifies a monumental power struggle that they stand to lose.

Treasury officials, who years ago could not find the IRS even if they were standing at the corner of 11th and Constitution, are suddenly in fits about losing some control over part of their budget and their bureaucracy.

They must be reminded that the IRS is one of the few Government agencies that has a significant impact on almost every American. The American taxpayer deserves a modern IRS that provides taxpayer customer service on a level equal to that provided by private financial institutions throughout this country.

We have seen a lot of promises of reform coming from the Treasury of late, wholly in response to the work of this commission. Treasury assures us that IRS reform is their top priority and their best people are on it. But if Congress turns its back now on reforming the IRS and listens to the siren song of the Treasury Department, I predict that a year from now Congress will face the justified wrath of the American taxpayer.

Treasury officials who are locked in this power struggle trying to preserve their bureaucratic empire would do well to remember the quote of the first Secretary of the Treasury, Alexander Hamilton, who said, "Here, sir, the people govern." That is the essence of what this commission would do, return power from the Federal Government to the people of this country.

I am also pleased that the commission did not call for the easy solution. The easy solution around Washington is just to give more money to some Federal bureaucracy. And the plea was made to us: More money is what is needed at the IRS. One Treasury official privately admitted recently that the IRS never would be serious about embracing reform as long as Congress kept throwing money at the bureaucracy.

Until 2 years ago, the IRS had seen continued increases in its budget for 40 years. This commission uncovered that hundreds of millions of taxpayers' dollars were being wasted. Clearly, the problem at the IRS is management, not money.

The commission made several findings and recommendations about protecting taxpayers and strengthening taxpayers' rights. I note that in the past, the Congress has focused its energies on giving rights to taxpayers who are in dispute with the IRS. The commission's recommendations build on this. We recommend a strengthening of taxpayers' rights in a number of areas, but I think of equal importance is the emphasis the commission has placed on protecting taxpayers, that is, preventing problems even before they ever happen by emphasizing quality of work and customer service by our IRS employees.

We all know the story of the small business owner who gets a notice from the IRS that he owes maybe $2,000 in additional taxes. The business owner goes to his accountant, who says he does not owe the IRS $2,000, but it is going to cost $5,000 to fight the IRS. So what does the small businessperson do? He pays the $2,000.

Why does this happen? Because the IRS puts such little emphasis upon quality control and upon taxpayers' rights. The IRS still measures its managers on dollars assessed, whether or not it is a proper tax owed.

Is it any surprise then that when a taxpayer does appeal, the IRS loses 72 cents on the dollar? It is wrong that many taxpayers have to spend millions of dollars fighting the IRS because there is no quality control.

I am pleased that the commission also emphasized the need for customer service. We recommend that taxpayers who are subject to examination or collection efforts or who simply try to contact the IRS to resolve a problem are provided a chance to comment on the service given. While revolutionary to the IRS, this is old hat for many State tax collection agencies as well as for business in the private sector. By measuring managers on customer service, we hope to begin to change the culture of the IRS and its employees.

Emphasizing quality service and customer service are ways to protect the taxpayers in the first place. It is also a way to measure the performance in an appropriate manner that will hold managers and employees at the IRS accountable for their action.

I suggest that the emphasis upon quality service and customer service is in keeping with what many saw as a mandate given to the Congress in 1994—moving power from Government to the people. The reforms suggested by the commission certainly emphasize that it is the taxpayer who comes first and it is serving the taxpayer as a customer that must be a top priority at the IRS.

Mr. President, I want to just briefly touch on a third point, the need for greater openness at the IRS. The commission found that the IRS was a very closed and insular organization. The commission put forward a first step to make the IRS more open to the Congress, more importantly, to the press as a policing agency within our process of Government. If we are going to be at all successful in changing the culture of the IRS, a key ingredient must be greater openness at the organization.

To encourage openness and also ensure accountability, there are three areas.

One, the IRS must be timely in responding to Freedom of Information Act requests.

Two, the IRS should not abuse its authority under section 6103 to cover up embarrassing information about management mistakes. For example, the commission highlighted that the IRS had abused its 6103 authority to hide from the press the fact that the IRS had provided Congress false information.

Three, the IRS must maintain and preserve documents. The commission itself discovered first hand several times that the former IRS historian Shelly Davis is right—that the IRS doesn't preserve records. Many requests by the commission for documents and data were met with the response that the data no longer existed or the documents could not be found.

Addressing these three areas of openness may not be headline grabbing, but my experience has shown me that they will go far in bringing accountability at the IRS and changing its culture.

My final point is to emphasize the commission's findings on the need to simplify the Tax Code. We heard from countless witnesses, as well as hundreds of IRS employees and thousands of taxpayers that the complexity of the code is crippling to IRS management.

While I've spent a lot of my time here criticizing IRS, let me make clear that the complex code is not the fault of the IRS, it is a burden placed on IRS management by Congress and the White House. It is clear that if we wish to see improvements at the IRS in customer service and relations with taxpayers, steps must be taken to simplify the code.

This IRS Restructuring Act will lead to better management of the IRS and better customer service in the field. I encourage all of may colleagues to cosponsor it.

Mr. President, before I yield the floor, my colleague is responsible for the tremendous product of this commission. It is not me. It is because he gave it the time it needed, the expert leadership it needed. I speak of Senator KERREY of Nebraska.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, I am pleased to announce my intention to introduce the IRS Reform and Restructuring Act of 1997 with the senior Senator from Iowa, Senator GRASSLEY, who also was a day-to-day participant in this effort and gave it a great deal of

energy and expertise. As one can tell from listening to him, he has offered a tremendous amount of enthusiasm and orientation to the taxpayers concerned, the customers themselves, as well as the need to open the IRS up. He cited the example of Shelly Davis, who brought to the attention of the public, the taxpayers, the significant problems the IRS is having and found that, as her reward for doing that, she lost her job. I very much appreciate Senator GRASSLEY's leadership. I look forward to working with him on the Finance Committee to try to get this piece of legislation heard and marked up and, hopefully, on to final passage yet this year.

This legislation reflects the recommendations of the National Commission on Restructuring the Internal Revenue Service. My co-sponsor, Senator GRASSLEY, and I have been the Senate members of the National Commission for the last year, and have been part of the most unprecedented review of a government agency that an independent commission has ever conducted. Senator GRASSLEY and I will shortly introduce legislation based on this commission's work. The goal of this legislation is to make the IRS work for the American taxpayer.

This legislation is so important because there are twice as many people who pay taxes as vote. Citizens' faith that their government can be fair and efficient is dependent on a well functioning IRS. The days of the old-fashioned tax collector are over—the core of this legislation is based on a vision for a new IRS. We believe, in today's world, the job of the IRS is to operate as an efficient financial management organization. It is a myth that the bulk of the Federal revenue is generated through heavy enforcement. While the IRS must maintain a strong enforcement presence, its core and the core of the Federal revenue stream lie in a revamped, modern organization that can assist taxpayers promptly and efficiently, track account information, and send out clear notices. There is a breathtaking gap between the service levels of the IRS and those of the private sector.

The IRS has a 20-percent error rate for processing paper returns and expends an incredible amount of resources and focus to correct these errors. It captures only 40 percent of the data from returns and is still drowning in a sea of paper. It is typically 18 months before a return can be matched against 1099s. A private sector business that took on average 18 months to send someone a bill, certainly wouldn't stay in business very long.

This legislation offers both a realistic goal for those who will take charge of the agency and a credible plan for reaching that goal.

We spent the last year studying the problems and solutions for the IRS.

Clearly, our access to the IRS's operations and employees was unprecedented. We spent 12 days in public hearings, interviewed 300 IRS employees in field offices, and interviewed over 500 current and former officials from the IRS, the Treasury Department, congressional committees that oversee the IRS, and other IRS experts. We also commissioned consulting reports and internal reviews of IRS management, governance, work force, compliance, and customer service. Finally, we heard directly from citizens through town meetings and surveys. During all of this work, we continually asked the question: How can we make the IRS serve the American people?

There are many visible problems at the IRS that should be noted by all colleagues, especially those who take the view that perhaps we don't need to change. All of these visible problems dictate that we act and that we change the law.

The IRS has a law enforcement mentality, but the vast majority of its employees perform service functions including tracking finances, sending out notices, and assisting taxpayers.

In addition, the IRS has the general attitude that taxpayers are guilty, even though 90 percent of taxpayers are compliant.

Taxpayers also have a low opinion of service levels provided by the IRS and do not believe the IRS is trying to help make paying taxes easier.

Next, training is not a priority, and employees do not have the skills of their private sector counterparts.

Fifth, the IRS uses employee evaluation measures that do not encourage employees to provide quality service to taxpayers.

Next, the IRS management and governance structure makes strategic planning impossible and has caused a massive failure of the IRS' $3.4 billion computer modernization program.

Further, IRS computer systems were developed during the 1960's and 1970's and lack the capability to provide taxpayers with quality service.

Wasteful inefficiencies and high error rates exist in the processing of paper forms.

The Treasury Department has basically left the IRS to its own devices, leaving a vacuum in executive branch oversight of the agency.

Congressional oversight of IRS is scattered and can send confusing signals to IRS that can be manipulated by the IRS to avoid accountability.

Last, complexity and constant changing of the tax code is a major obstacle that intensifies all of these problems.

We heard from witnesses who estimate that the American taxpayers spend nearly $200 billion a year just to comply with the Tax Code. Complexity is a problem, not only in giving customer service, but as far as a drain on the U.S. economy.

A key problem identified by the Commission was a lack of a coherent, accountable structure to implement a long-term vision and goals. At the top levels of the IRS and at Treasury there are murky lines of accountability, a lack of necessary expertise to operate in the new information age, and no people of authority with significant tenure to get the job done. The officials at the Treasury Department have expertise in tax law, but do not have the expertise in areas of customer service, technology, and management to oversee the IRS. Worse, they are not around long enough to ensure focus on multi-year projects like the tax system modernization [TSM] or changing the culture of the agency to be more responsive to taxpayers.

Additionally, Treasury does not coordinate its own oversight: The Commissioner of the IRS must deal with various assistant secretaries on budget, operations, computers, and others. At the end of the day, the IRS Commissioner really reports to the Deputy Secretary who also manages 11 other agencies—not to mention the economy. The recently retired Commissioner of the IRS, Margaret Richardson, told us that she reported to three different Deputy Secretarys during her 4-year tenure as IRS Commissioner. Aware of these glaring problems, the Restructuring Commission began developing ideas for a new governance structure. Our criteria for success were: First, clear accountability, second, expertise in running a modern customer-oriented organization, and third, continuity.

To provide for accountability, expertise, and continuity the legislation we will introduce will include:

First, an Internal Revenue Service Oversight Board, appointed by the President for staggered 5-year terms. The board will: Approve the mission, objectives, and annual strategic plans of the IRS; oversee the IRS management; have significant tenure to force change throughout the organization; and have unique public and private sector expertise in managing large service organizations.

Second, the Commissioner will be appointed for a 5-year term, so he or she will be around long enough to achieve real change.

Third, the Commissioner will be given greater flexibility to hire or fire his or her own team of executives, who will bring new expertise into the IRS. While the board will keep an eye on long-range strategic issues, the Commissioner will run the organization and be given greater authority to do so.

Fourth, congressional oversight will be coordinated among the authorizing committees, the appropriating committees, and the Government oversight committees. Our legislation codifies coordinated oversight, stating that committee leaders, majority and minority, meet regularly to ensure that

the IRS receives clear guidance from Congress, and that Congress is given the proper information to oversee the IRS.

This legislation draws clear lines of accountability between tax policy and tax administration, leaving all tax policy matters to the Secretary of the Treasury. The legislation makes the Secretary of the Treasury a member of this new board, recognizing the link between tax policy and tax administration. Additionally, the Secretary of the Treasury would continue to have final say over the IRS budget before it is sent to Congress. Under this legislation, the board would send Congress a copy of their budget at the same time they send it to the Secretary, giving Congress an independent view of how much money to appropriate. In short, our new structure will bring heightened accountability to the IRS and tax administration.

Mr. President, the American people know that the status quo is no longer tolerable and that the IRS needs fixing; $3.4 billion was wasted on a failed modernization project. IRS operations are antiquated and outdated, and taxpayers—close to 90 percent of whom voluntarily pay their taxes—are generally, and unfairly, treated as if they are guilty of something when they contact the IRS.

The IRS's problems are rooted in the lack of strategic vision and focus, measures that do not encourage employees to treat taxpayers well, operational units that do not communicate with each other, and a systemic lack of expertise and continuity in management and governance. The legislation Senator GRASSLEY and I will introduce will put the IRS on the road to recovery with a reasoned, comprehensive approach to fixing these problems. When implemented into law, I am confident the result will be: Restored public confidence in the IRS; increased focus on customer service; cohesive oversight and governance; efficiency gains in IRS operations; and innovative compliance and customer service programs.

We hope for expedited action on our legislation so that the American people have the IRS they expect and deserve. Our work to restructure the IRS will go a long way toward restoring taxpayers' faith not only in our tax system, but in our Government, as well.

Mr. President, again, I congratulate and applaud and appreciate the dedicated service and expertise and leadership of the distinguished Senator from Iowa, Senator GRASSLEY.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I yield to the Senator from Arizona such time as he may require.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

CAMPAIGN FINANCE REFORM

Mr. MCCAIN. Mr. President, my colleagues and I have come to the floor this morning to briefly discuss the issue of campaign finance reform. It is our hope that during the August recess, discussions will progress and a plan developed to bring campaign finance reform before the Senate no later than the end of September.

Almost daily I have approached the majority leader and told him that we must move forward on campaign finance reform. The leader has been exceedingly gracious and shown much patience in listening to my missives. I want to thank the majority leader for his time and hope that soon, we can come to an agreement for floor time to debate campaign finance reform.

But I also understand that the leader is under great pressure to move many bills, and may feel constrained to commit at this time. I understand that situation. The leader has to deal with the wishes of 99 other Senators. However, my colleagues and I feel compelled to put the Senate on notice that the time to act on this matter is rapidly expiring.

We believe that we must begin the debate on campaign finance reform no later than the end of September, and therefore, if we cannot come to some agreement to bring the bill up freestanding, with an up or down vote on the bill itself, we will feel compelled to bring the bill to the floor by offering it as an amendment to some unrelated measure.

This is not an approach we relish. But we realize that we may have no other choice.

Delay no longer serves any purpose. Since before the last election, talk of campaign finance reform has dominated the American conversation. The public has a right to have this issue debated. Members have recognized this fact, and as proof of that recognition, have introduced over 70 campaign finance bills.

I recognize that many of those bills have laudable features. I want to sit down and work with the sponsors of those bills. And I further recognize that McCain-Feingold is far from perfect. As I have stated on numerous occasions, we have only two fundamental principles that are nonnegotiable:

First, we must seek to level the playing field between challengers and incumbents; and

Second, we must seek to lessen the influence of money in elections.

All else is negotiable.

Some of our colleagues in the House have begun discussing a scaled-down version of McCain-Feingold. I welcome those talks and want to state that if that is what is necessary to change our electoral system, then let's move in that direction.

Fundamentally changing the electoral system in order to restore the faith of the American people in our Democratic Government is our goal. We are open to compromise and negotiation. But we must act soon. It is our duty.

Last week the Economist published an editorial entitled "The Fear of Foreign Cash." Although the title is slightly misleading, I would like to quote from this editorial.

The answer, at least on the strength of the hearings so far, is straightforward: foreign money is worse only because it is not American. And two meanings can be read into that. One is xenophobia: that century-old American fear of little yellow mercenary men, scurrying round now at the behest of a newly menacing power on the world stage. And the second meaning is that foreign money provides a convenient distraction. While it is being comprehensively investigated, with CIA men parked behind screens and giant blow-up charts of the destinations of Mr. Huang's telephone calls, politicians can be left free to attend their dinners, go to their fund-raisers, and continue in all the ways they know best to let their consciences and their legislative proposals be shaped, like warm wax, by the promise of a cheque.

While Mr. Thompson's hearings have been getting into gear, in other parts of Congress some 57 separate bills to reform campaign finance have been dying for lack of interest. Should anyone really care how good clean American money flows through the machine of American democracy? Well, yes, gentlemen: someone should.

Mr. President, I ask unanimous consent that this entire editorial be printed in the RECORD.

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

THE FEAR OF FOREIGN CASH

For two drowsy weeks, Senator Fred Thompson's committee has been conducting hearings into campaign-finance abuses during America's recent election. As a result, Americans now know that there was a Chinese plot to influence the 1996 campaign, though not who masterminded it or how wide it went. They know that John Huang, who once worked for an Indonesian bank with ties to the Chinese government, was given a post at the Commerce Department because he was such a good fund-raiser for the Democrats; but they do not know quite what use he made of his office and his fax machine. They are aware that Bill Clinton appreciated Mr. Huang and his fellow-fund-raiser, Charlie Trie, at whose Chinese restaurant in Little Rock Mr. Clinton often packed away the dim sum. But they are not yet clear what orders, if any, came down from the White House, beyond the sort that could be filled in small aluminium trays.

The largest question to be answered, however, is a simpler one. It is this: why is foreign money, applied to elections, so much worse than the American sort? When the Democratic National Committee learned that this money was "illegal, inappropriate or suspect", officials instantly returned it, as if it would corrode their hands. Yet how much was involved here? A mere $2.8m, out of $2 billion spent by both parties on campaigning. Of that total, $250m was "soft" money, subject to no limits, sent in by unions and corporations for the nebulous purpose of "party-building". Mr. Thompson's committee has undertaken to look into soft

money later; but, meanwhile, how much of it has been returned as suspect? None, of course.

PERILS, YELLOW AND OTHERWISE

Democrats and Republicans alike will insist that the cases are not the same. Foreign contributions are illegal for good reason: outside powers may well be trying to weaken America, steal its secrets, compromise its security. Yet the supposed Chinese plot appears to have had nothing to do with national secrets, nor with persuading America to treat it kindly over trade. China just seems to have wanted to make friends in high places, as all lobbyists do; and it may well wonder why election money was so evil, when American congressmen have happily, and legally, availed themselves of $400,000-worth of free trips to China over the past 18 months.

Is democracy hurt by this? Possibly; but no more than when a party or politician accepts money from any source with an interest to promote. Suppose that the Chinese government gave money in the hope of winning concessions in Asia-Pacific trade. Is this worse than the trade distortions and higher domestic prices already caused by years of election contributions from America's own sugar and peanut farmers? Or perhaps China thought an election contribution would encourage a blind eye to its abuses of human rights. Is this worse than the contributions that have won, for years, indulgent treatment for America's cigarette companies?

The answer, at least on the strength of the hearings so far, is straightforward: foreign money is worse only because it is not American. And two meanings can be read into that. One is xenophobia: that century-old American fear of little yellow mercenary men, scurrying round now at the behest of a newly menacing power on the world stage. And the second meaning is that foreign money provides a convenient distraction. While it is being comprehensively investigated, with CIA men parked behind screens and giant blow-up charts of the destinations of Mr. Huang's telephone calls, politicians can be left free to attend their dinners, go to their fund-raisers, and continue in all the ways they know best to let their consciences and their legislative proposals be shaped, like warm wax, by the promise of a cheque.

While Mr. Thompson's hearings have been getting into gear, in other parts of Congress some 57 separate bills to reform campaign finance have been dying for lack of interest. Should anyone really care how good clean American money flows through the machine of American democracy? Well, yes, gentlemen: someone should.

Mr. McCAIN. Mr. President, the Economist is exactly right. "Should anyone really care how good clean American money flows through the machine of American democracy? Well, yes, gentlemen, someone should."

Yes, we should and must. And we will have the opportunity to demonstrate our understanding of this issue when we return from recess.

Finally, I would like to thank my friend, RUSS FEINGOLD, my friend Senator COLLINS, Senator CLELAND, and so many others who have been involved in this issue and have made this a bipartisan issue, and one that I think deserves the attention of the Senate, and I think clearly deserves an answer for the American people.

Mr. President, I thank my friend, Senator FEINGOLD.

I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER (Mr. COATS). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I yield myself such time as I require.

Mr. President, it is truly a pleasure to be here on the floor with my friend and colleague and fellow campaign finance reformer from Arizona, the senior Senator, Mr. MCCAIN, as well as our other colleagues who join with us today, including the junior Senator from Maine, Senator COLLINS, and shortly expected the senior Senator from Michigan, Mr. LEVIN, and, of course, my good friend, the junior Senator from Georgia, Mr. CLELAND.

We are all among a group of 33 Members of this body who have already cosponsored the McCain-Feingold legislation. As the Senator from Arizona said, we are here today to announce that we will be seeking consideration of bipartisan campaign finance reform legislation during the month of September.

We will continue our discussions, as the Senator from Arizona indicated, with the majority leader. And I am hopeful that we will be able to reach a compromise that will allow us to have an open public debate on this issue, and allow all Senators the opportunity to participate in offering amendments to our proposal.

However, as the Senator from Arizona has just indicated, if such an agreement with the majority leader cannot be reached, we are prepared to use other legislative proposals as a vehicle for campaign finance reform. That is not our preference. But we are committed to having a discussion of this issue and making sure there are votes on campaign finance reform during the month of September.

We have said for some time now—and the Senator from Arizona just reiterated—that our bipartisan proposal is far from perfect. We have repeatedly told Senators on both sides of the aisle that we are open to making changes for modifications to this package. We do have some fundamental issues, however, that we will not waiver on.

First, this proposal will ban soft money. The days when corporations, labor unions, and wealthy individuals could make unlimited contributions to the national parties will be over.

Second, the proposal must try to level the playing field between incumbents and challengers. Currently, we have a system that provides incumbent Senators with a reelection rate of 90 to 95 percent and provides virtually no assistance to legitimate challengers who are essentially being shut out of the democratic process.

We must provide an opportunity for candidates, particularly underfunded challengers taking on well-entrenched incumbents, to run a competitive campaign without having to raise and spend millions of dollars.

Finally, Mr. President, whatever package of reforms we consider and whatever modifications we are willing to make, those reforms must be balanced and bipartisan.

I am pleased at this point, Mr. President, to insert into the RECORD a statement today from the President of the United States, William J. Clinton, with regard to the campaign finance reform legislation.

Mr. President, I would now like to read from the President's statement, which he asked us to present as a part of this presentation.

The President says:

In my State-of-the-Union Address, I called on Congress to enact bipartisan campaign finance reform legislation. I said that delay could be the death of reform, and urged Congress to move forward quickly. I strongly support the decision by Senators McCain and Feingold to bring campaign finance reform legislation to the floor of Congress in September for a vote.

The problem with the role of money in presidential and congressional elections are plain. Since the campaign finance laws were last overhauled two and a half decades ago, the system has been overwhelmed by a flood of campaign cash. Both political parties are now engaged in an ever-escalating arms race for campaign funds. The consequences for our political system are clear; there is too much money in politics, and it takes too much time to raise.

To make sure that ordinary citizens have the loudest voice in our democracy, we must act to change the campaign finance laws. This year, I have asked the FEC to ban so called "soft money" to parties; I have asked the Federal Communications Commission to require broadcasters to provide free TV time to candidates; and the Justice Department has indicated it will defend spending limits in the courts. But these steps, however important, are no substitute for legislation. America needs—and the American people demand—strong, comprehensive campaign finance reform legislation. As the new century approaches, we have an opportunity and an obligation to restore the trust of the American people in their politics—and this is our chance to do it.

For years, the special interests and their allies have blocked reform. This year, those who seek to continue special interest influence as usual will filibuster again. But this year, we have an opportunity to come together across party lines to act and pass reform that cleans up the campaign finance system. September will be the time for members of the Senate to stand up and be counted for reform. I will do what I can to see to it that 1997 is finally the year that it is achieved.

Mr. President, we welcome the support and enthusiasm of the President of the United States for our effort.

The Senators who are here on the floor today have joined together across party and ideological lines to produce a compromise package that I like to refer to as moderate, mutual disarmament.

We have already heard the top 10 excuses for why we can't pass campaign finance reform. And frankly, I am

amazed at some of the absurd arguments we have heard from opponents of reform.

We have been told, ridiculously enough, that there is not enough money flowing through our campaign system. That argument, incidently, is greeted with laughter every time I tell my constituents in Wisconsin that there are some folks in Washington who actually believe we need more money in our political system.

We have been told that our proposal is somehow inconsistent with the first amendment—a giant red herring given that a number of the leading nonpartisan, first amendment scholars in the country, including the nonpartisan Congressional Research Service, have all said otherwise.

We have been told that reform is not possible without a constitutional amendment, an argument all too familiar to those of us who were told that we could not have a balanced budget without a constitutional amendment.

We have been told that the Senate does not have enough courage to pass meaningful reform and that, once again, we should delegate responsibility to some sort of commission.

We have been told by some that this bill goes too far, and interestingly, by others that it does not go far enough. Some might point to that as the working definition of a moderate proposal.

We have been told that the American people do not care about this issue, despite numerous public opinion polls demonstrating 80 to 90 percent of the American people in support of these reforms.

We have been told that this issue requires further study, despite 29 sets of hearings, 76 CRS reports and 522 different witnesses testifying on this issue over the last decade.

We have been told that the outrageous fundraising practices that we witnessed in the last election and which have spawned congressional investigations, a Justice Department investigation, an FBI investigation, and a CIA investigation, and have led to charges of espionage, corruption and undue influence were "a healthy sign of a vibrant democracy."

In short Mr. President, we have heard more phony excuses than are heard by a high school vice-principal's office.

Fortunately, no one is buying these excuses. Not the Senators who are standing here on the floor today and certainly not the American people.

I look forward to having a public discussion during the month of September about the role of money in our political system. And I look forward to working with my colleagues on both sides of the aisle in passing meaningful, bipartisan campaign finance reform in 1997.

Mr. President, I want to conclude, as the Senator from Arizona did, by just mentioning the folks that are here on the floor with us today. Obviously, I have already talked about my great feelings about working with Senator MCCAIN on this, but I know that the other three Senators we are going to hear from—Senator COLLINS, Senator LEVIN, and Senator CLELAND—who are all members of the Governmental Affairs Committee, are intimately aware of what is wrong with our system. They have taken the time to come down here today to put forth a message, as Senator CLELAND has done so well at the hearings. He has asked a number of witnesses, "Would these things have happened had McCain-Feingold been enacted?" The answer in every case was, "No."

So that is the challenge before us.

Mr. President, at this point I would like to yield such time as she requires to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Thank you, Mr. President.

Mr. President, I am delighted to join my colleagues, particularly Senator MCCAIN and Senator FEINGOLD, in announcing our intent to bring bipartisan campaign finance reform legislation to a vote in September. At the State level, Maine has led the Nation on this issue, and the people of my State think the time has come for Congress to step up to the plate and enact meaningful reform.

As a member of the Governmental Affairs Committee, I have spent the past month listening to testimony about illegal campaign contributions. It is not a pretty picture. In my opening statement at the hearings, I observed that our political system suffers from a mania for money. If anything, the hearings have demonstrated that I underestimated just how intense that mania is.

Mr. President, we should be embarrassed by how our political system is viewed. Listen to the judgment rendered by Johnny Chung, one of the individuals alleged to have laundered foreign political contributions. "I see the White House is like a subway—you have to put in coins to open the gates." What Mr. Chung did not say, because he did not have to say it, is that the vast majority of hard-working and honest Americans do not have enough coins to make the gates open.

This is not a partisan observation. All of us in this Chamber—Republicans and Democrats alike—should be embarrassed at the perception that the leaders of the greatest Nation on earth are accessible only to those with enough coins.

Mr. President, we should be embarrassed that the American people are convinced that we will never reform the system, that we will never put the integrity of our political system ahead of our self-interests.

Some argue that the relative quiet of the people means they are satisfied with the status quo, but that is wrong. In this case, silence sends a stronger message of disapproval than the loudest shouts of protest. The message that it sends is that people have given up on us. Look at the reform efforts at the State level, and you will see that it is not that the voters do not believe in campaign finance reform. It is that they do not believe in the U.S. Senate.

We all know that if left untreated, the disease that afflicts our political system will only grow worse. With the high cost of television ads, the money frenzy can only grow. Indeed, the television ad race has become the political counterpart of the nuclear arms race characterized by the same insecure feeling that one can never have enough.

None of us involved in this effort has all of the answers. We recognize that reforming our campaign finance laws raises difficult issues of public policy and thorny issues of constitutional law. Our approach is not set in stone. We are open to other ideas. We are open to compromise, but we are not open to letting the Senate duck this issue. Like my colleagues, I look forward to working with the leadership of this body to bring this matter to a vote. We have an obligation to the American people to ensure that such a vote comes about, and we are determined to make that happen in September.

Mr. President, the American dream has undergone some changes, not all of which are for the better. We are now living in a country in which any millionaire can dream of growing up to be a United States Senator. That may be an acceptable state of affairs during a time of peace and prosperity, when the Government does not need to call upon the people of this Nation to make sacrifices. But the unhealthy mix between money and politics may produce far more worrisome consequences during periods when America is tested. As with all reforms, the time to make them is before they are urgently needed.

I look forward to a vigorous debate and vote on this issue in September. I thank my colleagues for working with me on this important issue.

I yield the floor.

Mr. FEINGOLD. Mr. President, I am extremely grateful for the work of Senator COLLINS on this issue.

I now yield to the Senator from Michigan such time as he may require.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my friend from Wisconsin and congratulate the great Senators from Arizona and Wisconsin for their steadfast leadership on this issue. It is a privilege to join their cause and to join with others, Senator COLLINS and Senator CLELAND, in the Chamber this morning to speak on behalf of this bill.

Mr. President, I have in my hand here a copy of the current Federal campaign finance law. It says that individuals cannot contribute more than $1,000 to any candidate or political committee with respect to any election for Federal office. It says corporations and unions cannot contribute at all. In Presidential campaigns you are supposed to be financed with public funds.

That is the law on the books today. So how is it that we hear about contributions of hundreds of thousands of dollars from individuals, corporations and unions? Why do Presidents and Presidential candidates spend long hours fundraising for hundreds of thousands of dollars? How is it possible, we ask? We thought there was a law.

Well, there is, but in the race to compete and win elections, candidates and parties have found a way around the law, and that way is what we refer to as soft money. It is called soft money as opposed to hard money, which is the money regulated by the campaign finance laws, because soft money is easier to raise. You can get $500,000, say, from just one corporation or individual. You do not have to go to 500 different people and raise $1,000 each as you do with hard money. You can find one person who is rich enough and willing enough to pay a half-million dollars or more and you can then accept that contribution.

There is another part in current law which says that if you spend money in an election in support of a candidate or opposed to a candidate, you have to spend only money that is raised the hard way, following the limits. But here is a TV ad, and there are dozens like this one, and here we have a transcript of this TV ad, and anyone who would see this ad would think that it was opposed to a particular candidate. But this ad was produced and aired not with hard money, as the law requires, but with soft money, and here it is. It reads this way:

> Who is Bill Yellowtail? He preaches family values but he takes a swing at his wife. Yellowtail's explanation. He only slapped her, but her nose was not broken. He talks law and order but is himself a convicted criminal. And though he talks about protecting children, Yellowtail failed to make his own child support payments, then voted against child support enforcement. Call Bill Yellowtail and tell him you don't approve of his wrongful behavior.

Now, there is no doubt that that ad, which was bought and paid for by an organization called Citizens for Reform, was designed to defeat Bill Yellowtail, but because it doesn't use any of the seven so-called magic phrases like "vote against" or "defeat," it is not governed by our campaign finance laws.

Why? Because it is viewed as an issue ad, at least up until now, and not a candidate ad, and it can be paid for with soft money. Now, nobody really believes that fiction, but that is what the law currently allows.

So, Mr. President, you have the vicious combination under the current campaign system and outside of the control of our campaign finance laws of contributions of hundreds of thousands of dollars from one individual or corporation funding campaign ads that go directly for or against a particular candidate. The net result is that the exceptions to our campaign finance laws have swallowed up the rules. Our campaign finance laws are a sham and a shambles. Now we face the daunting task of trying to plug those loopholes, to make the law whole again and in making it whole to make it effective.

I am pleased to be here today to announce our intention, Mr. President, to get the Senate, one way or another, to take up the McCain-Feingold campaign finance reform bill in September. We are hopeful, of course, that we can work out an agreement with the majority leader to allow us to have an up-down vote on the bill. But if that cannot be arranged, we are committed to getting this legislation before the Senate in spite of the absence of such an agreement. It is not our preferred way to approach this legislation, but it may be the only way we can get it before the Senate. I hope not, but it may prove to be the only way.

Some will argue that we should first complete the campaign fundraising investigation into the 1996 elections currently being conducted by the Governmental Affairs Committee. But they know that we do not need more evidence to prove this crime. And the current state of our campaign finance system is a crime. What is already unlawful, of course, must be prosecuted, but too much of what is currently lawful should be unlawful. The McCain-Feingold bill is a comprehensive bipartisan bill supported by over a majority of this Senate. The President has said in a letter read by Senator FEINGOLD that he welcomes the opportunity to sign it. There is strong support in the House of Representatives. We are determined to bring this bill to the floor of the Senate and to keep it before the Senate until we get an up-down vote, and we are determined to do that in September.

The Fourth of July was supposed to be the date by which this legislation was to be considered. This year July comes in September, and we will act to get this legislation considered in an up-down vote by the Senate in September.

Again, I commend the leaders of this effort. It is going to take great strength and great energy to overcome the opposition, but we are determined to use our full energies to do just that.

I thank the Chair and I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Presiding Officer will advise the Senator from Wisconsin he has 4 minutes and 40 seconds remaining on his time.

Mr. FEINGOLD. We are delighted to have the persistence and expertise of the Senator from Michigan on this effort.

I yield all but 30 seconds to my friend from Georgia.

Mr. CLELAND. Mr. President, hearing the discussion in this Chamber today gets my juices flowing. I appreciate the comments of everyone here. It reminds me that back in my great State of Georgia there is a little town called Waycross that has adopted as its mascot a little comic strip character called Pogo. Pogo was a little possum that lived on the edge of the Okefenokee Swamp, and he was famous for one statement, which is, "We have met the enemy and he is us."

There is no question, Mr. President, that the enemy of campaign finance reform is us, and yet the friends of campaign finance reform are us. We have to resolve this issue. It is not going to be left up to anyone else, any one other body. We have to do it and no one else is going to do it.

I am extremely pleased to join with my distinguished colleagues from Arizona and Wisconsin and Maine and Michigan to discuss this critical issue that I think is one of the most important issues we face certainly this year.

Now, my friends, Senators MCCAIN and FEINGOLD, have indicated we will be voting on this issue in this Chamber this September. I certainly hope so. Three of us here also have the distinction, and I guess it is an honor, of serving on the Governmental Affairs Committee which is investigating a series of illegal and improper activities in connection with the Federal elections of 1996. All three of us—myself, Senator COLLINS, and Senator LEVIN—are recently veterans of the campaign finance wars, each of us having won election or reelection in the 1996 elections. I think that is one of the reasons why we have a burning desire to change the very system under which we ran.

While the Governmental Affairs Committee has more work to do in uncovering the full story of the 1996 elections, it is already abundantly clear that the atrocious current system of Federal campaign finance laws has made our country vulnerable to efforts by foreign as well as domestic sources to improperly influence our electoral process. As Georgia's secretary of state and certainly as a U.S. Senator, I have been aware for a long time of the domestic abuses of big money and special interests, and that concern has helped fuel my longstanding interest in significant campaign finance reform.

Mr. President, these Governmental Affairs proceedings have been an eye-opener for me. They have indicated to me the incredible vulnerability that this country and our political system experience in terms of foreign special interests. As the preceding speakers have indicated, we as a group are not

wedded to any one plan. We will be working with other Senators to come up with the best legislation we can possibly put together. But we will insist that the final legislative language we will support and force a vote on in September be truly bipartisan, must be real reform and not a sham, and in my view to constitute real reform at a minimum we must reduce the role of big money in our political process, help level the playing field for less-financed candidates and must ban soft money altogether at the Federal level. One of the unifying threads of the Governmental Affairs investigation to date has been the very concentration virtually of all the fundraising abuses in both parties in the realm of soft money.

So I look forward to taking our case back home to our constituents in August and in forging a bipartisan compromise which does incorporate the necessary elements of real reform. We are not going to terminate our effort. We intend to terminate these abuses.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CLELAND. I thank the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank my colleagues for an excellent presentation this morning. We are very much looking forward to September.

Let me include, because know various Senators have to go to Governmental Affairs Committee, one last anecdote. The chairman of the Governmental Affairs Committee, Senator THOMPSON, the other day heard reference to the McCain-Feingold bill, and he corrected it saying it's actually been called the McCain-Feingold-Thompson bill. I think that is a good sign for the future of our legislation.

I thank the Chair.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

MEASURE PLACED ON CALENDAR—S. 1085

Mr. McCAIN. I understand there is a bill at the desk that is due for its second reading.

The PRESIDING OFFICER. The clerk will read the bill by title.

The legislative clerk read as follows:

A bill (S. 1085) to improve the management of the Boundary Waters Canoe Area Wilderness, and for other purposes.

Mr. McCAIN. I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. The bill will go to the calendar.

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

Mr. McCAIN. I now ask unanimous consent that the Senate proceed to the consideration of S. 39 as under the consent agreement.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 39) to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "International Dolphin Conservation Program Act".

(b) REFERENCES TO MARINE MAMMAL PROTECTION ACT.—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 Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

SEC. 2. PURPOSE AND FINDINGS.

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

(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

(b) FINDINGS.—The Congress finds that—

(1) the nations that fish for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with the purse seine fishery from hundreds of thousands annually to fewer than 5,000 annually;

(2) the provisions of the Marine Mammal Protection Act of 1972 that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities;

(3) tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market; and

(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000 animals, with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits with the goal of eliminating dolphin mortality.

SEC. 3. DEFINITIONS.

Section 3 (16 U.S.C. 1362) is amended by adding at the end the following new paragraphs:

"(28) The term 'International Dolphin Conservation Program' means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama, that requires—

"(A) that the total annual dolphin mortality in the purse seine fishery for yellow fin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

"(B) the establishment of a per stock per year dolphin mortality limit at a level between 0.2 percent and 0.1 percent of the minimum population estimate to be in effect through calendar year 2000;

"(C) the establishment of a per stock per year dolphin mortality limit at a level less than or equal to 0.1 percent of the minimum population estimate beginning with the calendar year 2001;

"(D) that if a dolphin mortality limit is exceeded under—

"(i) subparagraph (A), all sets on dolphins shall cease for the applicable fishing year; and

"(ii) subparagraph (B) or (C), all sets on the stocks covered under subparagraph (B) or (C) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

"(E) a scientific review and assessment to be conducted in calendar year 1998 to—

"(i) assess progress in meeting the objectives set for calendar year 2000 under subparagraph (B); and

"(ii) as appropriate, consider recommendations for meeting these objectives;

"(F) a scientific review and assessment to be conducted in calendar year 2000—

"(i) to review the stocks covered under subparagraph (C); and

"(ii) as appropriate to consider recommendations to further the objectives set under that subparagraph;

"(G) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the established per-year mortality limits, as determined under subparagraphs (A) through (C); and

"(H) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

"(29) The term 'Declaration of Panama' means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.".

SEC. 4. AMENDMENTS TO TITLE I.

(a) Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended—

(1) by inserting after the first sentence "Such authorizations may be granted under title III with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103" before the period; and

(2) by striking the semicolon in the second sentence and all that follows through "practicable".

(b) Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended—

(1) by striking subparagraph (B) and inserting the following:

"(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

"(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of the International Dolphin Conservation Program Act; or

"(II) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by

vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

"(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

"(iii) the total dolphin mortality limits, and per stock per year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed those levels determined for 1996, or in any year thereafter, consistent with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program; and"

(2) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively;

(3) by inserting after subparagraph (B) the following:

"(C) the Secretary shall not accept such documentary evidence if—

"(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner to allow determination of compliance with the International Dolphin Conservation Program; or

"(ii) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

"(iii) after taking into consideration this information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program."; and

(4) by striking "subparagraph (E)" in the matter after subparagraph (F), as redesignated by paragraph (2) of this subsection, and inserting "subparagraph (F)".

(c) Section 101 (16 U.S.C. 1371) is amended by adding at the end the following new subsection:

"(d) ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.—The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.".

(d) Section 104(h) (16 U.S.C. 1374(h)) is amended to read as follows:

"(h) GENERAL PERMITS.—

"(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

"(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 304 of this Act, subject to the regulations issued pursuant to section 302 of this Act.".

(e) Section 108(a)(2) (16 U.S.C. 1378(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by inserting after subparagraph (B) the following:

"(C) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate—

"(i) the conservation and management provisions agreed, to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature on December 4, 1995; and

"(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

"(D) discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;".

(f) Section 110(a) (16 U.S.C. 1380(a)) is amended—

(1) by striking "(1)" in paragraph (1); and

(2) by striking paragraph (2).

(g) Subsection (d)(1) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)(1)) is amended to read as follows:

"(1) It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term 'Dolphin Safe' or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains—

"(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing;

"(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements of being considered dolphin safe under paragraph (2);

"(C) tuna harvested outside the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (3); or

"(D) tuna harvested by a vessel engaged in any fishery identified by the Secretary pursuant to paragraph (4) as having a regular and significant incidental mortality of marine animals.".

(h) Subsection (d)(2) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)(2)) is amended to read as follows:

"(2) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—

"(A) the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or

"(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no dolphins were killed or seriously injured during the sets in which the tuna were caught;

"(ii) the product is accompanied by a written statement executed by—

"(I) the Secretary or the Secretary's designee;

"(II) a representative of the Inter-American Tropical Tuna Commission; or

"(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer documented that no dolphins were killed or seriously injured during the sets in which the tuna in the tuna product were caught; and

"(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

"(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which would provide for the verification of tuna products as dolphin safe.".

(i) Subsection (d) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)) is amended further by adding the following new paragraphs:

"(3) For purposes of paragraph (1)(C), tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

"(A) it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; or

"(B) in any fishing in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, it is accompanied by a written statement executed by the captain of the vessel and an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.

"(4) For purposes of paragraph (1)(D), tuna or a tuna product that contains tuna harvested in a fishery identified by the Secretary as having a regular and significant incidental mortality or serious injury of marine mammals is dolphin safe if it is accompanied by a written statement executed by the captain of the vessel and, where determined to be practicable by the Secretary, an observer participating in a national or international program acceptable to the Secretary certifying that no marine mammals were killed or seriously injured in the course of the fishing operation or operations in which the tuna were caught.

"(5) No tuna product may be labeled with any reference to dolphins, porpoises, or marine mammals, except as dolphin safe in accordance with this subsection.".

(j) Subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)) is amended to read as follows:

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not

later than 6 months after the effective date of the International Dolphin Conservation Program Act.

"(2) TRACKING REGULATIONS.—Within 3 months after the date of enactment of the International Dolphin Conservation Program Act, the Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d). In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall include provisions that address each of the following items:

"(1) the use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported;

"(2) additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures;

"(3) the designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d);

"(4) the reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set;

"(5) the shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise;

"(6) the use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d); and

"(7) the provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this subsection.

The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.".

SEC. 5. AMENDMENTS TO TITLE III.

(a) The heading of title III is amended to read as follows:

"TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM".

(b) Section 301 (16 U.S.C. 1411) is amended—

(1) by striking paragraph (4) of subsection (a) and inserting the following:

"(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating, dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority."; and

(2) by striking paragraphs (2) and (3) of subsection (b) and inserting the following:

"(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

"(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;".

(c) Section 302 (16 U.S.C. 1412) is amended to read as follows:

"SEC. 302. AUTHORITY OF THE SECRETARY.

"(a) REGULATIONS.—

"(1) The Secretary shall issue regulations to implement the International Dolphin Conservation Program.

"(2)(A) Not later than 3 months after the effective date of the International Dolphin Conservation Program Act, the Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

"(B) Regulations issued under this section shall include provisions—

"(i) requiring observers on each vessel;

"(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of marine mammals in fishing operations;

"(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;

"(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

"(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;

"(vi) banning the use of explosive devices in all purse seine operations;

"(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;

"(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

"(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;

"(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

"(xi) authorizing fishing with the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

"(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

"(C) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

"(b) CONSULTATION.—In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

"(c) EMERGENCY REGULATIONS.—

"(1) If the Secretary determines, on the basis of the best scientific information available (including research conducted under subsection (d) and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse effect on a marine mammal stock or species, the Secretary shall—

"(A) notify the Inter-American Tropical Tuna Commission of his or her findings, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

"(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

"(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.

"(3) Emergency regulations prescribed under this subsection—

"(A) shall be published in the Federal Register, together with an explanation thereof;

"(B) shall remain in effect for the duration of the applicable fishing year; and

"(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency action no longer exist.

"(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

"(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's findings under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the problem described in the findings. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall—

"(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

"(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

"(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

"(d) RESEARCH.—

"(1) IN GENERAL.—The Secretary shall, in cooperation with the nations participating in the International Dolphin Conservation Program and with the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

"(2) SPECIFIC AREAS OF RESEARCH.—Research carried out under paragraph (1)—

"(A) may include projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

"(B) may include projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

"(C) may include projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States;

"(D) shall include projects to study the effect of chase and encirclement on the health and biology of dolphin and dolphin populations incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean; and

"(E) may include projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks, and nontarget species.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $8,000,000 to be used by the Secretary, acting through the National Marine Fisheries Service, to carry out the research described in paragraph (2)(D).

"(4) REPORT.—Within 5 years after the date of enactment of the International Dolphin Conservation Program Act, the Secretary shall complete and submit a report containing the results of the research described in paragraph (2)(D), together with any recommendations the Secretary may have to offer on the basis of the study, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce of the House of Representatives, and to the Inter-American Tropical Tuna Commission. The Secretary shall include a description of the annual activities and results of research carried out under this subsection in the report required under section 303.".

(d) Section 303 (16 U.S.C. 1413) is hereby repealed.

(e) Section 304 (16 U.S.C. 1414) is amended to read as follows:

"SEC. 303. REPORTS BY THE SECRETARY.

"Notwithstanding section 103(f), the Secretary shall submit annual reports to the Congress which include—

"(1) results of research conducted pursuant to section 302;

"(2) a description of the status and trends of stocks of tuna;

"(3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

"(4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin populations in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program;

"(5) actions taken by the Secretary under section 101(a)(2)(B) and section 101(d);

"(6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title; and

"(7) any other information deemed relevant by the Secretary.".

(f) Section 305 (16 U.S.C. 1415) is hereby repealed.

(g) Section 306 (16 U.S.C. 1416) is amended to read as follows:

"SEC. 304. PERMITS.

"(a) IN GENERAL.—

"(1) Consistent with the regulations issued pursuant to section 302, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—

"(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

"(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 302, with respect to each vessel.

"(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.

"(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

"(b) PERMIT SANCTIONS.—

"(1) In any case in which—

"(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 305;

"(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 305; or

"(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,

the Secretary may—

"(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

"(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(iii) deny such permit; or

"(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

"(2) In imposing a sanction under this subsection, the Secretary shall take into account—

"(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

"(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

"(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

"(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

"(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.".

(h) Section 307 (16 U.S.C. 1417) is hereby redesignated as section 305, and amended—

(1) by striking paragraphs (1), (2), and (3) of subsection (a) and inserting the following:

"(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated and within 6 months thereafter completed all steps required of applicant nations in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(B) by striking paragraph (2) and inserting in lieu thereof the following:

"(2) except as provided for in subsection 101(d), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this title and regulations issued under pursuant to this title; and

"(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);";

(2) by inserting "(a)(5) or" before "(a)(6)" in subsection (b)(2); and

(3) by striking subsection (d).

(i) Section 308 (16 U.S.C. 1418) is redesignated as section 306, and amended by striking "303" and inserting in lieu thereof "302(d)".

(j) CLERICAL AMENDMENTS.—The table of contents in the first section of the Marine Mammal Protection Act of 1972 is amended by striking the items relating to title III and inserting in lieu thereof the following:

"TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

"Sec. 301. Findings and policy.
"Sec. 302. Authority of the Secretary.
"Sec. 303. Reports by the Secretary.
"Sec. 304. Permits.

SEC. 6. AMENDMENTS TO THE TUNA CONVENTIONS ACT.

(a) Section 3(c) of the Tuna Conventions Act (16 U.S.C. 952(c)) is amended to read as follows:

"(c) at least one shall be either the Administrator, or an appropriate officer, of the National Marine Fisheries Service; and".

(b) Section 4 of the Tuna Conventions Act (16 U.S.C. 953) is amended to read as follows:

"SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

"(a) APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.—The Secretary, in consultation with the United States Commissioners, shall—

"(1) appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the

fisheries included under the conventions, and from nongovernmental conservation organizations;

"(2) appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations;

"(3) establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data; and

"(4) fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

"(b) FUNCTIONS.—

"(1) GENERAL ADVISORY COMMITTEE.—The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

"(2) SCIENTIFIC ADVISORY SUBCOMMITTEE.—

"(A) ADVICE.—The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including—

"(i) the conservation of ecosystems;

"(ii) the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and

"(iii) the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

"(B) OTHER FUNCTIONS AND ASSISTANCE.—The Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners, or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include—

"(i) the review of data from the Program, including data received from the Inter-American Tropical Tuna Commission;

"(ii) recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research;

"(iii) recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments;

"(iv) consulting with other experts as needed; and

"(v) recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or its equivalent).

"(3) ATTENDANCE AT MEETINGS.—The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.".

(c) BYCATCH REDUCTION.—The Tuna Conventions Act (16 U.S.C. 951 et seq.) is amended by adding at the end thereof the following:

"SEC. 15. REDUCTION OF BYCATCH IN THE EASTERN TROPICAL PACIFIC OCEAN.

"The Secretary of State, acting through the United States Commissioners, shall take the necessary steps to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The bycatch reduction program shall include measures—

"(1) to require, to the maximum extent practicable, that sea turtles and other threatened species and endangered species are released alive;

"(2) to reduce, to the maximum extent practicable, the harvest of nontarget species;

"(3) to reduce, to the maximum extent practicable, the mortality of nontarget species; and

"(4) to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.".

SEC. 7. EFFECTIVE DATES.

(a) AMENDMENTS TO TAKE EFFECT WHEN IDCP IN EFFECT.—Sections 3 through 6 of this Act shall become effective upon certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in effect.

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding subsection (a), subsection (f)(2) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)(2)), as added by section 4(j) of this Act takes effect on the date of enactment of this Act.

Mr. MCCAIN. Mr. President, we have an agreement to move forward on the tuna-dolphin legislation, S. 39, the Snowe-Breaux-Stevens-Kerry, et al., legislation.

This legislation would implement the International Dolphin Conservation Program. Senator SNOWE, who is responsible for this legislation, will soon offer a managers' amendment that will make several changes to the bill. As I stated last week, my consent to modifications was with the stipulation that any changes would not undermine the International Dolphin Conservation Program by causing the signatory nations to dissolve the agreement.

With the assurances we have received from the President's National Security Adviser that these changes meet that stipulation, I support strongly the managers' amendment.

Again, Mr. President, this legislation is supported by Greenpeace, the National Wildlife Federation, the World Wild Life Fund, the Environmental Defense Fund and the Center for Marine Conservation.

I ask unanimous consent to have printed in the RECORD at this time letters from these organizations and from the President endorsing this legislation.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JULY 17, 1997.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN, The Center for Marine Conservation, Environmental Defense Fund, Greenpeace, National Wildlife Federation and the World Wildlife Fund, representing more than 10 million supporters in the United States strongly support passage of S. 39, *The International Dolphin Conservation Program Act*. We urge you to support S. 39, seek prompt consideration of the bill by the full Senate, and to oppose any procedural moves which would delay consideration of the bill.

Not only does the bill strengthen the Marine Mammal Protection Act, protection for dolphins in the Eastern Tropical Pacific (ETP) but it also protects the ecosystem by reducing the bycatch of endangered sea turtles, sharks, billfish and juvenile tuna. Additionally, the Act is an important step in solidifying the voluntary program presently in place in the ETP which has reduced dolphin mortality from 423,678 in 1972 to 2,700 in the last year. Enactment of S.39 and the development of the new international standards it prescribes will bring the conservation community significantly closer to the goal of eliminating dolphin deaths altogether.

We applaud your efforts to bring S. 39 to the floor for consideration. The amendments passed by the Senate Committee on Commerce, Science and Transportation have strengthened the bill considerably. Significantly, these changes directly address concerns about truth in labeling, because they prohibit the use of the of "Dolphin Safe" label on tuna if a single dolphin died or suffered serious injury during the fishing operation. That change means that the "Dolphin Safe" label will provide greater protection for dolphins than ever before. In addition, the bill as amended now provides numerous fail-safe measures to protect the dolphin populations in the ETP. The amended bill gives the Secretary of Commerce emergency powers to re-impose the trade embargoes if a detrimental change in the dolphin population is observed. While there is no indication in the current science that chase and encirclement adversely affects dolphins populations the bill, as amended provides that a five year study be done to determine the effects of chase and encirclement on those dolphin populations. If at any time the study shows adverse impact on the populations, the bill provides the Secretary of Commerce emergency powers to protect dolphins. In short, S. 39 offers a powerful and effective means of protecting dolphins, the Eastern Tropical Pacific ecosystem, and the American consumer.

This bill is supported by environmentalists, the fishing industry, and the Seafarers Union. It is based on sound science, and has been the subject of Congressional consideration for two full legislative sessions. Delay in enactment of S. 39 would mean sacrificing this important opportunity to strengthen the protection of dolphins and the ecosystem in which they live. We strongly urge you to seek prompt consideration of S. 39 by the full Senate and to oppose any procedural moves which would delay its prompt enactment.

Sincerely,

ROGER MCMANUS,
President, Center for Marine Conservation.

BARBARA DUDLEY,
Executive Director, Greenpeace.

KATHRYN FULLER,
President, World Wildlife Fund.

FRED KRUPP,
Executive Director, Environmental Defense Fund.

MARK VAN PUTTEN,
President, National Wildlife Federation.

THE WHITE HOUSE,
Washington, July 15, 1997.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: I urge the Senate to consider and pass S. 39, the International Dolphin Conservation Program Act.

The House of Representatives recently passed counterpart legislation with wide bipartisan support and it is my hope that the Senate will act similarly. As you know, this legislation has recovered the support of environmental organizations in addition to our nation's fishing industry. If enacted, S. 39 will allow the United States to implement the Panama Declaration, a strong international program needed to protect dolphins and other marine life in the Eastern Tropical Pacific Ocean.

I hope that the Senate acts in our national interest and passes this measure, which will permit the United States to maintain its leadership role in promoting better stewardship of our oceans and their valuable resources.

Sincerely,

BILL CLINTON.

Mr. MCCAIN. The bill, which was approved in the House last year and again last May by overwhelming majorities, would implement the International Dolphin Conservation Program by making basically two changes to U.S. law. First, when the IDCP agreement is officially concluded, it permits the importation of tuna from the Eastern Tropical Pacific as long as dolphin-safe fishing practices are adhered to. Second, it will permit the labeling of tuna from this area as dolphin safe as long as no dolphin were killed or seriously injured during the catch and that science shows no significant adverse impact on dolphins.

Failure to enact this bill would be a devastating blow to our efforts to protect the marine environment. Without this implementing legislation, current fishing practices will continue, practices which scientists have learned have an adverse impact not only on dolphin but a host of other marine life including sea turtles and bill fish. Foreign fishing companies no longer bound by the international treaty may well resume even more harmful fishing practices which would spell disaster for dolphin. The impact of tuna fishing on dolphin is an international problem which demands an international response. Passage of this legislation will ensure the cooperation of the need to provide meaningful and sustainable protection for dolphin and other marine life.

Mr. President, I want to again thank Senator SNOWE, the chairman of the Ocean and Fisheries Subcommittee, Senator STEVENS, Senator BREAUX, and Senator KERRY of Massachusetts. They have been working on this legislation for 2 years. Senator SNOWE has held numerous hearings, has agreed to a number of compromises, and a number of amendments, and I would like to again congratulate her for her success in reaching agreement on this very difficult and controversial legislation. The enactment of this legislation is a great victory for the environment and the environmental communities and they deserve enormous credit and gratitude.

I thank the other Senators without whose cooperation passage of this bill would not be possible. I would like to yield to Senator SNOWE for her comments including a description of the managers' amendment.

Mr. President, I yield the floor.

Ms. SNOWE addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Maine.

Ms. SNOWE. I thank Senator MCCAIN, who, as chairman of the Commerce Committee, has shown tremendous leadership, and I congratulate him for getting this contentious bill to the floor.

Before beginning, I ask unanimous consent that Kate Wing, a Sea Grant fellow from the Subcommittee on Ocean and Fisheries, be given floor privileges during consideration of S. 3 9.

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

Ms. SNOWE. Mr. President, I would also like to commend the original sponsors of this legislation, Senator STEVENS and Senator BREAUX, for their stellar efforts on the bill before us today. They have spent a tremendous amount of time and energy over the past year and a half to get this bill to this point, and they have made every effort to accommodate the concerns of Senators with opposing views.

I would also like to thank Senator KERRY, the ranking member of the subcommittee, and Senators HOLLINGS, BOXER, and BIDEN who have been instrumental in helping us reach agreement on this bill, and I appreciate their efforts.

S. 39, the International Dolphin Conservation Program Act, will make the changes in U.S. law necessary to implement the Declaration of Panama, which was signed by the United States and 11 other countries in 1995. Under Panama, these nations agreed to conclude a binding agreement to protect dolphins in the Eastern Tropical Pacific tuna fishery, and to adhere to broadly sustainable methods of harvesting this tuna.

This bill enjoys a tremendous amount of public support. The Clinton administration, which negotiated the agreement, strongly supports this bill. As Senator MCCAIN indicated, a number of environmental groups are champions of this legislation as well. The World Wildlife Fund, National Wildlife Federation, Center for Marine Conservation, Environmental Defense Fund, and Greenpeace have all strongly supported this bill.

The bill is also strongly supported by the National Fisheries Institute, the U.S. tuna fishing industry, and the Seafarer's International Union.

The Panama Declaration and S. 39 represent a landmark international effort to achieve two critical objectives: to protect dolphins in the ETP, and to protect the entire marine ecosystem of this vast region. They do this by requiring the nations fishing in the ETP to meet exceedingly strict limitations on the mortality and serious injury of dolphins. In exchange for the other nations agreeing to this stringent conservation regime, the United States will lift its embargoes of tuna from other nations, and permit fishermen that set purse seine nets around dolphins to use the U.S. dolphin-safe label if they do not kill or seriously injure any dolphins.

This is the most effective and responsible way to achieve our dual objectives of protecting dolphins and the ecosystem of the ETP, and the reasons are twofold. While dolphin setting was once very deadly for dolphins, refinements to the practice in recent years have yielded tremendous gains. The graph behind me shows dolphin mortality per dolphin set, and we can see how successful fishermen have been in reducing mortality to dolphins in each set—99 percent since 1986.

These mortality reductions per set have in turn led to a precipitous decline in total dolphin mortality in the ETP, as this other graph behind me indicates as well. Overall dolphin mortality has plummeted 99 percent since 1986, even though the rate of dolphin setting has remained stable during that period.

At the same time, it has become apparent that the alternatives to dolphin setting—log and school setting—are very damaging to many other species. The table behind me shows the relative amounts of bycatch for each of the three harvesting methods.

I ask unanimous consent the table be printed in the RECORD.

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

Year	Number of Dolphin sets	Total dolphin mortality	Mortality per set	Dolphin sets as a percent of total sets
1986	10,507	133,174	5.34	59.82
1987	12,538	99,177	12.67	62.00

Year	Number of Dolphin sets	Total dolphin mortality	Mortality per set	Dolphin sets as a percent of total sets
1988	10,571	81,593	7.91	47.75
1989	12,580	97,046	7.72	56.34
1990	10,571	52,531	7.71	51.95
1991	9,482	27,292	4.97	55.32
1992	10,326	15,550	2.88	56.16
1993	6,953	3,716	1.51	40.27
1994	7,804	4,095	0.53	50.00
1995	7,209	3,276	0.52	47.00
1996	7,353	2,766	0.45	52.00

Data from the Inter-American Tropical Tuna Association.

Ms. SNOWE. Mahi-mahi, for instance, a fish popular in white tablecloth restaurants in the United States, suffers far higher bycatch rates in log and school sets than in dolphin sets. Looking at blacktip sharks, we see a similar problem. The same is true for every other nondolphin species in the ETP. If you look at Mahi-mahi, you are talking about losing 30,000 Mahi-mahi fish for every 1,000 pounds of tuna caught in the eastern tropical pacific.

Mr. President, the basic intent of the Panama Declaration and S. 39 is to lock the nations that fish in the ETP into a very strict conservation regime that will require them to continue the progress made to date and eventually reduce dolphin mortality to a level near zero. And it is also to recognize a fishing method that causes very little harm to dolphins, but which is also the safest possible fishing method for all of the other species that live in the ETP.

Mr. President, as we know, some Senators have been concerned that dolphin setting may be causing unseen harm to dolphins, and they objected to the immediate change in the dolphin safe label contained in S. 39 as reported by the committee. The latest compromise that we all reached last week, and that is contained in the manager's amendment that was offered by Senator MCCAIN.

It requires the expeditious commencement of research to further study the effect of dolphin setting on dolphins. Tuna caught by dolphin sets may not be labeled dolphin safe until at least March 1999, at which time the Secretary of Commerce must review the preliminary results of the study, and make a determination as to whether or not dolphin setting is causing significant adverse impacts to depleted dolphin stocks in the ETP. If the Secretary finds no significant impact, then the label changes to permit tuna caught with dolphin sets to be labeled dolphin safe, as long as no dolphins were killed or seriously injured during harvest.

Between July 1, 2001, and December 31, 2002, the Secretary will review the completed results of the study, and make another determination. If significant adverse impacts to dolphins are found at that time, he must prohibit the labeling of tuna caught with dolphin sets as dolphin safe.

Mr. President, I think this compromise reasonably addresses the concerns on both sides, and it resolves what has been a very contentious issue. I urge my colleagues to support the manager's amendment to S. 39, and the bill as amended.

I reserve the remainder of my time, Mr. President.

Mr. President, may I ask how much time I have remaining?

The PRESIDING OFFICER. The Senator from Maine has 5 minutes and 28 second.

Ms. SNOWE. Mr. President, I yield 3 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 3 minutes.

Mr. BREAUX. I thank the Senator and start by congratulating her on the effort she has made in this regard, and Senator STEVENS from Alaska for the work he has done along with Senator KERRY, and also acknowledge Senator Barbara BOXER's longstanding commitment on doing what is necessary to preserve and protect dolphins.

As we bring this legislation to the floor, it is very, very significant, for we have been working on this for 25 years to try to improve on a program that I think has made great progress in preserving the ability for the tuna industry in the United States, one of the most popular fishing resources in the entire world, to be able to continue to operate in a manner that does not cause death or mortality or serious harm to dolphin, which conflict, many times, with the tuna fish themselves. This industry, I think, is to be commended because they have made tremendous strides in trying to preserve their industry, at the same time protecting dolphins. So they are to be congratulated for the great work they have done. This legislation hopefully will be an improvement. I commend all of those who have had a chance to be involved in it.

One concern that I do have is directly related to the labeling issue. As many of you know, the debate on the tuna-dolphin issue has a long and tortuous history. It was our own industry, primarily the U.S. canners, who started the dolphin-safe movement by voluntarily adopting that label back in 1990. It took several years and many millions of dollars to educate the American consumer about what the dolphin-safe label means. It was because of the industry's efforts and congressional backing that we still have that label today.

But today, when we pass S. 39, the Congress will establish criteria by which to evaluate the appropriateness of the dolphin-safe label. The definition of the label may change, based upon further scientific studies.

But let us not fool ourselves that there are some people who will oppose this change at all costs. One way to do this is through the use of alternative labels.

The existence of alternative labels alone is not problematic, but the misuse of those labels to deceive or mislead the American public is a problem. The original version of S. 39 recognized this fact and prohibited other labels that referred to dolphins or other marine mammals on a can of tuna. It made sense from a practical point of view—if the Congress is establishing very strict criteria for a Government dolphin-safe label, then it should be the only such label.

Opponents to this provision would argue on the right to free commercial speech. We must remember that commercial speech is not given the same degree of protection as individual speech. If a significant Government interest exists, then the Government can regulate such commercial speech. I believe that the conservation goals of the International Dolphin Conservation Program are such a significant Government interest. But in the spirit of compromise, I was willing to allow alternative labels under some strict conditions.

Alternative labels can exist if they meet the minimum standards of the dolphin-safe label, including the no mortality or serious injury standard as well as the support of a tracking and verification program similar to that found in S. 39. If you want to claim that you are as safe as dolphin safe, then you must be able to prove it. Alternative labels are subject to all applicable labeling, marketing and advertising laws and regulations of the Federal Trade Commission Act—this only makes sense.

But the concern on the misuse of alternative labels continues to exist. Our compromise would address this concern by forbidding any campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the International Dolphin Conservation Program.

Finally, we ask the Secretary of Commerce to monitor the situation. If alternative labels are used in such a way to undermine the conservation goals of the International Dolphin Conservation Program, then the Secretary will make a report to the Congress. If our efforts here today, and over the past 2 years, are being thwarted by a campaign to undercut the label or International Dolphin Conservation Program, then we should know and we should take action to eliminate this problem.

Mr. President, I hope these safeguards are sufficient in dealing with the misuse of alternative labels. I can only support this bill if I know that our efforts and the goals of the binding international program are not being undone by a campaign which uses alternative labels to cerate market distinctions for the purpose of customer confusion or deception. I believe that we addressed this concern with our compromise. If not, I am sure that we shall visit this issue again.

In closing, Mr. President, I would like to acknowledge the leadership of my friend from Alaska, Senator STEVENS, who has helped guide this bill through to this day. I also would like to note the efforts of Senators SNOWE and MCCAIN who took a personal interest in protecting dolphins through an international agreement. My colleague from Massachusetts, Senator KERRY, helped to forge the compromise agreement which we stand to implement today. Of course, Senators BIDEN and BOXER should be noted for their continuing concern for dolphin protection—I am glad that our common interests were merged into common legislation. I urge my colleagues to vote in favor of S. 39.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Will the Senator yield to me?

Ms. SNOWE. Mr. President, I am more than happy to yield the remainder of my time to Senator STEVENS, who is a major sponsor of this legislation along with Senator BREAUX. I thank the Senator for his leadership on this issue.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes and 22 seconds.

PRIVILEGE OF THE FLOOR

Mr. KERRY. Mr. President, I ask unanimous consent that Jean Toal and Tom Richey be granted the privilege of the floor for this debate.

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

Mr. BREAUX. Mr. President, I ask unanimous consent my staff person, Paul Deveau, be granted the privilege of the floor.

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

The Senator from Alaska.

Mr. STEVENS. Mr. President, I introduced S. 39, the International Dolphin Conservation Program Act, in January of this year at the request of the administration.

The bill would implement the international conservation agreement called the Panama Declaration, which was signed on October 4, 1995, by the 12 nations that fish for tuna in the eastern tropical Pacific Ocean [the ETP].

These countries include: Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, and Venezuela.

The President and Vice President strongly support the bill, as do Greenpeace, the Center for Marine Conservation, the Environmental Defense Fund, the National Wildlife Federation, the World Wildlife Fund, the American Sportfishing Association, U.S. labor unions, and the U.S. tuna industry.

The House of Representatives has passed measures similar to S. 39 twice—in both the 104th and 105th Congresses, by large bipartisan majorities.

Under the Panama Declaration and S. 39, a binding international agreement to reduce dolphin mortality and conserve fishery resources in the ETP will be created.

This binding agreement will cap dolphin mortality in the ETP at no more than 5,000 dolphins annually, with the goal of reducing the mortality of dolphins to zero.

It will also create binding observer, bycatch, and other conservation and management measures in the ETP similar to those we just enacted in our domestic fisheries in the Magnuson-Stevens Act.

These important conservation measures are contingent on specific changes to U.S. law.

The key changes include: A change to allow tuna caught in compliance with the Panama Declaration—including through the encirclement of dolphins—to be imported into the United States; and a change so that dolphin safe will mean tuna in the ETP caught in a set in which dolphin mortality occurred.

Under the agreement we have reached with Senators BOXER, BIDEN, and BREAUX, the second of these changes will be delayed.

Tuna caught by encircling dolphins in the ETP will only be able to be labeled as dolphin safe beginning in March 1999.

Before this happens, the Secretary of Commerce must determine—as we believe he will based on the scientific data we have already seen—that encirclement is not having a significant adverse impact on depleted dolphin stocks.

I have strong doubts about whether this delay is necessary, but the Latin American countries who signed the Panama Declaration with the United States have agreed to the delay.

It is appropriate that in 1997—the 25th anniversary of the passage of the Marine Mammal Protection Act—we are making improvements with respect to the protection of dolphins, a primary focus in our enactment of the original MMPA.

Since passage of the MMPA in 1972, dolphin mortality in the ETP has been reduced from over 400,000 per year, to below 5,000.

This decrease in dolphin mortality is primarily due to the development of a practice called the back-down technique, in which dolphin are safely allowed to escape from the net.

Our bill today acknowledges the vast improvements that have been made in this encirclement fishing method.

S. 39 will allow tuna caught through this method to be imported into the United States and thereby discouraged alternative methods—log sets—which we have learned have extremely high levels of bycatch.

We spent the last 3 years working on the new measures to curb bycatch in our domestic fisheries—this year's S. 39 will help with the situation in the ETP.

I thank Senator BREAUX for his work on the matter, along with Senator KERRY, and I want to acknowledge the leadership of Senator SNOWE in working out the final version of this bill.

I thank the staff: Trevor McCabe, of my office; Paul Deveau, from Senator BREAUX's staff; Clark LeBlanc, with Senator SNOWE and Senator MCCAIN; Kate Wing, from Senator MCCAIN's staff; Penny Dalton, along with Jean Toal, from Senator HOLLINGS' staff; Margaret Cummisky, from Senator INOUYE's staff; and Kate English and Tom Richey, from Senator KERRY's staff. It has been an excellent staff job.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I yield myself 5 minutes.

I would like to also thank all of those involved in this effort, which has been a very long, very complicated, sometimes difficult effort, but I think, nevertheless, an extremely important one, which is resulting in a very important conservation bill being passed.

I particularly thank Senator MCCAIN, Senator STEVENS, Senator HOLLINGS, Senator BREAUX, Senator SNOWE, Senator BOXER, Senator BIDEN, Senator DASCHLE, Senator INOUYE, and Senator SMITH, all of whom have been involved in the negotiations and effort to reach this point. I thank the representative from the White House, Katie McGinty, and the State Department, and the Department of Commerce who have all been part of these negotiations, and particularly the staff on both sides, the staff on the majority side that Senator STEVENS mentioned and also particularly Kate English and Penny Dalton, Tom Richey and Jean Toal on our side who have really spent hour upon hour upon hour trying to find a compromise.

I fought for this compromise because it includes the critical element missing from the original bill: enhanced protection for depleted dolphin stocks on the basis of sound science before any changes are made to U.S. law to ease restrictions on fishing procedures that could jeopardize dolphins. This was my key concern: sound science first.

In addition, the compromise strengthens the bill by adding a bycatch reduction program, mandating a research study, guaranteeing funding costs for its initiation, and strengthening the authority for the emergency regulatory provisions. Finally, tied to the conclusions of the research study, the compromise resolves perhaps the key concern over the timing of, and the process for, changing the definition of what constitutes "dolphin-safe" when that term is employed to label tuna products.

What this debate was and is about is the impact that fishing for yellowfin tuna in the eastern tropical Pacific Ocean [ETP] has had on the two depleted dolphin stocks placed at risk as a result of this fishing effort: the eastern spinner and northeastern offshore spotted dolphins. The authors of legislation that established the dolphin-safe label—Senators BOXER and BIDEN—intended the label as one method to bring attention to the plight of these quickly declining dolphin stocks due to the unsafe fishing practices of catching yellowfin tuna by setting nets on dolphins that swim with tuna.

Since the creation of the label and the embargo of tuna products from countries that do not use the dolphin-safe fishing methods, dolphin mortality has dropped significantly. This decline in mortality has been attributed to the attention that the United States brought to this issue through the dolphin-safe label, and to the efforts of nations which participate in the dolphin conservation program under the La Jolla agreement of 1992.

I think there is consensus that the La Jolla agreement and its successor agreement, the Panama Declaration, are very important to dolphin conservation. That is why I and Senators BOXER and BIDEN and others have continued to struggle to reach a compromise on this legislation which will move the Panama Declaration further along the path to creating an international treaty on dolphin protection.

The outstanding concern with the bill originally reported by the Commerce Committee was that it altered the international conservation regime, before the safety of those alterations were scientifically known to be safe for depleted dolphin stocks. This concern applied particularly to changing the definition of the dolphin-safe label as required by the Panama Declaration. In my judgement, a decision to change the criteria for use of the dolphin-safe label could only be made responsibly after the U.S. Government would authoritatively answer the question, "What is the current health and abundance of these two dolphin stocks?"

We know that 10 years ago over 80,000 dolphins were killed each year in the ETP through the practice of setting on dolphins to catch giant yellowfin tuna. While the Technique has been modified, the practice still exists today.

The National Marine Fisheries Service, our Government agency charged with fisheries research and regulation, has not conducted a dolphin population study since 1987.

Proponents of the bill as reported by committee claim that empirical data provided by the Inter-American Tropical Tuna Commission [IATTC] provides enough information for them to feel comfortable that the dolphin stocks are safe and that no further study is needed. They conclude that IATTC observer data indicate that dolphin populations are either stable or increasing and that, taking into account the added number of boats fishing in the ETP since 1988, dolphin recovery is suggested.

BYCATCH VERSUS DOLPHIN

Supporters of S. 39 argue that, from a broader conservation perspective, catching yellowfin tuna by methods other than setting on dolphin results in the higher catch levels of juvenile yellowfin and bycatch including sea turtles, sharks, and marlin. I share their conservation concerns about bycatch and I support the bycatch reduction program added to S. 39.

However, I don't believe that we should address the bycatch problem at the expense of the two depleted dolphin stocks at risk in the ETP. That is why I have pushed so hard to ensure that any changes made to Federal law regarding fishing agreements that impact these two dolphin stocks must be based on sound scientific knowledge regarding the dolphin populations. If we all could agree that the dolphin stocks are recovering and that the new fishing practices developed over that last 10 years are now safe for dolphins, then there would be agreement on lifting the embargo and revisiting the precept of the dolphin-safe label. The dolphin research study included in this compromise will provide the necessary knowledge to support or refute this conclusion.

HISTORY OF TUNA-DOLPHIN DEBATE

I would like to briefly describe the history of dolphin conservation and why this compromise is so important to it continued success. Since the enactment of the Marine Mammal Protection Act in 1972 there has been a dramatic decrease in the dolphin deaths from American fishing practices. However, in the early years of the MMPA, foreign nations had become a far more serious source of dolphin mortality. During the 1980's amendments to the MMPA required foreign nations to accept dolphin protection requirements comparable to those imposed on U.S. tuna fishermen, or become subject to a U.S. ban on tuna imports. Those protections include a ban on encircling dolphin using purse seine nets when fishing in the eastern tropical Pacific Ocean [ETP].

In 1990, following a voluntary prohibition on the purchase of tuna caught in association with dolphin by canned tuna companies, the U.S. implemented legislation to require a dolphin-safe tuna label which remains in use-today. The labeling law specifies that tuna caught in driftnets could not qualify as dolphin safe. That same year, the United States embargoed tuna imports from Mexico, Venezuela, and Vanuatu for failure to meet the MMPA requirements.

In 1992, the MMPA was further amended by the International Dolphin Conservation Act, giving the Secretary of State authority to enter into international agreements to establish a global moratorium on the practice of setting nets on dolphins and established a dolphin-safe market in the United States in 1994.

In 1992, the Inter-American Tropical Tuna Commission [IATTC] adopted a voluntary international agreement—the La Jolla agreement—establishing a multilateral program to reduce dolphin mortalities in the ETP. This agreement contains the goal of reducing dolphin deaths to less than 5,000 annually. Currently, 11 nations including the United States, participate in this voluntary program. While Mexico had been a participant in the program, they recently announced that they were suspending their formal participation in the voluntary program.

During the summer of 1995, five environmental groups and six Latin American nations negotiated the Panama Declaration, a new initiative to strengthen the IATTC dolphin protection program in exchange for eliminating the current United States ban on tuna that is not dolphin safe.

This brings us to today, where our efforts are focused on enacting the necessary legislation for implementing the Panama Declaration, and the requirements that we revise United States dolphin protections laws.

Thanks to the efforts of so many Senators, their staffs and others, the bill we are about to vote on now includes: a label change provision that accommodates our international obligations as laid out in the Panama Declaration, while providing enhanced protection for dolphins, and sound science for future conservation efforts.

The compromise reflected in S. 39 as amended, provides for a $12 million over 3 years to fully fund a study on the practice of chase and encirclement and its impact on depleted dolphin stocks. The bill requires a preliminary finding on the results of this study to

be made in March, 1999. Unless the Secretary of Commerce finds that intentional encirclement has a significant adverse impact on depleted dolphin stocks, then the definition of the "dolphin-safe" label immediately changes to allow for the encirclement of dolphin—as long as no dolphin were killed or seriously injured in the process—as a legitimate fishing practice in the eastern tropical Pacific Ocean. Conversely, if the Secretary of Commerce finds that intentional encirclement does not have a significant adverse impact on depleted stocks, then the dolphin-safe label does not change at that time.

This compromise provides, further, for a second and final finding to be made by the Secretary of Commerce at the conclusion of the 3-year study, between July 2001 and December 2002, as to whether or not the intentional encirclement of dolphins has a significant adverse impact on depleted dolphin stocks or is preventing the recovery of such stocks. The Secretary of Commerce shall use the same threshold for this second determination.

In closing, Mr. President, this compromise is an important step forward for both continued dolphin protection and enhanced ecosystem protection. The agreement we reached accommodates our international obligations as laid out in the Panama Declaration, while providing enhanced protection for dolphins, and sound science for future conservation efforts. This bill also continues to protect consumers by maintaining the dolphin-safe standards. S. 39 represents a serious, well-vetted effort to bridge legitimate differences on how best to protection dolphins. I, therefore, encourage my colleagues to vote for its swift passage.

I ask unanimous consent that a letter from Kathleen McGinty at the White House be printed in the RECORD.

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

EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL ON ENVIRONMENTAL QUALITY,

Washington, DC, July 29, 1997.

Hon. TED STEVENS

Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you know, members of the Senate and the Administration have reached a compromise on S. 39, the International Dolphin Conservation Act. A key component of this compromise is a comprehensive dolphin population abundance study and stress study to be undertaken by the National Marine Fisheries Service commencing in Fiscal Year 1998 and continuing through Fiscal Years 1999, 2000, and 2001. The Administration strongly supports this study and will work with Congress to obtain the necessary funding to initiate it in 1998. To ensure that the study achieves its scientific objectives, as laid out in the compromise, the Administration will seek the funds necessary to continue the study in Fiscal Years 1999 and 2000 and to complete it in Fiscal Year 2001.

Sincerely,

KATHLEEN A. MCGINTY,
Chair.

Mr. KERRY. Mr. President, I yield to the Senator from California 5 minutes.

The PRESIDING OFFICER. The Senator from California is recognized for 5 minutes.

Mrs. BOXER. Thank you very much, Mr. President. I thank Senator KERRY, and I will say more about him in a moment.

Mr. President, we have travelled a very difficult route to get to this day. There are so many people I wish to thank. I will start off by thanking my colleagues, Senator JOE BIDEN and Senator BOB SMITH, for their constant support over the last several years on this issue. Senator BIDEN was the Senate author of the 1990 dolphin-safe label law that I authored in the House at that time. Senator SMITH has, time and time again, proven that he is a champion of dolphin protection. Getting this compromise worked out has been very difficult—and Senator JOHN KERRY was a master negotiator. When many of us on all sides of the issue thought we would never reach agreement, he stuck with it. We are here today in great part due to the dedication of Senator KERRY. He knows this issue, he was persistent, and he never quit.

I also thank Senator HOLLINGS, the distinguished ranking member of the Commerce Committee, for his leadership and, of course, Senator JOHN MCCAIN, the chair of the committee, for coming to the table, as well as Senator SNOWE, Senator STEVENS, and Senator BREAUX.

One more thank you, Mr. President, to the 45 Senators from both sides of the aisle who stood with us in this fight. The only reason we got here today is they refused to vote for cloture on this bill. They made promises on it to their constituents, and they kept those promises. I feel, I have to say, that without them, we would not be here either. Senator DASCHLE, the Democratic leader, stood with us the entire time.

I think we have saved dolphin lives as a result of this compromise, and we have protected American consumers.

Mr. President, the whole argument over this bill really revolved around one issue: What is the definition of "dolphin safe"? In 1990, we decided that if you want to get a dolphin-safe label, you have to fish for tuna in such a way as to not harm the dolphin. That is, you may not chase or encircle dolphin with purse seine nets on that fishing trip. There are those who believe there are new ways to use the purse seine nets that no longer harm the dolphin.

Many of us believe there is no proof of that. Senator BIDEN and I, Senator SMITH, the other Senators, and 85 environmental and consumer groups said we can't change the definition until we have a scientific study that tells us it is safe for dolphins. That is what this debate is all about.

Eleven countries put tremendous pressure on this Government to change the definition of "dolphin safe" before there was even a study. We believed that our position was the right position; there should be a study.

We did have to give on this. We wanted a 3-year study, and we did not want any change in the label until that 3-year study was analyzed. We did not win that point.

Essentially, the way the compromise works, in 18 months when the preliminary results come in on the study, if—if—the Secretary of Commerce believes that those preliminary results indicate that chasing and setting nets on dolphins is safe for dolphins then the definition of "dolphin safe," will be changed. And if the study does not show that, the bill we are passing today says we will have no change in the definition.

So, yes, this is clearly a compromise. We have won 18 months of the status quo; 18 months when consumers know that the dolphin-safe label means just that, and after that, we will live to see the preliminary results of that study, I hope, and we can have a new debate at that time. But this is what compromise is all about.

I want to make one further statement, Mr. President, because there is a disturbing element in all of this to me, and it doesn't just come into being with respect to this issue; it is an overall issue. And that is, I have a very straightforward opinion that American laws should be made by Americans; that, in fact, our environmental laws, all of our laws, our labor laws, ought to be made by the people who are sent here to fight out those issues. American laws should not be made by other countries.

I was disturbed in the course of this debate that, in fact, there was tremendous influence from other countries. I think there are many Senators who feel that is appropriate, and I think this debate shall continue, but we have a very good law on the books and I am proud to say it is going to stand for 18 months.

I look forward to making sure that the bill we are passing today comes back after conference in just this format, and it can be signed into law. Thank you very much, Mr. President. I reserve my side's time.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 3 minutes 18 seconds.

Mr. KERRY. Mr. President, I thank the Senator from California, and I

thank her particularly for her comments about me. I am very appreciative of that. I thank her for her extraordinary tenacity in this effort and willingness to fight for what she believes in, which she did.

I also want to emphasize that I believe this was a fair compromise arrived at by a lot of people who wanted to do what was in the best interest. I thank Senator SNOWE and Senator MCCAIN for their patience in this effort. It was trying at times and sometimes there were some difficulties along the way. They have been very gracious and very decent in arriving at this. I think a compromise is a compromise. Everybody agrees to settle, and they do so because it is in the best interests ultimately of the issue, and that is what has happened here.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. 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.

AMENDMENT NO. 1045

(Purpose: To make changes in the bill as reported by committee)

Ms. SNOWE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maine [Ms. SNOWE], for herself, Mr. BREAUX, Mr. STEVENS, and Mr. MCCAIN, proposes an amendment numbered 1045.

Mr. KERRY. 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 text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1045) was agreed to.

Mr. KERRY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BREAUX. Mr. President, I would like to engage the bill managers and Senator STEVENS in a colloquy.

As a chief cosponsor of S. 39, my understanding is that the appropriate standard of judicial review that would apply to the Secretarial findings in section 5 on whether dolphin encirclement is having a significant adverse impact on dolphin stocks in the standard under the Administrative Procedures Act. Is that the understanding of the bill managers and the sponsor of the bill?

Ms. SNOWE. Yes, the Senator is correct on that point. The Secretarial determinations to which you refer are included in S. 39 as an amendment to the Dolphin Consumer Protection Information Act. That act does not specify any alternative standard of review, and therefore the standard under the Administrative Procedures Act would apply. Furthermore, the bill managers intend that such standard will apply to the Secretarial findings in section 5 of S. 39. this standard involves a review of the administrative record, and a determination of whether the Secretary acted in an arbitrary and capricious manner.

Mr. STEVENS. I concur with Senator SNOWE. As the original sponsor of the bill, it is my intent that the Secretarial findings in section 5 be subject only to the scope of judicial review in the Administrative Procedures Act. That is clearly the appropriate standard, and I think we all agree on that.

Mr. KERRY. I concur with Senator SNOWE and Senator STEVENS on this point.

Mr. BREAUX. I thank the Senators for clarifying that point.

Mr. CHAFEE. Mr. President, I commend the efforts of the Senator from Alaska, Senator STEVENS, and the Senator from Maine, Senator SNOWE, for bringing this much-needed legislation to the floor. It has been nearly 2 years since legislation was first introduced in the Senate to implement the Panama Declaration, an international agreement which will promote marine conservation in the Pacific Ocean. I recognize that the opponents of this measure have strong convictions, and am pleased that the two sides were able to work out a compromise that, most importantly, is consistent with the international agreement which the United States signed.

Let me first state my view that eliminating dolphin mortality must remain a top priority as the Senate considers this bill. Like so many Americans, I will not soon forget the tragedy that occurred in the 1970's, when hundreds of thousands of dolphins were killed annually from tuna fishing in the Eastern Tropical Pacific [ETP]. In 1972 alone, more than 420,000 dolphins were killed there. While we can all applaud the tremendous progress that has been made in reducing dolphin mortality in recent years, Congress must be vigilant in working toward complete elimination.

But dolphins are not the only species adversely impacted by tuna fishing in the Eastern Tropical Pacific, sometimes called ETP. New fishing methods have resulted in significant bycatch of nondolphin species, including juvenile tuna. These other marine species in this ecosystem must also be protected, and legislation should address this larger goal.

The question before the Senate today is how do we best achieve sustained conservation in the ETP tuna fishery? We must first acknowledge that much progress has been made in reducing dolphin mortality through new fishing techniques such as the back down procedure. Through this technique, the back edge of the purse seine fishing net sinks below the surface, allowing dolphins to swim out. In 1996, dolphin mortality in the ETP is currently estimated at a record low of less than 3,000, down from record highs of more than 400,000 in the 1970's. That's a 99-percent reduction.

International cooperation in conserving this resource, particularly through the voluntary measures of the La Jolla agreement of 1992, has also been a primary factor in achieving this great success. Among other things, this landmark agreement, which was signed by 10 nations, established strict dolphin mortality limits and required observers to be present aboard tuna fishing boats in the ETP.

In order to continue this tremendous progress, the United States must continue to work with our neighbors on multilateral efforts to conserve this resource. This involves enacting the legislation before the Senate today, S. 39, which implements the Panama Declaration.

Contrary to much of what has been said in the 2 years since it was signed, the Panama Declaration represents the best in international conservation. It would retain—and in many cases, enhance—the provisions of the La Jolla agreement that have been so successful in reducing dolphin mortality and protecting the tuna fishery. Let me be clear: the Panama Declaration will not threaten the dolphin population in the Eastern Tropical Pacific.

Unlike the voluntary La Jolla agreement, the Panama Declaration is binding upon its signatories. Among its many stringent requirements are reductions in the annual overall limit on dolphin mortalities that were established by the La Jolla agreement. These limits include per-stock mortality limits to protect all dolphin populations.

The Panama Declaration also increases enforcement and monitoring efforts to protect dolphins, including mandatory observers on all tuna fishing vessels. In addition, it sets as an agreed goal the elimination of all dolphin mortality in the ETP tuna fishery. And the Panama Declaration has teeth: if foreign nations do not comply, then the United States can reimpose our tuna embargo.

Opponents of S. 39 have been concerned over its change in the definition of dolphin safe, as mandated by the Panama Declaration. It is important to note that the new definition of dolphin safe is not weaker than current law. Let me explain.

When the current definition was adopted in 1990, the dolphin safe label was intended to prevent the import of tuna into the United States that were caught by encircling dolphins. This definition made good sense in 1990 since, historically, fishing methods that encircled dolphins caused high mortality rates. But as I've stated, recent modifications to the encirclement method of tuna fishing have resulted in reduced dolphin mortality.

A more sensible definition of dolphin safe should mean no dolphins were killed during the tuna fishing, rather than no dolphins were encircled. Under the new definition, if even one dolphin is killed in the process, that tuna cannot be labeled dolphin safe. Proponents of the old definition want truth in labeling. I agree with this. But, don't consumers expect that dolphin safe means no dolphins were killed? The Panama Declaration and S. 39 would do just that.

In any event, so as to be absolutely sure that these new encirclement techniques do not adversely affect dolphin stocks in the ETP, the compromise before us today delays the label change until NOAA conducts a preliminary survey of these stocks. This slight delay should not threaten United States participation in the Panama Declaration, allowing its strong conservation requirements to be implemented.

The Panama Declaration also recognizes the importance of protecting nondolphin marine life in the ETP that has been harmed by tuna fishing. The controversy over dolphin mortality has encouraged tuna fishermen to utilize alternative methods to encirclement—namely school sets and log sets. These techniques, while more protective of dolphins, are well known to cause destruction of nondolphin marine life, including sea turtles, billfish, sharks, and juvenile yellowfin tuna.

NOAA scientists have warned repeatedly that the high bycatch of juvenile tuna, associated with these two fishing methods, might actually imperial tuna stocks in the future—to say nothing of their impact on other species. As envisioned by the Panama Declaration, S. 39 requires the United States to implement a program to reduce bycatch of all marine life in the ETP, not just dolphins.

Mr. President, today the United States confronts a choice that must be made soon on how best to conserve marine life in the Pacific Ocean. Negotiators have worked out a compromise that will allow the United States to choose the best option. This option entails joining our neighbors in implementing a binding, carefully crafted international agreement that includes strong mandates that will protect dolphins and other species.

Another option involved going it alone, sacrificing what little leverage we have in an increasingly foreign fishery. Keep in mind that the ETP is completely outside the jurisdiction of the United States. We cannot simply go in and tell others how to fish.

Instead, our best chance of promoting conservation is through a multilateral, rather than a unilateral, forum. But other signatories to the Panama Declaration will not wait forever while the United States Congress continues to debate this issue. The time to act is now.

If we had chosen to go it alone, dolphins would not necessarily have been saved. Indeed, more dolphins may well be killed if the United States rejects the Panama Declaration, as fishermen will likely abandon the voluntary provisions of the La Jolla agreement. What incentive would these fishermen have to conserve if the largest consumer of tuna maintains an embargo on their product and refuses to participate in international conservation efforts?

Because the Panama Declaration offers the best hope for marine conservation in the ETP, S. 39 has been endorsed by Greenpeace, National Wildlife Federation, Center for Marine Conservation, Environmental Defense Fund, and World Wildlife Fund. These groups recognize the merits of this multilateral approach.

I again commend the tireless efforts of the authors of this legislation, and urge my colleagues to support S. 39.

Mr. HOLLINGS. Mr. President, the manager's amendment before us today is the product of many hours of work on the part of a number of my colleagues. I would like to express my personal appreciation to my friend, the chairman of the Commerce Committee, Senator MCCAIN, and the chair of the Subcommittee on Oceans and Fisheries, Senator SNOWE, for their personal efforts and willingness to delay consideration of this legislation until interested parties could work out an agreement.

In addition, I particularly would like to acknowledge the effort of the ranking Democrat on the subcommittee, Senator KERRY for his commitment to reaching a compromise. The Senator from Massachusetts made the mistake at our hearing on this legislation of volunteering to find a middle ground between the proponents and opponents of S. 39. Since that time, he has spent hours listening to and trying to accommodate the concerns of all sides in this contentious issue. Without his tireless effort, we would not be standing here today.

My own interest in this legislation has always been: to ensure sound conservation of marine mammals; to provide consumers with the information they need when purchasing tuna; and to ensure U.S. tuna fishermen a level playing field on which to compete.

The bill before us now is a far better bill. It addresses many of the concerns of Senators BOXER and BIDEN as well as others. These two Senators have been leaders in the area of dolphin protection—they wrote the dolphin-safe labeling law and have legitimate concerns about changing the dolphin-safe label without the scientific research to ensure that the tuna fishing methods allowed by S. 39 are safe for dolpins. The compromise before us today ensures that there will be a study of the effect of chasing and encircling dolpins and bases a change in the meaning of "dolphin safe" on the results of that study.

Furthermore, the compromise addresses the concerns of Senator INOUYE. It allows alternative labels on tuna but makes sure that the claims on those labels are true and can be verified.

Again, I thank the primary sponsors of the bill, Senators STEVENS and BREAUX, and all of the parties who worked on the manager's amendment for their efforts to improve this legislation.

Mr. THURMOND. Mr. President, when the President signs the International Dolphin Conservation Program Act, the United States will have joined the rest of the tuna-fishing nations in the Eastern Pacific in pledging that, in the future, no dolphins will be killed in the harvesting of tuna. Further, the transition to better fishing methods will result in a significant reduction in by-catch waste in that portion of the ocean. This is a remarkable achievement.

My colleagues from Alaska and Louisiana, Senators STEVENS and BREAUX, have pressed on for 2 years to see that this agreement is ratified. Their perseverance should be recognized and appreciated. Finally, this bill would likely have never become law had the subcommittee chairman, Senator SNOWE, not gathered the various parties to work out a compromise that would assure passage of this implementing legislation. She is to be commended for her skill and stamina in seeing this measure to its successful conclusion.

I yield the floor.

Mr. BIDEN. Mr. President, I am pleased to rise in support of the compromise amendment to S. 39—the so-called tuna-dolphin bill.

In forging this bipartisan agreement, we have struck a proper balance between resolving the market access problems now faced by other countries and keeping the faith with American consumers. It is a fair deal.

In short, the bill implements an international dolphin protection regime—known as the Panama Declaration—while maintaining the current dolphin-safe label during the pendency of a study on the impacts on dolphins from purse net tuna fishing.

In March 1999—after scientists have preliminary determined whether purse net tuna fishing harms dolphin stocks—the Secretary of Commerce is

to make a determination as to the appropriate dolphin-safe label, whether that be the current one that Senator BOXER and I wrote into law in 1990, or another protective version. This decision will be reviewed in the year 2001.

Also included in the bill are provisions requiring Latin and South American countries tuna fishing the Eastern Tropical Pacific Ocean to enroll in an expanded dolphin protection program, which includes on-board observers. This will enable us to lock-in and improve upon the tremendous gains that we have already made in decreasing dolphin mortalities.

This amendment represents a compromise on process, not a cave-in on principles. Again, we retain for every letter of the current dolphin-safe label. In 2 years' time the question will be if the label should be changed—not when it should be changed.

I would also note that I do have some reservations regarding the adequacy of the data that will form the basis of the March 1999 label review. Only one population survey will be available at that time; this will not be an abundance of information upon which to make an informed and unbiased decision. I urge the Secretary of Commerce to err on the side of caution during the preliminary review and not make science conform to political will.

I would like to recognize and publicly thank my colleagues who worked so hard in crafting this agreement, particularly Senator BOXER, Senator KERRY, Senator BREAUX, Senator SNOWE, Senator MCCAIN, and Senator STEVENS. Each spent a great deal of personal time trying to bridge the gap in this debate, and I am grateful for their efforts.

In closing, this agreement continues to protect dolphins while keeping our faith with the American people. It is environmentally and economically the right thing to do, and I urge its passage.

FUNDING FOR DOLPHIN RESEARCH

Mr. STEVENS. Mr. President, an agreement has been reached to address concerns with S. 39, the International Dolphin Conservation Program Act. The agreement is contained in the manager's amendment to S. 39 offered by Senator SNOWE. Under the agreement, the Secretary of Commerce is required to conduct a multi-year study on dolphin and dolphin stocks taken incidentally in the eastern tropical Pacific Ocean (ETP) purse seine fishery. The Secretary will use the information from this study to make two separate findings that will determine whether or not tuna caught in the ETP by intentionally encircling dolphins can be labeled as dolphin safe in the United States. Senator SNOWE's amendment authorizes appropriations of $4 million in fiscal year 1998, $3 million in fiscal year 1999, $4 million in fiscal year 2000, and $1 million in fiscal year 2001 to complete the study. These amounts are based on National Marine Fisheries Service estimates for the costs for the study. I have received a letter from the White House indicating that the administration will request funds for the study in fiscal years 1999, 2000, and 2001. If the administration follows through on its commitment to request these funds, I will do everything I can to ensure they are appropriated.

Mr. BYRD. Mr. President, I am supportive of the effort to appropriate the funds necessary for the study outlined in the manager's amendment to S. 39, beginning in fiscal year 1998. In fact, it is my understanding that the manager's amendment is written so that a number of sections in S. 39 will become effective only after funding for the first year of the study has been provided. It is clear to me that full funding for this research is a critical element of the agreement on S. 39.

Mr. GREGG. Recognizing the importance of this study to the compromise reached on S. 39, funds were added to the fiscal year 1998 Commerce, Justice, State appropriations bill in the Senate to complete the first year of work. We will work together to protect this appropriation in conference. I, too, encourage the administration to follow through on its commitment to include the funds for fiscal year 1999, 2000, and 2001 in its budget requests, and will work to include the funds in appropriations if they are requested.

Mr. HOLLINGS. Mr. President, I join my colleagues in supporting appropriations for the completion of the dolphin study. The manager's amendment to S. 39 developed by the Commerce Committee is written so that most of the operative provisions of bill will become effective only if funding for the fist year of the study has been provided. The White House has expressed support for the appropriation mentioned by Senator GREGG for fiscal year 1998, and has indicated that funding will be requested to complete the study in fiscal year 1999, 2000, and 2001. Together with Senators STEVENS, BYRD, and GREGG, I support the fiscal year 1998 appropriation for the first year of the study, and will support funds in years to come to complete the study.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Democratic leader.

Mr. DASCHLE. Mr. President, I appreciate very much your recognizing me prior to the time we go to third reading. I will be very brief. I am not sure we have any time left. If we don't, I will just use leader time.

I just want to say how much I appreciate the effort made by the Senators who are on the floor to bring us to this point. This has been a 2-year-long debate. Obviously, there have been good intentions on both sides, and negotiations have resulted in a compromise that brings us to a point that will allow us to address this issue in a meaningful way.

I congratulate the administration and those who worked with us to accomplish this within the administration. But I particularly want to thank Senators BOXER and BIDEN who pioneered the establishment of the dolphin safe label all the way back to 1990, who recognized the importance of this issue and dedicated themselves to solving it as they did back then.

I thank Senator HOLLINGS, the ranking member of the Commerce Committee, Senator SNOWE, the chair of the Oceans and Fisheries Subcommittee, for her work, Senator MCCAIN, Senator STEVENS, and Senator BREAUX, who developed and introduced the legislation to implement the Panama Declaration, and perhaps a special thanks goes to Senator JOHN KERRY, the ranking member of the Oceans and Fisheries Subcommittee whose patience and guidance and leadership was critical to bringing all sides together in reaching this agreement.

So this is a very good moment for us. It is another opportunity to demonstrate the commitment that we have in working together to face these serious questions in a meaningful way. So, to all of those involved, especially Senators BOXER, BIDEN, and KERRY, my thanks. I hope we can address this matter now by an overwhelming vote here in the Senate.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina [Mr. FAIRCLOTH] is necessarily absent.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 207 Leg.]

YEAS—99

Abraham	Bumpers	Daschle
Akaka	Burns	DeWine
Allard	Byrd	Dodd
Ashcroft	Campbell	Domenici
Baucus	Chafee	Dorgan
Bennett	Cleland	Durbin
Biden	Coats	Enzi
Bingaman	Cochran	Feingold
Bond	Collins	Feinstein
Boxer	Conrad	Ford
Breaux	Coverdell	Frist
Brownback	Craig	Glenn
Bryan	D'Amato	Gorton

Graham	Kohl	Robb
Gramm	Kyl	Roberts
Grams	Landrieu	Rockefeller
Grassley	Lautenberg	Roth
Gregg	Leahy	Santorum
Hagel	Levin	Sarbanes
Harkin	Lieberman	Sessions
Hatch	Lott	Shelby
Helms	Lugar	Smith (NH)
Hollings	Mack	Smith (OR)
Hutchinson	McCain	Snowe
Hutchison	McConnell	Specter
Inhofe	Mikulski	Stevens
Inouye	Moseley-Braun	Thomas
Jeffords	Moynihan	Thompson
Johnson	Murkowski	Thurmond
Kempthorne	Murray	Torricelli
Kennedy	Nickles	Warner
Kerrey	Reed	Wellstone
Kerry	Reid	Wyden

NOT VOTING—1

Faircloth

The bill (S. 39), as amended, was passed as follows:

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "International Dolphin Conservation Program Act".

(b) REFERENCES TO MARINE MAMMAL PROTECTION ACT.—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 Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

SEC. 2. PURPOSES AND FINDINGS.

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

(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

(b) FINDINGS.—The Congress finds that—

(1) the nations that fish for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with the purse seine fishery from hundreds of thousands annually to fewer than 5,000 annually;

(2) the provisions of the Marine Mammal Protection Act of 1972 that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities;

(3) tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market; and

(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000 animals, with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and with the goal of eliminating dolphin mortality.

SEC. 3. DEFINITIONS.

Section 3 (16 U.S.C. 1362) is amended by adding at the end the following new paragraphs:

"(28) The term 'International Dolphin Conservation Program' means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama.

"(29) The term 'Declaration of Panama' means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.".

SEC. 4. AMENDMENTS TO TITLE I.

(a) EXCEPTIONS TO MORATORIUM.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended—

(1) by inserting after the first sentence "Such authorizations may be granted under title III with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103."; and

(2) by striking the semicolon in the second sentence and all that follows through "practicable".

(b) DOCUMENTATION REQUIRED.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is further amended—

(1) by striking subparagraph (B) and inserting the following:

"(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

"(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

"(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

"(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

"(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;";

(2) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively;

(3) by inserting after subparagraph (B) the following:

"(C) shall not accept such documentary evidence if—

"(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

"(I) to allow determination of compliance with the International Dolphin Conservation Program; and

"(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

"(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program."; and

(4) by striking "subparagraph (E)" in the matter after subparagraph (F), as redesignated by paragraph (2) of this subsection, and inserting "subparagraph (F)".

(c) CERTAIN INCIDENTAL TAKINGS.—Section 101 (16 U.S.C. 1371) is further amended by adding at the end the following new subsection:

"(e) ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.—The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.".

(d) PERMITS.—Section 104(h) (16 U.S.C. 1374(h)) is amended to read as follows:

"(h) GENERAL PERMITS.—

"(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

"(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act.".

(e) INTERNATIONAL NEGOTIATIONS.—Section 108(a)(2) (16 U.S.C. 1378(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by inserting after subparagraph (B) the following:

"(C) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate—

"(i) the conservation and management provisions agreed to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature on December 4, 1995; and

"(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

"(D) discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;".

(f) RESEARCH GRANTS.—Section 110(a) (16 U.S.C. 1380(a)) is amended—

(1) by striking "(1)" in paragraph (1); and

(2) by striking paragraph (2).

SEC. 5. AMENDMENTS TO DOLPHIN PROTECTION CONSUMER INFORMATION ACT.

(a) LABELING STANDARD.— Subsection (d) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)) is amended to read as follows:

"(d) LABELING STANDARD.—

"(1) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term 'dolphin safe' or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product contains tuna harvested—

"(A) on the high seas by a vessel engaged in driftnet fishing;

"(B) outside the eastern tropical Pacific Ocean by a vessel using purse seine nets—

"(i) in a fishery in which the Secretary has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean), unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

"(ii) in any other fishery (other than a fishery described in subparagraph (D)) unless the product is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

"(C) in the eastern tropical Pacific Ocean by a vessel using a purse seine net unless the tuna meet the requirements for being considered dolphin safe under paragraph (2); or

"(D) by a vessel in a fishery other than one described in subparagraph (A), (B), or (C) that is identified by the Secretary as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Secretary determines that such an observer statement is necessary.

"(2) For purposes of paragraph (1)(C), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—

"(A) the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or

"(B)(i) the product is accompanied by a written statement executed by the captain providing the certification required under subsection (h);

"(ii) the product is accompanied by a written statement executed by—

"(I) the Secretary or the Secretary's designee;

"(II) a representative of the Inter-American Tropical Tuna Commission; or

"(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer provided the certification required under subsection (h); and

"(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

"(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which provide for the verification of tuna products as dolphin safe.

"(3)(A) The Secretary of Commerce shall develop an official mark that may be used to label tuna products as dolphin safe in accordance with this Act.

"(B) A tuna product that bears the dolphin safe mark developed under subparagraph (A) shall not bear any other label or mark that refers to dolphins, porpoises, or marine mammals.

"(C) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to label a tuna product with any label or mark that refers to dolphins, porpoises, or marine mammals other than the mark developed under subparagraph (A) unless—

"(i) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught;

"(ii) the label is supported by a tracking and verification program which is comparable in effectiveness to the program established under subsection (f); and

"(iii) the label complies with all applicable labeling, marketing, and advertising laws and regulations of the Federal Trade Commission, including any guidelines for environmental labeling.

"(D) If the Secretary determines that the use of a label referred to in subparagraph (C) is substantially undermining the conservation goals of the International Dolphin Conservation Program, the Secretary shall report that determination to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, along with recommendations to correct such problems.

"(E) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) willingly and knowingly to use a label referred to in subparagraph (C) in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the International Dolphin Conservation Program.".

(b) TRACKING REGULATIONS.—Subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)) is amended to read as follows:

"(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this Act, including regulations to establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d). In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall address each of the following items:

"(1) The use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

"(2) Additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures.

"(3) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d).

"(4) The reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set.

"(5) The shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.

"(6) The use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).

"(7) The provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this paragraph.

The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.".

(c) FINDINGS CONCERNING IMPACT ON DEPLETED STOCKS.—The Dolphin Protection Consumer Information Act (16 U.S.C. 1385) is amended by striking subsections (g), (h), and (i) and inserting the following:

"(g) SECRETARIAL FINDINGS.—(1) Between March 1, 1999, and March 31, 1999, the Secretary shall, on the basis of the research conducted before March 1, 1999, under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make an initial finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The initial finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

"(2) Between July 1, 2001, and December 31, 2002, the Secretary shall, on the basis of the completed study conducted under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make a finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

"(h) CERTIFICATION BY CAPTAIN AND OBSERVER.—

"(1) Unless otherwise required by paragraph (2), the certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified in subsection (d)(2)(B)(ii) shall be that no dolphins were killed or seriously injured during the sets in which the tuna were caught.

"(2) The certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified under subsection (d)(2)(B)(ii) shall be that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and that no dolphins were killed or seriously injured during the sets in which the tuna were caught, if the tuna were caught on a trip commencing—

"(A) before the effective date of the initial finding by the Secretary under subsection (g)(1);

"(B) after the effective date of such initial finding and before the effective date of the finding of the Secretary under subsection (g)(2), where the initial finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any depleted dolphin stock; or

"(C) after the effective date of the finding under subsection (g)(2), where such finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any such depleted stock.".

SEC. 6. AMENDMENTS TO TITLE III.

(a) CHANGE OF TITLE HEADING.—The heading of title III is amended to read as follows:

"TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM".

(b) ADDITIONAL FINDINGS.—Section 301 (16 U.S.C. 1411) is amended—

(1) by striking paragraph (4) of subsection (a) and inserting the following:

"(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority."; and

(2) by striking paragraphs (2) and (3) of subsection (b) and inserting the following:

"(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

"(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;".

(c) Title III (16 U.S.C. 1411 et seq.) is amended by striking sections 302 through 306 (16 U.S.C. 1412 through 1416) and inserting the following:

"SEC. 302. INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.

"The Secretary of State, in consultation with the Secretary, shall seek to secure a binding international agreement to establish an International Dolphin Conservation Program that requires—

"(1) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

"(2) the establishment of a per-stock per-year dolphin mortality limit, to be in effect through calendar year 2000, at a level between 0.2 percent and 0.1 percent of the minimum population estimate, as calculated, revised, or approved by the Secretary;

"(3) the establishment of a per-stock per-year dolphin mortality limit, beginning with the calendar year 2001, at a level less than or equal to 0.1 percent of the minimum population estimate as calculated, revised, or approved by the Secretary;

"(4) that if a dolphin mortality limit is exceeded under—

"(A) paragraph (1), all sets on dolphins shall cease for the applicable fishing year; and

"(B) paragraph (2) or (3), all sets on the stocks covered under paragraph (2) or (3) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

"(5) a scientific review and assessment to be conducted in calendar year 1998 to—

"(A) assess progress in meeting the objectives set for calendar year 2000 under paragraph (2); and

"(B) as appropriate, consider recommendations for meeting these objectives;

"(6) a scientific review and assessment to be conducted in calendar year 2000—

"(A) to review the stocks covered under paragraph (3); and

"(B) as appropriate to consider recommendations to further the objectives set under that paragraph;

"(7) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the established per-year mortality limits, as determined under paragraphs (1) through (3); and

"(8) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

"SEC. 303. REGULATORY AUTHORITY OF THE SECRETARY.

"(a) REGULATIONS.—

"(1) The Secretary shall issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program.

"(2)(A) The Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

"(B) Regulations issued under this section shall include provisions—

"(i) requiring observers on each vessel;

"(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of, or serious injury to, marine mammals in fishing operations;

"(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;

"(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

"(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;

"(vi) banning the use of explosive devices in all purse seine operations;

"(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;

"(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

"(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;

"(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

"(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

"(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

"(C) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

"(b) CONSULTATION.—In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

"(c) EMERGENCY REGULATIONS.—

"(1) If the Secretary determines, on the basis of the best scientific information available (including research conducted under section 304 and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall—

"(A) notify the Inter-American Tropical Tuna Commission of his or her determination, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

"(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

"(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.

"(3) Emergency regulations prescribed under this subsection—

"(A) shall be published in the Federal Register, together with an explanation thereof;

"(B) shall remain in effect for the duration of the applicable fishing year; and

"(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency action no longer exist.

"(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

"(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's determination under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the actions necessary to reduce incidental mortality and serious injury and mitigate the adverse impact which resulted in the determination. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall—

"(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

"(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

"(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

"SEC. 304. RESEARCH.

"(a) REQUIRED RESEARCH.—

"(1) IN GENERAL.—The Secretary shall, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission, conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The study, which shall commence on October 1, 1997, shall consist of abundance surveys as described in paragraph (2) and stress studies as described in paragraph (3), and shall address the question of whether such encirclement is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean.

"(2) POPULATION ABUNDANCE SURVEYS.—The abundance surveys under this subsection shall survey the abundance of such depleted stocks and shall be conducted during each of the calendar years 1998, 1999, and 2000.

"(3) STRESS STUDIES.—The stress studies under this subsection shall include—

"(A) a review of relevant stress-related research and a 3-year series of necropsy samples from dolphins obtained by commercial vessels;

"(B) a 1-year review of relevant historical demographic and biological data related to dolphins and dolphin stocks referred to in paragraph (1); and

"(C) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement.

"(4) REPORT.—No later than 90 days after publishing the finding under subsection (g)(2) of the Dolphin Protection Consumer Information Act, the Secretary shall complete and submit a report containing the results of the research described in this subsection to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, and to the Inter-American Tropical Tuna Commission.

"(b) OTHER RESEARCH.—

"(1) IN GENERAL.—In addition to conducting the research described in subsection (a), the Secretary shall, in consultation with the Marine Mammal Commission and in cooperation with the nations participating in the International Dolphin Conservation Program and the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

"(2) SPECIFIC AREAS OF RESEARCH.—Research carried out under paragraph (1) may include—

"(A) projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

"(B) projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

"(C) projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States; and

"(D) projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks and nontarget species.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) There are authorized to be appropriated to the Secretary the following amounts, to be used by the Secretary to carry out the research described in subsection (a):

"(A) $4,000,000 for fiscal year 1998.

"(B) $3,000,000 for fiscal year 1999.

"(C) $4,000,000 for fiscal year 2000.

"(D) $1,000,000 for fiscal year 2001.

"(2) In addition to the amount authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Secretary for carrying out this section $3,000,000 for each of the fiscal years 1998, 1999, 2000, and 2001.

"SEC. 305. REPORTS BY THE SECRETARY.

"Notwithstanding section 103(f), the Secretary shall submit annual reports to the Congress which include—

"(1) results of research conducted pursuant to section 304;

"(2) a description of the status and trends of stocks of tuna;

"(3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

"(4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin stocks in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program;

"(5) actions taken by the Secretary under section 101(a)(2)(B) and section 101(d);

"(6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title; and

"(7) any other information deemed relevant by the Secretary.

"SEC. 306. PERMITS.

"(a) IN GENERAL.—

"(1) Consistent with the regulations issued pursuant to section 303, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—

"(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

"(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 303, with respect to each vessel.

"(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.

"(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

"(b) PERMIT SANCTIONS.—

"(1) In any case in which—

"(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 307;

"(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 307; or

"(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,

the Secretary may—

"(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

"(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(iii) deny such permit; or

"(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

"(2) In imposing a sanction under this subsection, the Secretary shall take into account—

"(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

"(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

"(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

"(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

"(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.".

(d) Section 307 (16 U.S.C. 1417) is amended—

(1) by striking paragraphs (1), (2), and (3) of subsection (a) and inserting the following:

"(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated and within 6 months thereafter completed all steps required of applicant nations in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

"(2) except as provided for in subsection 101(d), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this title and regulations issued pursuant to this title; and

"(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);";

(2) by inserting "(a)(5) or" before "(a)(6)" in subsection (b)(2); and

(3) by striking subsection (d).

(e) Section 308 (16 U.S.C. 1418) is repealed.

(f) CLERICAL AMENDMENTS.—The table of contents in the first section of the Marine Mammal Protection Act of 1972 is amended by striking the items relating to title III and inserting in lieu thereof the following:

"TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

"Sec. 301. Findings and policy.
"Sec. 302. International Dolphin Conservation Program.
"Sec. 303. Regulatory authority of the Secretary.
"Sec. 304. Research.
"Sec. 305. Reports by the Secretary.
"Sec. 306. Permits.
"Sec. 307. Prohibitions.".

SEC. 7. AMENDMENTS TO THE TUNA CONVENTIONS ACT.

(a) Section 3(c) of the Tuna Conventions Act (16 U.S.C. 952(c)) is amended to read as follows:

"(c) at least one shall be either the Administrator, or an appropriate officer, of the National Marine Fisheries Service; and".

(b) Section 4 of the Tuna Conventions Act (16 U.S.C. 953) is amended to read as follows:

"SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

"(a) APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.—The Secretary, in consultation with the United States Commissioners, shall—

"(1) appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations;

"(2) appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations;

"(3) establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data; and

"(4) fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

"(b) FUNCTIONS.—

"(1) GENERAL ADVISORY COMMITTEE.—The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

"(2) SCIENTIFIC ADVISORY SUBCOMMITTEE.—

"(A) ADVICE.—The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including—

"(i) the conservation of ecosystems;

"(ii) the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and

"(iii) the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

"(B) OTHER FUNCTIONS AND ASSISTANCE.—The Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners, or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include—

"(i) the review of data from the Program, including data received from the Inter-American Tropical Tuna Commission;

"(ii) recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research;

"(iii) recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments;

"(iv) consulting with other experts as needed; and

"(v) recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or its equivalent).

"(3) ATTENDANCE AT MEETINGS.—The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.".

(c) BYCATCH REDUCTION.—The Tuna Conventions Act (16 U.S.C. 951 et seq.) is amended by adding at the end thereof the following:

"SEC. 15. REDUCTION OF BYCATCH IN THE EASTERN TROPICAL PACIFIC OCEAN.

"The Secretary of State, in consultation with the Secretary of Commerce and acting through the United States Commissioners, shall seek, in cooperation with other nations whose vessel fish for tuna in the eastern tropical Pacific Ocean, to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The bycatch reduction program shall include measures—

"(1) to require, to the maximum extent practicable, that sea turtles and other threatened species and endangered species are released alive;

"(2) to reduce, to the maximum extent practicable, the harvest of nontarget species;

"(3) to reduce, to the maximum extent practicable, the mortality of nontarget species; and

"(4) to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.".

SEC. 8. EFFECTIVE DATES.

(a) AMENDMENTS TO TAKE EFFECT WHEN IDCP IN FORCE.—Sections 3 through 7 of this Act (except for section 304 of the Marine Mammal Protection Act of 1972 as added by section 6 of this Act) shall become effective upon—

(1) certification by the Secretary of Commerce that—

(A) sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972, as so added; and

(B) the study has commenced; and

(2) certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding subsection (a), the Secretary of Commerce may issue regulations under—

(1) subsection (f)(2) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)(2)), as added by section 5(b) of this Act;

(2) section 303(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1413(a)), as added by section 6(c) of this Act,

at any time after the date of enactment of this Act.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The PRESIDING OFFICER. Under the previous order, the clerk will report H.R. 2169.

The assistant legislative clerk read as follows:

A bill (H.R. 2169) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

The Senate resumed consideration of the bill.

Mr. HOLLINGS. Mr. President, included in the fiscal year 1998 Transportation appropriations bill is an amendment that directs the Federal Aviation Administration [FAA] to work with one segment of the aviation industry to develop an expeditious way to comply with the pilot record sharing legislation, enacted last year.

When we passed the pilot record sharing legislation as part of the FAA Reauthorization Act, "air carriers" were required to obtain certain records, including FAA records, on pilots. The term air carrier includes more than just airlines. It also includes, for example, on-demand non-scheduled carriers. These carriers tend to hire pilots on an as-needed basis, and need the information from the FAA in a more timely manner than airlines.

The FAA is aware that these carriers need to be able to respond quickly to information requests from the on-demand segment of the industry, and are striving to get the required information to them within 15 days. Ultimately, the information should be available on a real time basis through desk top computers. The amendment recognizes that the FAA must work with industry to figure out a means to comply with the law, and then implement those changes.

There are many ways for the FAA to facilitate the passing of the information, and discussions should commence with the industry. Compliance is critical, but we cannot ask the impossible of the industry or the FAA. I also want to note that the directive in the Appropriations bill does not authorize any new program, but merely directs the FAA to work with the industry to implement last year's legislation. As a result, I do not believe that we are legislating on an Appropriations bill.

I want to thank the chairman, Senator SHELBY, and the ranking member, Senator LAUTENBERG, for their acceptance of the amendment.

Mr. D'AMATO. Mr. President, the Senate has accepted an amendment that Senator MOYNIHAN and I offered to the fiscal year 1998 Transportation appropriations bill that I believe will help provide a measure of financial relief to the working men and women of Nassau, Suffolk, Westchester, Putnam and Dutchess counties. Residents of these counties pay a premium price to commute each day into New York City by commuter railroad. Roughly half of these commuters then have to pay another fare to get to their final destination by bus or subway. Our amendment will require the New York Metropolitan Transportation Authority [MTA] to conduct a study to determine the feasibility of providing a free subway or bus transfer to those persons who use the Long Island Rail Road [LIRR] or Metro North commuter railroad so that these daily riders may decrease their commuting costs.

Recently, the New York Metropolitan Transportation Authority [MTA] announced its MetroCard Gold program. This program for the first time provides free transfers for those who transfer between New York City buses and subways. In essence, the commuter who until now commuted from a two-fare zone now pays only one fare. This program will greatly benefit city commuters, saving them approximately $750 per year. It will also have a positive impact on the local economy and the environment.

In addition, at my urging, the MTA will extend this single fare policy for similar bus-to-bus and bus-to-subway transfers for the MTA's 40,000 Long Island Bus commuters traveling between Long Island and New York City. It is estimated that these commuters will realize an average yearly savings of approximately $900 based on current fare structures.

The intended goal of this policy is to create a seamless, integrated transportation system that will benefit commuters in the most transit-dependent region of our country and, indeed, the world. I commend Governor George Pataki and MTA Chairman Virgil Conway for this forward thinking initiative. What now needs to be determined is if this policy can be expanded. My amendment will require the Metropolitan Transportation Authority [MTA] to conduct a feasibility study, from funds made available to the MTA from the Federal Transit Administration, on extending this policy to New York's two commuter railroads.

New York is home to the two largest commuter railroads in the Nation—the Long Island Rail Road [LIRR] and the Metro North railroad. Each day, approximately 235,000 commuters depend on these two railroads to get to work and back home again. Almost half of these commuters—108,000 or 46 percent—transfer to subways and buses once they arrive in New York City. They also repeat the trip in the evening as they head back to the train station. These are commuters who may pay $125, $175, $225 or more per month to take these two commuter railroads. On top of that, they can pay an additional $750 over the course of a year for that portion of their commute that occurs on the city's subways and buses.

If we really want to create a seamless transit system, one that encourages more people to take the train and leave their cars at home, then Metro North and Long Island Rail Road commuters should be offered a free transfer to the city's subways and buses. In addition to the financial savings for commuters, the benefits to public health, the environment and the preservation of natural resources as well as the enhancements to the quality of life for these commuters should be powerful incentives to extend this single-fare policy.

More than 100,000 Long Island Rail Road and Metro North rail commuters use New York's subway and bus systems daily. If it is feasible—and taking into consideration all factors—then the commuters who use Long Island Rail Road [LIRR] or Metro North and the New York City subway or bus systems should receive similar benefits as are available under the MTA's single-fare policy. This amendment will move us one step closer to that goal.

Mrs. BOXER. Mr. President, I would like to ask the distinguished chairman of the Subcommittee on Transportation appropriations if he would respond to questions that I have regarding the bill.

Mr. SHELBY. I would be happy to respond to the questions from the Senator from California.

Mrs. BOXER. I first want to thank the chairman for his work in developing this major appropriations bill that is so vital to our Nation's economic productivity and quality of life. This was an important undertaking that presented many difficult issues. I applaud him for his patience and his willingness to meet with me and my constituents in California on one of those issues involving a fixed-guideway transit project.

As the chairman knows, my State has many requests for transportation investments, particularly in the area of bus and bus facilities. I would like to bring to the chairman's attention two

projects in particular which were not funded in either the Senate or the House bills. The first was a request from the Los Angeles Metropolitan Transit Operators Coalition, which represents 8 municipal transit operators serving more than 63 million passengers annually in 36 cities of Los Angeles County. The coalition was formed to obtain economies of scale in procuring replacement and expansion buses and to provide critical alternative fuel facilities. These clean-fuel buses are vital for the Los Angeles area which has the most severe air pollution in the country. The second project involves replacement and expansion buses for the growing city of Santa Clarita.

I ask the chairman if he would support some funding for these two projects when he meets in conference with the House on the Transportation appropriations bill?

Mr. SHELBY. I understand the Senator's concerns about funding for bus and bus facilities in California and the subcommittee did face very difficult choices for funding. I will be happy to work with the Senator on these issues in the conference committee.

Mrs. BOXER. I thank the Senator and ask if he would respond to an additional question.

Mr. SHELBY. I would be happy to.

Mrs. BOXER. As the Senator knows, the advanced technology transit bus [ATTB] under development in California has the potential to be the next-generation urban transit bus. It has already demonstrated its ability to provide maintenance savings, accommodation for the disabled, and to be a platform for a variety of clean-fuel technologies. The committee agreed at my request to provide some funding for the project under the bus program. I now understand that the chairman did meet the President's request for full funding of the project at $10 million under the Transit Planning and Research Program and ask that he support transferring the $2 million earmarked elsewhere for the ATTB in the bus program funding to Foothill Transit.

Mr. SHELBY. Yes, the committee fully funded the President's request under the Transit Planning and Research Program. I will be happy to work with the distinguished Senator from California during conference committee consideration of this issue.

Mrs. BOXER. I thank the Senator for his continued cooperation and leadership on the Transportation appropriations bill.

Mr. GRAMM. 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 occurs on passage of the bill, as amended.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina [Mr. FAIRCLOTH] is necessarily absent.

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 208 Leg.]

YEAS—98

Abraham	Feingold	Lott
Akaka	Feinstein	Lugar
Allard	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Gramm	Moynihan
Bond	Grams	Murkowski
Boxer	Grassley	Murray
Breaux	Gregg	Nickles
Brownback	Hagel	Reed
Bryan	Harkin	Reid
Bumpers	Hatch	Robb
Burns	Helms	Roberts
Byrd	Hollings	Rockefeller
Campbell	Hutchinson	Santorum
Chafee	Hutchison	Sarbanes
Cleland	Inhofe	Sessions
Coats	Inouye	Shelby
Cochran	Jeffords	Smith (NH)
Collins	Johnson	Smith (OR)
Conrad	Kempthorne	Snowe
Coverdell	Kennedy	Specter
Craig	Kerrey	Stevens
D'Amato	Kerry	Thomas
Daschle	Kohl	Thompson
DeWine	Kyl	Thurmond
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Warner
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden
Enzi	Lieberman	

NAYS—1

Roth

NOT VOTING—1

Faircloth

The bill (H.R. 2169), as amended, was passed.

The PRESIDING OFFICER. Under a previous order, the Senate insists on its amendment, requests a conference with the House, and the Chair is authorized to appoint conferees.

The PRESIDING OFFICER (Mr. HUTCHINSON) appointed Mr. SHELBY, Mr. DOMENICI, Mr. SPECTER, Mr. BOND, Mr. GORTON, Mr. BENNETT, Mr. FAIRCLOTH, Mr. STEVENS, Mr. LAUTENBERG, Mr. BYRD, Ms. MIKULSKI, Mr. REID, Mr. KOHL, and Mrs. MURRAY conferees on the part of the Senate.

Mr. INHOFE addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

Mr. INHOFE. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 408, the House companion to the tuna-dolphin legislation. I further ask unanimous consent that the Senate proceed to its consideration and all after the enacting clause be stricken and the text of S. 39 as passed by the Senate be inserted in lieu thereof, the bill then be considered read a third time and passed, with the motion to reconsider laid on the table.

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

The bill (H.R. 408), as amended, was passed.

MORNING BUSINESS

Mr. INHOFE. Mr. President, I ask unanimous consent that between now and 12 o'clock we have a period of morning business.

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

ORDER OF SPONSORSHIP—S. 1084

Mr. INHOFE. Mr. President, I also ask unanimous consent that the bill I introduced yesterday, S. 1084, that was introduced as the Inhofe-Breaux bill, be changed so that the bill be considered the Breaux-Inhofe bill.

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

OZONE AND PARTICULATE MATTER RESEARCH ACT OF 1997

Mr. INHOFE. Let me make a couple comments. Since we are down to a few minutes, there will not be the time for detail which I will go into later.

Yesterday, Senator BREAUX and I introduced S. 1084 entitled the "Ozone and Particulate Matter Research Act of 1997." This bill offers a simple solution to a very serious problem. I think there is a large segment of the population out there that will consider this bill to be singly the most significant of this legislative session.

In essence, this legislation provides the authority and resources to conduct the necessary scientific research and monitoring for the national ambient air quality standards for ozone and particulate matter. It reinstates the preexisting standards for both pollutants and requires the agency to wait until the research is complete before they revise the standards.

The bill creates an independent panel which will be convened by the National Academy of Sciences to prioritize the needed particulate matter research. This would take the politics out of setting research priorities. Next, a panel will be created to oversee the Federal research program in order to ensure that the priorities set out will be followed.

Mr. President, just to bring us up to date here in this short period of time, last November the Administrator of the EPA came out with a message on behalf of the administration stating that we should change our ambient air standards so far as ozone and particulate matter are concerned. In particulate matter, it would mean that we would drop it down from 10 microns to

2.5 microns. In ozone, which is measured by parts per million, it would drop it down from .12 to .08.

While that sounds technical and a little confusing to some people, the bottom line is that many counties throughout the United States, would find themselves out of attainment with these new standards. I can tell you, when I was mayor of the city of Tulsa and we were out of attainment, how difficult it was. There was not any possibility of recruiting any new industry. A lot of industries had been shut down or had to reduce the number of shifts they had. We had to impose various requirements for car pooling and impose things that really changed the lifestyle of our citizens.

The problem is that when the Administrator came out with the proposed new standards in November, we did some research only to find out that there is no scientific justification for lowering the standards. In fact, as the chairman of the Clean Air Subcommittee of the Environment and Public Works Committee, I held my first hearing, a scientific hearing, where we had members of CASAC—that is the Clean Air Scientific Advisory Committee—to come in and advise us as to what the science is behind these recommended changes, only to find that there is no scientific consensus behind these recommended changes. In fact, these experts said there is no bright line, as they call it, for ozone levels beyond which it can be said to be detrimental to human health. As far as particulate matter is concerned, they say there is no science that concludes that there is any causal relationship between any level or type of 2.5-micron particulate matter and respiratory diseases. When asked how long it would take to establish such conclusions, they said it would be approximately 5 years before we should know.

Consequently, we feel that legislation is warranted to postpone any decision to set an arbitrary new standard for these pollutants. Instead we need more study and this bill provides for it. Clearly, as you can see from the original sponsor and cosponsor as well as from those behind a corresponding bill in the other body, this is a bipartisan effort. It is a bipartisan effort that wants clean air, that wants us to make sure that we do not impose any hardships on the American people which are going to be costly and make us noncompetitive on a global basis, inconvenience the American people, and cost us billions of dollars unless there is some scientific justification for it.

I have been critical of EPA. When their proposed rules first came out, the Agency claimed the new standards were needed to prevent 40,000 premature deaths per year due to respiratory problems. Then some months later they changed that to 20,000 deaths, and then recently they knocked that down again to a much smaller amount. At the same time, a research group called the Reason Foundation out in California concluded that a more accurate figure would be no more than 1,000 premature deaths, if that. So there has been a lot of scare talk around. And a lot of misinformation.

We hear many say that those of us who differ with the EPA don't want dirty air. Let me assure you, Mr. President, I have four kids and six grandkids. I do not want dirty air either. I care about their health and well-being as much, I dare say, as any public servant shuffling paper in some Federal agency. What I am concerned about is that we approach this issue in a rational and orderly manner. We should do the science first, we should know what's causing the problem, we should be clear about what is needed to address the problem and then take action with a proper consideration of all the consequences—both wanted and unwanted. What we don't want to do is put ourselves in a position where our philosophy is "ready, fire and aim" instead of the more reasonable "ready, aim and fire." Unfortunately, the EPA wants to shoot first and ask questions later. This is not right.

In the House of Representatives, on a bipartisan basis, H.R. 1984 was introduced, and this bill is very similar to the bill we are introducing.

So I would like to suggest to you, Mr. President, that there is going to be a lot of activity during the August recess, a lot of education going on to make sure that people understand what is about to happen and to make sure we don't go ahead and adopt standards that are artificially reduced with inadequate science to justify those reduced standards.

Mr. President, 12 o'clock being near, I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. We have plenty of time. I wonder if the Senator from Oklahoma desires additional time.

Mr. INHOFE. I would like to have 5 additional minutes if I may.

Mr. DOMENICI. I yield up to 10 minutes to the Senator.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Oklahoma.

Mr. INHOFE. I thank the Senator from New Mexico.

To give you an idea of how this issue has been distorted, it was stated by the administration that, in the event that we do adopt the lower standards for ozone and particulate matter, they said it would only cost $9 billion. Yet, last week, when we had Mary Nichols, the EPA's Assistant Secretary for Air, she stated that the cost would be $9.1 billion, a very uneven number, making us believe there is some scientific reason for that, when, in fact, the Reason Foundation, out in California, concluded, in its study, that the cost is not going to be $9.1 billion if we adopt these standards. Instead, they say it is going to be somewhere between $90 and $150 billion. In fact, the President's own Council of Economic Advisers put the cost at $60 billion for the ozone standard alone.

If we split the difference between the $90 and the $150 billion, that means that for a family of four on average income, it would cost them approximately $1,600 a year—$1,600 a year—to do something for which there is not adequate science to justify it. Second, the administration, in their scare tactics, back in November, said in the event we do not do this, it is going to result in 40,000 premature deaths a year. In December, they dropped that down to 20,000 premature deaths a year. In April, it came down to 15,000 premature deaths a year. Again, many groups now say it is less than 1,000.

It was kind of interesting, because when we had the people who are trying to claim the number of premature deaths that would be there if we did not lower these ozone and particulate matter standards, I described the death of my beloved mother-in-law, which took place on New Year's Day. She was 94 years old. It was one of those deaths that was a real blessing; the time was here. Yet, the circumstances under which she died would have qualified her, according to these so-called experts, to be counted as a premature death.

I think we have also been told things that are not true by the administration, when they say how many people are going to be affected. I have a chart here that we found by some accident, of the Southeastern part of the United States. This came out of the EPA. This is not my chart. What they are trying to say is only the counties, if we lower these standards, in the dark green would be affected in terms of having to come into compliance. Now we see these concentric circles around here covering more than half of this whole region, admitting at one point there would have to be some controls. They call this level 1 control region; level 2 control region—this would be level 2. In other words, the areas actually subject to some form of regulation under these new standards are much larger than people are sometimes being led to believe. So we are getting information that is certainly not consistent with the facts.

Another criticism I have with the administration is how they have tried to sell this idea by singling out certain people. Certainly the Presiding Officer, being from Kansas, and the former chairman of the House Agriculture Committee, understands that this would have a tremendous effect on the agricultural community throughout the United States. You would have

Government saying when you can disk, when you can till, when you can burn off a field, when you can use fertilizers, when you can harvest a crop. I can tell you right now, if you ask the average farmer in America what his biggest problem is, it's not the taxes; it's the overregulation that takes away his freedoms. I have often said, every time you increase regulation, you take away a degree of individual freedoms. That is exactly what they have done.

So we have an administration which now says to the farmers, don't worry, we are going to exempt you; you are not going be affected by this. Then they went to the U.S. Conference of Mayors—and I have to say that I used to be the token conservative on the board of directors of the U.S. Conference of Mayors when I was mayor of Tulsa, OK. It's not really a conservative operation. Yet, they voted, in San Francisco, overwhelmingly, to reject these standards, and these are the mostly Democrats talking, not Republicans.

Why are they concerned about it? They are concerned about it because they know if we bring these standards down, those mayors are going to be running cities that will be out of attainment. This will be another, probably the most severe, of what they call the unfunded mandates that has been out there.

The administration also tried to single out small business, to say this is not going to affect small business. They even said that to one of the Congressmen from Louisiana: Well, you have seven parishes, but don't worry, we won't make you do anything, we'll get the people to the west so when the air flows over it is going to clean up your air. So it has been a very dishonest campaign by the administration. I really believe during the August recess we are going to be able to show the American people what this is really all about.

Last year we passed two significant laws. One is called SBREFA, the Small Business Regulatory Enforcement Act—SBREFA. The thrust of this bill is you can't pass a new rule, a new regulation, unless you explain its effect on small business. So, during one of our committee meetings, we asked the Director of the EPA, "Why is it that you have not explained what the effect of this will be on small business?" The response was, "There is no effect on small business."

I can assure you, Mr. President, all these farms that are small businesses—I can assure you, any small business that has an electric bill, when they say this is going to increase the electric bills by somewhere between 8 and 10 percent, that's an impact on small business. The response of the EPA is, "Wait a minute, all we are saying to the States is you have to come into attainment. You have to figure out how to do it. And whatever you do to your citizens to make that happen is your responsibility. So we—the EPA—are not the ones saying we are imposing a hardship."

We passed another bill, the unfunded mandates bill, that says we cannot pass regulations here that result in an unfunded mandate to political subdivisions below the Federal Government. Consequently, I can assure you, the U.S. Conference of Mayors, the National Association of Governors, and the National Association of State Legislators, the National League of Cities and all these groups that are so concerned about this, they know exactly what an unfunded mandate is.

I anticipate, when the time comes that these standards are put into effect, or set, that there are going to be some lawsuits. I think the American Truckers Association already stated they are going to be suing the EPA. So my concern is, with all these lawsuits that will take place, that we resolve this issue to some satisfaction now, before we get locked in endless litigation. the best way to avoid this happening, the best way to avoid these arbitrary, onerous, and unjustified regulations, would be to go ahead and pass this legislation, which is S. 1084.

I believe S. 1084 and H.R. 1984 will be passed, and I think they will be passed with a large enough margin to sustain a veto.

Mr. President, I yield the floor.

BALANCED BUDGET ACT OF 1997—CONFERENCE REPORT

Mr. DOMENICI. Under the previous unanimous-consent order, I assume we are on the budget bill at 12 o'clock?

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to H.R. 2015 having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

THE PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of July 29, 1997.)

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. 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. DOMENICI. Mr. President, parliamentary inquiry. How is the time being charged?

The PRESIDING OFFICER. The time under the quorum call was charged to the Senator from New Jersey who asked for the quorum call.

Mr. DOMENICI. He asked for it. That is not fair. Can we do this: I ask unanimous consent that we charge the time that has elapsed equally to both sides and, henceforth, on the quorum call I am going to ask for right now, it be charged equally also.

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

Mr. DOMENICI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. DOMENICI. Mr. President, I ask unanimous consent that we stand in recess until the hour of 1 o'clock, and that the time continue to run on the conference report pursuant to the Budget Act, and it be charged equally.

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

Thereupon, at 12:29 p.m., the Senate recessed until 1 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HAGEL).

BALANCED BUDGET ACT OF 1997—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it be charged equally.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOMENICI. 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. DOMENICI. Mr. President, I understand Senator GRAMS would like to speak for up to 10 minutes. I yield him that time off the bill from our side of the 10 hours.

The PRESIDING OFFICER. The Senator from Minnesota is recognized to speak for up to 10 minutes.

Mr. GRAMS. Mr. President, I want to give my congratulations to the chairman of the Budget Committee and all the others who have worked so hard over the last couple of weeks to work out an especially very important tax package, which I believe is going to be a step in the right direction of relieving some of the tax burden placed on American families over the last several years.

So with that, Mr. President, I rise to express my strong support for the tax relief package that will be coming before the Senate tomorrow. I want to take this opportunity, again, to commend and thank the majority leader, Chairman DOMENICI, Chairman ROTH, and the negotiators for the administration for all of their efforts to bring us to this historic point here today.

Mr. President, when my good friend TIM HUTCHINSON and I went to the floor as freshmen members of the House in June 1993 to introduce a budget plan we called Putting Jobs and the American Family First, I could never have guessed the long road we would have to travel to reach the point we find ourselves at today—on the verge of enacting the $500 per-child tax credit that served as the centerpiece of our 1993 legislation.

Our proposal did not have a lot of support in Washington in 1993, and family tax relief did not even make the radar screen of most lawmakers. But that was not important, because we had support where it mattered the most: with the American taxpayers. In the years since, I have watched the enthusiasm for the $500 per-child tax credit continue to grow until it could no longer be ignored here in Washington. After being embraced by the President and congressional leaders in both parties, 1997 is the year in which the $500 per-child tax credit will finally become law.

I have been pleased with many of the changes we been able to bring about in our Government during my service in Congress—but the vote we'll take tomorrow on our tax relief plan charts an important new course. This week, we fulfill what I consider to be a fundamental promise we made 2½ years ago to the American taxpayers: that Washington would finally listen to the people and let them keep a little bit more of their own money at the end of the day.

This legislation is a victory—not for the Senate, or the House, or the President, but for the working families of America. Those are the men and women who go to work every day—and sometimes to a second job at night—in the summer when the heat is horrific and the winter when the car will not start and the snow is piled up to their knees. They put in their 8 hours and often stay for another 3 or 4 for the overtime if they are struggling to save for a new furnace or the kids need braces. They do not ask for much—just to be treated fairly. These are the folks who look at their checkbooks each week and wonder "Where did it all go?"—the same folks who stare at their tax returns each April and ask "How come the government takes so much?"

Thanks to the $500 per-child tax credit, the Government will be taking a little less on tax day.

Mr. President, I am pleased with the improved $500 per-child tax credit provision contained in the fiscal year 1998 reconciliation conference agreement. It is a needed improvement over the Senate-passed version, which I voted against in June.

At that time, I opposed the Senate tax bill because of the way it restricted the use of the $500 per-child tax credit, and in the process, diluted its value. The Senate plan offered a $250 tax credit in 1997 for children under the age of 13, which increased to $500 per-child in 1999. For children age 13 to 16, the tax credit was available only if parents dedicated it toward their children's education. While I fully support the idea of putting away those tax credit dollars for college, I do not believe the Government should mandate exactly how the taxpayers should spend their own money. That is not the place of Congress and the President.

When I cast my vote against the Senate's tax cut bill in June, it was to send a signal to budget negotiators that we must craft a $500 per-child tax credit that does more for working families. With the recent improvements made by the House and the Senate, it is clear Washington finally got the message—as a result, more families will keep more of their hard-earned tax dollars.

The $500 per-child tax credit remains the centerpiece of the our tax relief plan. Under the agreement, working families will be provided a $400 per-child credit in 1998, which increases to $500 per-child in 1999 for dependent children below age 17. The credit is phased out for families earning more than $110,000 per year. The result is that the families of 43 million children nationwide will receive more than $70 billion in tax credits over the next 5 years.

It is the Nation's middle-income families who will benefit most once this provision is enacted. In my State of Minnesota, nearly 700,000 children from middle-class families will be the primary beneficiaries. Those families will see over $300 million in tax relief. That is $300 million that will not go to Washington to fund the priorities of the Federal Government. Instead, families can use that money to fund their own priorities, whether that is groceries, medical expenses, insurance, or education.

An additional 170,000 Minnesota children will receive the tax credit under this expanded version than would have under President Clinton's plan.

Another notable improvement is that the agreement broadens the child tax credit to low-income families.

When Senators HUTCHINSON, COATS, and I introduced our most recent version of the child tax relief legislation earlier this year, we urged Congress to provide immediate tax relief to families effective in 1997, provide it to as many families with children under age 18 as it possibly can, regardless of their income, and make it available against all taxes paid by workers, including payroll taxes. I am pleased the agreement adopted our proposal and offset this tax relief by tightening the earned income tax credit.

For a typical family of four, the $500 per-child tax credit means $1,000 in tax relief, which would pay 1 month's mortgage and grocery bills, or 11 months' worth of electric bills, or nearly 20 months' worth of clothing for the children.

More significantly, the $500 per-child tax credit will reverse a 16-year tide of rising Federal taxes to finally reduce a family's total Federal income tax burden. This is the first tax cut in 16 years, but, in the meantime, there have been 10 tax increases in that 16 years. This begins to reverse the tide.

For a family of four earning $30,000 per year, $1,000 in tax relief would cut their income tax burden by 51 percent. Meanwhile, a family of four earning $40,000 would see their tax burden cut by 30 percent, a family earning $75,000 would see their tax burden reduced by 12 percent, and a family earning $100,000 per year would receive a tax cut of 7.4 percent.

This tax relief will restore some fairness for the taxpayers of my State. Over the past several decades, the Federal tax load on Minnesota residents has grown larger and larger while their share of Federal spending has gotten smaller and smaller. Minnesotans last year paid an average of $5,563 per person in taxes to the Federal Government, $203 more than the national average. But Minnesota received back only 78 cents in Federal spending for every $1 its taxpayers sent to Washington, among the lowest return of any State. This regional disparity is an additional financial burden to Minnesota residents.

Mr. President, I also applaud the inclusion in the agreement of important pro-economic-growth and pro-prosperity tax provisions such as capital gains relief and estate tax reduction. Although these tax cuts are rather small and hardly keep pace with inflation, it is nonetheless a move in the right direction. These tax cuts will spur job creation and economic growth. In doing so, they will reduce the cost of capital, increase worker productivity, and provide higher salaries for the American people.

However, I believe Congress could have done much more in the way of tax

relief for working Americans if Washington would just spend less and allow working families to keep more of their hard-earned money.

I personally would prefer a full and immediate $500 per-child tax credit for all families with children under 18 without any restrictions, zero capital gains tax, elimination of the death tax, and ending double taxation. But those battles will have to wait for another day.

My greatest disappointment with the tax deal is that it contains no real tax reform. Instead of simplifying the Tax Code, this tax bill increases its complexity. Tax policy is still used as a tool for the redistribution of private incomes and for social engineering. Nothing is done to end the IRS as we know it. Unfortunately, these defects greatly diminish the positive impacts of the tax bill. I pledge to continue to work with my colleagues on real tax reform in the future.

Although the tax relief in the improved bill is still tiny when compared against both the total tax burden of the American taxpayers and total Government spending, it is the first time in 16 years that the Government has acknowledged that working families are being heavily overtaxed. That is reason enough to celebrate.

Mr. President, ever since the people of Minnesota sent me to represent them in Congress—first in the House and now in the Senate—Americans have been writing me to share their dreams for themselves and for their nation. Their letters fill dozens of files in my office. Some of the most passionate stories have come from families—working families who heard that I had proposed a $500 per child tax credit and wanted to tell me what a difference such a seemingly simple piece of legislation would make in their lives.

I would like to share just a few of their letters. A family in Illinois wrote:

> We are a one-paycheck family struggling to keep our heads above water . . . It is encouraging to know there are members of the government who understand our struggle and are working on our behalf.

"Thank you for your efforts in trying to help families receive a tax credit of $500 per child," wrote another family, this one from Texas. "As parents of three children, we truly appreciate your endeavors in a time when other politicians are trying to get more and more of our hard-earned money."

From Michigan came this letter:

> There are not very many people in Washington who remember the pro-family community—and even fewer in Washington who will support the family.

And a family in my own State of Minnesota sent me this heartfelt letter:

> As the mother of seven children with one income, I am especially interested in the $500 per child tax credit. We refuse to accept aid from federal or state programs that we qualify for.

> We believe this country was built with hard work and sacrifice, not sympathy and handouts. We also believe that we can spend this money more effectively than the government, which has only succeeded in creating a permanent dependent welfare class with our money over the last 40 years. Let us get back to basics.

Let us get back to basics.

I think "getting back to basics" is what this debate is all about, Mr. President. The American family has always been our Nation's most basic level of government. The power begins with the family and it ought to remain with the family at the end of the day. By enacting the $500 per child tax credit into law, Congress and the President will at last send a message to real Americans—the folks outside the confines of this Capitol—that we understand what it means to be a working family in the 1990's, that we know government demands too much while delivering too little, and that we can put aside the politics that too often divide us and do what is right by the American taxpayers.

Mr. President, the $500 per child tax credit is not going to make anybody rich, but we cannot measure its value in just dollars and cents. After 16 years without a drop of tax relief, we are finally going to let the taxpayers keep a little bit more of their own money at the end of the day. From the vantage point of this Senator, that is a priceless investment in the American family.

Again, after 4 years of hard work to bring about at least this portion of the tax bill, which has been called "the crown jewel," we are going to finally succeed in giving the American family some hard-earned tax relief.

Thank you, very much, Mr. President.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, thank you for recognizing me.

I want to make an announcement for Senators. The bill—the very large bill that you have seen kind of appear on the desk—is available to those who have access to the Internet. You can view the bill through a link in the Budget Committee office. You can do it in your own offices on the Budget Committee home page, and the bill will be here no longer than a half-hour from now in sufficient numbers for those who want to view it in its entirety.

As you know, the House is voting on the bill now—debating and voting on it. Then it will officially be transmitted to us. We have decided to start debating this so that we could all use this time during the day and not have to be here all night to get this done in a timely manner.

Mr. President, I want to make a few observations. Obviously, Senator LAUTENBERG will have his, and then I would like very much to say to Senators that we are using time out of the 10 hours allowed.

I understand from our majority leader that we intend to get this bill done, if possible, tonight; if not, clearly tomorrow morning. So that means we are going to spend a lot of time here on the floor between now and the time we quit tonight.

So, if Senators have comments they would like to make, or if they have questions, I would particularly suggest if you have questions with reference to the Byrd rule—one of the rules that apply to these bills that do not apply anywhere else because it has to do with a special test for extraneousness—I wish they would talk with us, or talk with Senator LAUTENBERG's staff or our respective leadership offices about the Byrd rule violations that we are aware of and kind of documented now. We would all like to have a chance to work together on them. When it comes to that issue, I would like to make the following statement so that everybody understands. I am sure my friend, Senator LAUTENBERG, will concur.

The White House has been involved from the very beginning in the preparation of this legislation. And from time to time both the Republicans and the White House have been involved with Democratic legislators. But let me make it very clear. This is a historic document in another procedural context because last evening the White House staff stayed until late in the evening—in fact, until the early morning hours—before they would sign off on this. They read every single word of legislative language. And, indeed, they read every word in the accompanying report language. Frankly, I have been around here a long time and working with administrations and the White House with legislation up here, and I think this may be the first time that has ever happened.

I only say that because, obviously, it was hard to put this package together. In the process there are many wordsmiths, and there are many things that have to be put together in terms of language. But every bit of it, including those few instances where there are Byrd rule violations—and that sounds rather ominous, but it really means that we have a technical rule that says you ought not be legislating in this bill. You ought to be doing deficit reduction. And on some occasions it is hard to keep that altogether and not fall into something that is legislative in a 1,000-page document.

So let me stop the process part, and just remind Senators who would like to speak today if you have some thoughts and things that you want the public to hear from the floor of the Senate, as soon as you can start calling us for time, we would be very, very glad to accommodate. And I think we can accommodate most people on a rather

short notice because from my standpoint I have said an awful lot. I don't intend to be here on the floor saying a lot more. I am just trying to get this bill completed.

But let me start by saying this morning that the headline in the Washington Post, which has not been very supportive of this, used five very nice words. They said, "This is a Big Deal." Maybe they don't like the "big deal," but it is nice that they recognize what all of us know—that this is a big deal for the American people. It carries out a bipartisan budget agreement that in itself was historic between the President and the leadership of Congress back in May. It is a big deal in this town when we could do what the American people asked us to do, and that is to work together to live by our commitments, to reduce spending and reduce taxes, and get our work done.

So it is pretty obvious that this is a big deal. It balances the budget for the first time in 30 years. And I know there are many who will continue to be skeptical until that day arrives. Frankly, I am here saying I am a pretty good budgeteer. I understand all of these nuances about budgeting, and how the economy impacts on it—how inflation impacts, how the growth in the economy impacts. But absent a real major catastrophe, which nobody can plan for, this budget will be balanced. Frankly, it is because of a number of things. The economy is doing splendidly. That could change. But it looks like things are in place like they haven't been for a long, long time in terms of those things that make an economy go into recession or into an inflationary cycle. And we are not growing out of control. It is kind of a measure of good solid growth.

So I think we are entitled to use conservative estimates for the next 5 years, which we have done, Mr. President. The economics in this bill's projections for the future are not overly optimistic. So when you add it up, for those who say we have some new programs and we spend some money, that is correct. For some there isn't enough by way of cutting the budget in this—cutting the expenditures. But I will get to that in a minute.

Just remember, it is a Democratic President elected by the people and a Republican-controlled Congress with Democrats in the minority who had to put a package together that did something significant, or spend the next 3½ years, in my opinion, doing nothing. We would have been around here fighting. We would have at every juncture on every bill have had stalemates. We might have even closed down Government again.

So from my standpoint, if you look at 10 years—and I am not saying everything in these 10 years is locked in stone, but 5 years of it is—we reduce what we would have otherwise spent by about $1 trillion. This time we have not included in that estimate the savings that will come from debt service because as you reduce the amount that you borrow you take off of that baseline that had calculated in it interest.

Yes, this balanced budget is a bipartisan budget agreement. We followed it as well as any differing groups could follow it. We put it together with a different group than had to implement it. So that is not easy, for they always second-guess us and claim they should have been in. I wish everybody in the Senate could have been in on the negotiating. I wish every chairman could have been. I guess as I wish it I speak the truth—that had they we wouldn't be here. That is the reality of trying to do this kind of thing.

But we said in that agreement that we were going to spend $24 billion. We did agree to provide $24 billion in new spending for children's health programs for insurance. We also agreed to make changes in last year's welfare reform, which results in some additional national spending.

I want to correct myself. The bipartisan agreement said $16 billion in new spending for child health care coverage. The U.S. Senate voted in $24 billion, and the Senate version prevailed in the final outcome of negotiations.

I note on the floor of the Senate now, along with Senator LAUTENBERG, is the distinguished Senator from Delaware, Senator BILL ROTH.

Let me make sure that everybody understands that his chairmanship and his committee made this the big deal that it is. I say to the Senator, I just commented that finally the Washington Post, after being against this budget, at least recognized one thing. They said, "It Is a Big Deal." And I am saying there would have been no big deal without the Senator from Delaware and the marvelous bipartisan committee that he has. I thank him right here publicly for that.

Let me just go on through. After Senator LAUTENBERG speaks, our distinguished chairman of the Finance Committee, which had jurisdiction over about 85 percent of this bill, wants to speak. I want to yield quickly.

I want to say, however, that Republicans for a long time said we ought to balance the budget. It has now become everybody's cry. The President wants it. Many Democrats want it. But I take a great deal of pride in behalf of Republicans in my capacity as chairman and ranking member of this Budget Committee.

I have been trying to get there for a long time. And I think we have done a great job as Republican leaders in pushing this. That is not trying to detract from those who have joined us, including the President of late. We also wanted some tax cuts.

Many of us thought American families were in desperate need of some help—especially middle-income American families with kids. We have done that. Again, even though most of that originally started on our side of the aisle, I don't tend to, nor do I want to, denigrate the fact that it has broad support on the other side, and the President of the United States is supportive of it.

The capital gains differential has been part of what Republicans thought we should have in this Tax Code for decades. As a matter of fact, it is very interesting that we got a capital gains differential in this bill. We joined the industrial nations of the world with capitalistic societies that have moved that way already, and I think that bodes well for the future.

Everybody knows the other provisions that my friend, the chairman, will speak to. But I just wanted to make the point, for those who seem from time to time to give up on causes and to be for them for a few years and say we can't get them done, I believe Republicans ought to be proud of the fact that we have stood pretty fast for those issues, the ones I just described, and some others, and most of them are coming true here.

That is not to say some issues that the Democratic Party and this President have pushed very hard for are not in this bill, also. I am sure, knowing my friend, Senator LAUTENBERG, he will remind us—and that is what he ought to do. And those are some things I want, too. I am not running around apologetic about trying to cover children that do not have health insurance. I am not sure we know how to do it quite right yet, I say to the occupant of the chair, who shares that concern with me, but I think we have to get started, and we have done that.

One last thing is we all know the Medicare Program for the seniors of America—39 million of them almost right now—we know that program is, for many of them, something they build their confidence on as they get older and as some of them get sick, and as they get sick, they know they have this great hospitalization program. Now, there is no one who ought to be anything but proud of the fact that we have taken a system that is falling apart financially, and we fixed it for 10 years. It probably would have gone bankrupt in 2, maybe 2½ years, so we fixed it for 10 years.

Now, I am kind of tempted to say that is a big deal. But I think it is. Now, it is not fixed permanently. It still continues to have big problems out there in 15 years, 20 years, but, frankly, I am not apologizing that a budget resolution and essentially this plan did not solve that. Actually, I do not believe it could have. I believe it is such a big issue in and of itself that it will be solved only when a bipartisan national commission, which is provided for in this bill, goes out into America

and tells everybody the problems and comes up with some solutions that are bipartisan that Presidents and Congress will support. We started that here.

But I believe in the meantime we had to make that program more efficient. We have done that. In fact, we made it $115 billion more efficient by changing the rules of the game. In the meantime, we are trying to give seniors the best of health care at the most reasonable prices, putting some competition into the program, and that is there, alive and kicking and strongly voicing itself in this bill—competition.

So there are HMO's, there are professional provider organizations, there are private fee-for-service programs, and there are PSO's. It also has a demonstration program, a medical savings account of 390,000 beneficiaries.

Now, when you put all that together, along with a new $4 billion preventive program that I am not going to discuss in detail, we have done fairly well by the people who pay for Medicare, the working people, and pretty well by the seniors. You package this all together—a balanced budget, which means we are not going to have our children paying our bills too much longer. That is what a deficit and a debt are. It is asking our kids and our grandkids to pay our bills. A balance says we are not going to do that anymore.

Now, it is a long time coming, and we owe a lot of money, so we cannot stand up and say to our kids they are not going to pay some of our bills, because the debt is so big we cannot get rid of it. But at least we can stop it. So that was No. 1.

No. 2 was fix Medicare, and I have described it.

No. 3 was to make sure that we had a tax bill that was fair to the American people. Frankly, after all the bickering on the edges—and that is what it all was, on the edges. All this argument about how many children are covered and how far down do you go were really on the edges, small, small things, small numbers. The people that need tax cuts and tax breaks are the American people earning between $25,000 and $30,000 and $110,000. They are the middle-income Americans, two jobholders, two professionals, two people working, and they are paying the taxes, they are following the rules, and they haven't had anything from their Government saying we would like to make it a little easier for you—until this bill.

Now, they have three very significant new things they can look to. It isn't like we are giving them a present. It is saying to them, keep some of your own money and let Government grow less and let you make your decisions on what you do for your children rather than have us build a bigger and bigger Department of Education. Those are the kinds of tradeoffs that are going to occur and are starting to occur, although, when it comes to education, this bill is strong on college education, strong as anything you can have. When it comes to the new programs appropriations, we have been very generous. We have been very generous to the education programs that our country has.

I am not sure before we vote on this that I will have another chance to thank everyone, so I just wish to thank Senator LAUTENBERG, and I thank our distinguished Republican leader—he did a great job—Senator ROTH, and all the other chairmen, our House counterparts, including Representative KASICH.

But I want to make one statement on the floor. It might seem it ought to be done on the House floor, but I want to make it here, and I think my friend, Senator ROTH, would concur. The Speaker of the House, NEWT GINGRICH, in negotiations from the beginning until the end, was absolutely a fantastic leader. I have to say to those who doubt, because he was under a lot of pressures, I did not notice for a minute that had anything to do with his single-mindedness, his tremendous intellect and the way he could put things back together and get us moving in the direction of getting things done. So my compliments to the Republican leadership in both Houses from my side, and obviously we had great support from Democrats.

At this point I am going to yield the floor.

Mr. ROTH. Could I ask the distinguished chairman to yield just for a minute?

Mr. DOMENICI. Of course, yes.

Mr. ROTH. There are many people who are responsible for bringing together this important piece of legislation, and I strongly agree with what the distinguished Senator from New Mexico said about the Speaker and the majority leader. They provided not only strong leadership but ideas, were able to move ahead, and I have to say I could not agree more that the Speaker showed every ability of providing the kind of leadership we needed from the House in order to get this complex piece of legislation through.

I would just like to say to my distinguished friend and colleague, Senator DOMENICI, that the legislation would have gotten nowhere if it had not been for him. I know no one in the Senate, or House for that matter, that has a better understanding of the budgetary process, knows the issues with which we are dealing and who has devoted, what is it, 7 or 8 months' time to getting this job accomplished.

I would also like to say in the same context I think Bill Hoagland has been a tremendous strength for this whole process.

I, too, join the Senator in congratulating the ranking member, my colleague and friend from New Jersey, for his outstanding work.

Mr. DOMENICI. I thank the Senator very much.

Mr. LAUTENBERG. I thank the Senator.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I am pleased to join the chairman of the Budget Committee, Senator DOMENICI, in supporting the conference report on this budget reconciliation bill, which, along with the conference report on the tax bill, will finally implement a bipartisan plan to balance the budget.

I have to ask Senator DOMENICI, because he talked about the five words that appeared in the Washington Post, I wonder whether it read like this. I heard him say, "This is a big deal." Or did it say, "This Is A Big Deal?" I wasn't sure quite where the emphasis was. But I assume it was the way it was intended.

Mr. DOMENICI. The way I said it.

Mr. LAUTENBERG. The way the Senator read it himself as opposed to, "This is a Big Deal?"

I want to say to Senator ROTH, who was pulled from so many directions, I was amazed to see him arrive in one piece each day. He listened with great patience—great patience and great interest. Everybody is pleased. I will speak about it from the Democratic side. People don't realize, when there is a majority and a minority, the minority doesn't always get a chance to present their views. But BILL ROTH, Senator BILL ROTH of Delaware, is known as someone who is a fair-minded person, and while he would not always agree, he would almost always listen. I have never found him to say "no," and I appreciated that. I think it produced a very good product. It is, under the circumstances, I think, perhaps the best that could have been gotten. All of us wish there were other things in there—everybody. If you ask any Member of the Senate whether they did not think there was another thing that should have been in or another thing that should have been out, they would have, I guarantee, a menu of things they would like to select from.

I am so pleased that we are joined in the Chamber by the ranking member of the Finance Committee, my good friend and colleague from New York, Mr. MOYNIHAN. Senator MOYNIHAN is a man with vast knowledge about so many things that I often say I would enjoy, even with all my white hair, going to college with Professor MOYNIHAN and hearing his views on things. But there is always a background of information that adds so much to the dialog and the debate, and I congratulate him for his role and for his willingness to hear the arguments and to work to try to get a consensus in the legislation which we now have in front of us.

Mr. DOMENICI. Will the Senator yield without losing his right to the floor?

Mr. LAUTENBERG. Be happy to.

Mr. DOMENICI. I note the presence of Senator MOYNIHAN, and I had not said anything about him in his absence. I would like now to say there are many points, as you look at the last 7½ months, when you would say this is critical, this is where it might end. And I believe the thing that gave us momentum to get it done was the Finance Committee's bipartisan addressing of most of the issues in this bill.

Now, I am sure the Senator from New York didn't get everything he wants, but I believe it was one of the big turning points when the Senator joined with Senator ROTH and between the two of them had such a large cadre of Senators from both sides supporting some very, very powerful things, and I thank the Senator personally for that.

Mr. MOYNIHAN. Mr. President, might I thank with great gratitude the senior Senator from New Jersey and my friend from the day I entered this Chamber, the chairman of the committee. They speak to what I think is an important fact. But, of course, the person who made it possible was Senator ROTH, the chairman of the committee. I was with him in this regard and proud to have been. I thank Senators.

Mr. DOMENICI. Mr. President, could I say that under the rule under the Budget Act somebody is designated to manage, and I am it for today, but I can give that to someone else. I am giving that to Senator ROTH until I return, and he will be our floor leader now. I thank the Senator.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I will continue to extend congratulations to some who are not here. I have to take my time to salute the efforts of Senator DASCHLE, who was ever present in his encouragement to get this job done—let's see what we can negotiate together, let's see if we can make this adjustment or that adjustment, or talked to his counterpart on the other side. And I want to say for Senator LOTT, the majority leader, he, too, was someone who wanted to get this bill behind us, get this job done, and he has shown his interest in doing that as he runs the Senate from the majority leader's position that we do move things along. There were Members on both sides of the aisle who also helped, too numerous to mention, but I think it is fair to say that those whom we have talked about had a significant role.

PETE DOMENICI and I were among the four elected representatives to be negotiating, and we were often closeted days at a time. Though the atmosphere got stuffy, I think neither one of us did, and we were able to continue talking in a civilized fashion.

The bill before us is the culmination of those many months of intense effort and people of both parties deserve to be proud of this accomplishment. This budget proves that when leaders with good will come together, we can overcome partisan divisions and find common ground. That is good news for all Americans.

I will say this. We have gotten a lot of salutations, a lot of compliments about getting this job done. Threaded through those comments were the kinds of remarks that might surprise, like: Finally, the bickering has stopped, there is no partisanship involved; hurrah, the Senate and the House are working to get our interests put up front. I think that was kind of a noteworthy thing. It's not that we spend all of our time in the boxing ring here. But sometimes, when people's positions on legislation get too entrenched, they lose sight of the fact that we have to stop the argument and get on with producing a product. So, I think the Nation is going to be better off because of this.

The budget agreement is not perfect. It is not drafted exactly as I, as I said, nor any other Senator would have written it. But it is an honorable compromise that, on balance, is an enormous step forward. It will lead to the first balanced budget in this country since 1969. It invests in education and helps ordinary Americans afford college. It provides health coverage for many of America's uninsured children. And it provides tax relief for middle-class families. It provides important protections for kids and legal immigrants, people who were invited to come here and who later became disabled. And it helps accomplish something that President Clinton has had on the agenda for a long time—to move people from welfare to work, and to provide the means with which to make that transition.

More generally, it shows we can both be fiscally responsible and true to our highest values as a nation. This budget agreement will produce roughly $900 billion in net deficit savings over the next 10 years. It will give us the first balanced budget in a generation. It will build on President Clinton's tremendous success in reducing the deficit. And one cannot ignore—and Senator DOMENICI knew this was coming—one could not ignore the incredible accomplishments, economic accomplishments that have been made since President Clinton has been in office—with a budget deficit that was at $290 billion when he took over in 1993, and at the moment looking like it is going to be something less than $50 billion for the year 1997. It will build on President Clinton's tremendous success in reducing that deficit. It will build on the success that we have had in getting new jobs for people in our country—12 million new jobs created. And the stock market—one can't help but notice that indicator. I noticed today, after hearing the news and yesterday after hearing the news, the market continued to move upward. Inflation is in check. People feel very good about the strength of the United States, leading the world's most developed countries in competing in the marketplace. That is a terrific record upon which to build.

This balanced budget amendment is an extension of all of those good things. But I think the President is due a lot of credit for having brought that deficit down to where it was, based on his hard work and, yes, a turn of very good events at the same time. But it was his foresight and his planning that helped enable us to get to this point.

The budget agreement, also, will move our Nation into the 21st century by providing the largest investment in education in 50 years. I, as a recipient of the benefits of the GI bill—I served in the war. I don't always like discussing which one. Sometimes people ask me if it was the Spanish American? It was not. It was World War II. But, without the GI bill, my widowed mother, age 36 when my father died, and the poor circumstances in which our family found ourselves when I was discharged from the Army—never, never would have enabled me to get a college education and get a start on a career that has been very satisfying for me and, I hope, worthwhile for the country. So I saw the value of helping someone get a head start in life, someone getting an education and being able to contribute to our society. That is what I want to see us do and the President certainly led us to that point.

The tax bill we are going to be considering also will include a $1,500 tax credit to make the first 2 years of college universally available. There will be a tuition tax credit for all working Americans who want to pursue lifelong learning, continue to learn. That enriches the mind, enriches the body, and enriches the quality of life. That is what we have seen in so many cases. If you look in the universities and research laboratories and so forth, you see the people who continue to learn and who gain vitality and youth, even as they do that. These provisions are critically important to the future of our economy.

In addition, the budget agreement also includes $24 billion for children's health care, the largest increase in children's health care since the enactment of Medicaid in 1965. This will help provide health insurance to millions of uninsured children and it is a tremendous achievement.

The budget agreement also protects Medicare and extends the solvency of the Medicare trust fund by roughly another 7 years. Unlike earlier proposals, it does not ask senior citizens to bear unfair burdens and it doesn't threaten the quality of their health care. Instead, it reforms and modernizes the

program and includes significant new preventive benefits.

We all know there is going to be a more thorough review of Medicare in the years ahead, to see whether we can comprehensively make changes that will guarantee that solvency for as long as one can imagine.

In addition, the agreement provides tax relief for the middle class. As we will discuss when we turn to the tax bill, the agreement provides a $500 tax credit for children under the age of 17, to help families to be able to bring up their children in the fashion that would provide them with sustenance and direction, and perhaps help them get started on their education. Importantly, that credit will be available to working families with lower incomes. This sounds a little mysterious but there are people whose incomes are supported by assistance from the Government, earned-income tax credit, in which a family that is below a certain level of income gets a stipend or a tax refund from the Government. It often makes their lives livable. But there was a huge debate about whether or not this credit would be available for people who do not pay taxes in the first place. But we know they are working families and they do pay payroll taxes and we decided, jointly, that it would be appropriate to give some credit on those payroll taxes that they pay.

We, the Democrats, made that a priority. With support from our Republican friends we won an important victory for millions of ordinary Americans.

The conference report also restores a basic level of fairness for people who have come into this country legally, who have obeyed the law, paid their taxes, and then fate delivers them a disability whether through accident or just sickness. Last year the Congress pulled the rug out from under these people and eliminated their disability benefits; for some, the only provision that they have that enables them to get along. But today we are restoring that basic safety net. It is the right thing to do. As the Senate sponsor of this amendment I am particularly pleased that it will be enacted into law.

Another important section of the conference report will protect 30,000 disabled children who otherwise would lose Medicaid coverage. This corrects a serious defect in last year's welfare legislation and will make a huge difference for these children and their families. I am also pleased that the budget agreement includes a renewed commitment to environmental protection. We will be enacting new incentives to clean up thousands of contaminated, abandoned sites in economically distressed areas. That not only will improve the environment, but it will help encourage redevelopment of these areas, known as brownfields.

I have seen it in towns in New Jersey, industrial cities that had a glorious past but now suffer from the delinquency that often results from industrial pollution. Some of these communities have had these sites, dormant sites, small sites that were unused, yet with people begging for work not blocks away, able to get there; people begging for retail facilities—they are not used. We have seen, in New Jersey, where we have cleaned up a few of these sites, good retail activity—in one site in Hackensack, NJ, with a couple of hundred people working in a discount store, a marketplace that people can go to, to get their goods, buy their food. It has been a miracle, almost, to see these things. And it is, often, for very small sums of money.

So we now have brownfields that I worked very hard on. It's now in place. It's a win-win approach that will make a difference for communities around the Nation.

Additionally, the conference report includes important provisions to move people from welfare to work as I mentioned. One million long-term welfare recipients stand to benefit from this initiative. And the Nation as a whole will benefit, as more Americans leave welfare and become productive members of our economy, lift their heads high, lift their spirits, provide some vision for themselves and their families. It is a wonderful vision and I am pleased to see we are putting the resources there to make it happen.

Mr. President, I am going to leave to others the discussion on some of the other details of this legislation. But I once again take the opportunity to congratulate the President, President Clinton, for his outstanding leadership in this effort. We are here today on a bipartisan basis only because the President decided it could happen and he wanted to make it happen. His people were all over the place, working alike with Democrats who occasionally disagreed and Republicans who occasionally disagreed. He brought us all together and we are grateful for that. I think his commitment will be acknowledged for many years to come.

Mr. President, I don't think, as I said earlier, there is anyone who would say they are 100 percent happy with this agreement. But, while no one sees it as perfect, everyone should see it as good. It is fair, it is balanced, and it will serve our country well. It will balance the budget. It will invest in education and training. It will provide tax relief to the middle class. It will protect Medicare. It will provide health care coverage to millions of children. It will throw a life vest to disabled legal immigrants. It will invest in environmental protection, move people from welfare to work, and will make life better for millions of ordinary working Americans.

So I urge my colleagues to put aside as much challenge as they can. Yes, everybody in this place is free to make their statements, to say what they want. But I hope in the final analysis they are going to support this budget agreement enthusiastically, because it sends a message to the American people. It will say yes, this wasn't something that was nurtured through an inch at a time. This is something that was supported by people across the room from different States and from different parties. That is the way it ought to be. It is the right thing for America and I am proud to have been a part of it.

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

The PRESIDING OFFICER (Mr. GREGG). Who seeks recognition?

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

PRIVILEGE OF THE FLOOR

Mr. ROTH. Mr. President, I ask unanimous consent that Rick Werner, a detailee to the Finance Committee from the Department of Health and Human Services, be granted the privilege of the floor for the duration of the debate on this conference report.

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

Mr. ROTH. Mr. President, the budget reconciliation conference between the Senate and House has come to an end. All sides have weighed in. The process has been long and involved, around the clock, through the weekends. But I must say the result is well worth the exercise.

What we have achieved is a balance, a carefully crafted compromise between the Senate and the House, between Republicans and Democrats, between Congress and the White House. I can say with certainty that no Senator, no Congressman, not even the President got everything he or she would have liked. Undoubtedly there are specifics in this final package that I would prefer to have seen written differently. But I can say that, while there were necessary compromises to achieve balance and to deliver the budget reconciliation to the American people, there was no compromise on principle. Differences? Certainly, but I cannot remember the last time I saw such a positive, bipartisan willingness to work together in a budget effort.

This, I believe, is because there has been a profound change in the nature and character of Washington. Two recent proclamations demonstrate this change. The first was President Clinton's declaration in his State of the Union Address that the era of big Government is over. And the second came from our distinguished colleague, Senator DASCHLE, when, during this debate, he agreed that the question in Congress is no longer whether or not taxes should be cut, rather a question of how much they should be cut.

Cutting taxes and achieving a balanced budget have long been Republican objectives. For years now, we

have advocated the need to change the way Washington does business. Now President Clinton and the distinguished minority leader demonstrate the growing bipartisan consensus on these objectives, objectives that underscore this reconciliation package.

It is a strong first step. It signals that the era of big government is over. Certainly government has its place. There are moral and contractual obligations that the Federal Government must maintain with the American people. Many are enumerated in the Constitution. Others, like Medicare and Medicaid, are more recent and have become critically important to those who depend on them now and to those who rely on them for the future.

Having said this, I believe a clear and growing majority realizes that the Federal Government is not the answer to all that challenges us. In fact, in some cases, the Government is shown to be the problem, particularly when it comes to waste, fraud, abuse, inefficiency, and a top-heavy, unresponsive bureaucracy. The ability of both sides to compromise on this bill demonstrates that Washington acknowledges this reality and that Washington is responding to the attendant frustration and legitimate concerns felt by Americans everywhere.

Beyond signaling an end to big and inefficient government, this package meets several other shared criteria. It places us squarely and honestly on the road to a balanced budget by the year 2002. We all know how important this is. The United States has not balanced a Federal budget since 1969. This, despite the fact that our Founders made it clear that saddling future generations with debt is immoral. According to Thomas Jefferson, the question of whether one generation has a right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. Jefferson said that we should consider ourselves unauthorized to saddle posterity with our debts; we are morally bound to pay those debts ourselves.

This budget reconciliation package is the first in years that puts us back where we must be. It is balanced. It begins to address the dilemma of big government's licentious legacy, a legacy that burdens every man, woman, and child with almost $20,000 in public debt. I am happy to say that our majority leader, Senator LOTT, made it clear at the beginning of the 105th Congress that balancing the budget in 5 years would be one of our top priorities. Mr. President, we have delivered on that promise.

Our third objective has been to strengthen the programs that would be influenced by our actions. The reforms to entitlement that are contained in this package are, indeed, historic. We make significant and important changes to Medicare and Medicaid. We strengthen assistance to children. We return authority and means to our States so they can better meet the needs of their citizens. It was not enough to simply change entitlement programs to reduce their rate of growth. We sought in the process to improve, to strengthen them, to preserve them, and, again, we succeeded.

Let me give you the specifics. But before I do that, let me reiterate that we were able to accomplish these significant objectives because of a growing consensus on both sides of the political aisle, and because of our willingness to compromise, compromise not on principles but for principles.

In our effort to control spending, the largest program we addressed was Medicare. Our objective here was not just to control its spending, but to strengthen the Medicare Program for the long term, and we did this. We did this by increasing choice and competition within the program. Choice within the Medicare Program will give beneficiaries myriad options. It will allow them to participate in HMO's, PPO's, PSO's and private fee-for-service programs. We have based our expansion of choice in the Medicare Program on the successful Federal Employees Health Benefits Program. Through these options, seniors will be able to obtain important benefits, like prescription drugs, that are not covered by traditional Medicare.

These changes and the money they will save also allow us to expand Medicare coverage for certain important preventive services, including mammography, prostate colorectal screening, bone mass measurement, and diabetes management. Beyond increasing choice and competition within Medicare, we strengthen and preserve the program by slowing its rate of spending growth. Our measures save Medicare for another 10 years, while still increasing program spending per beneficiary from $5,500 this year to $6,800 in the year 2002.

Beyond encouraging choice and competition, this bill introduces important innovations into the Medicare Program, innovations that could go a long way toward strengthening the program for future generations.

One very important innovation is the creation of a demonstration project that will explore the advantages of having medical savings accounts available within the Medicare Program. This demonstration project will allow up to 390,000 Medicare beneficiaries to opt into an MSA program, a program that will allow them to choose a high-deductible Medicare choice plan.

I believe medical savings accounts will be an important component of Medicare's long-term viability, and to study and recommend other innovations, our legislation creates a national bipartisan commission on the future of Medicare. Senator MOYNIHAN and I called for this commission back in February as we realized that to realize long-term solutions for the program, we needed a commission that would be above politics. This will be a 17-member commission established for a little more than a year. Its task will be to make recommendations to Congress on actions necessary to ensure the long-term fiscal health of the Medicare Program. It will report back to Congress on March 1, 1999, and these changes to Medicare will result in a net savings of $115 billion over 5 years, savings that will not only help us balance the budget, but savings and reforms that will preserve the Medicare Program while ensuring that it continues to serve those who depend on it now.

Concerning Medicaid, we were able to achieve a total savings of $13 billion. This savings will come largely from a reduction in disproportionate share, or DSH payments, and by giving our States more flexibility in how they run the program.

For more than a decade, there has been a tug of war between the Federal Government and the States over Medicaid. Each side has tried to assert its will over the other. From the mid-1980's and through the early 1990's, the Federal Government imposed mandates on the States and, in turn, the States shifted costs to the Federal Government. The result was devastating to all of our budgets as Medicaid routinely grew at a double-digit pace, reaching as high as a 29-percent increase in 1992.

This legislative package marks a new beginning, a new trend. It marks a change in the Washington mindset that has sought, since the days of the New Deal over 60 years ago, to centralize power in this city. With this substantive change in the Medicaid Program, we are offering our Governors the tools they need to control this program. This, I believe, is the way things should be done.

With this bill, they will be able to move more individuals into managed care without waiting years for waivers from the Federal Government. They will be able to contract with selected provider for services. The States will be able to ask families to take some responsibility for the decisions they make when seeking health care services. This power at the State level will go a long ways toward stretching Government health care dollars.

As I said, beyond making significant and important changes to Medicare and Medicaid, we have strengthened assistance to our children to meet the health care needs of the most vulnerable among us. It became clear through the conference that both sides of the aisle are equally committed to increasing access to health care for as many children as we can. Both sides of the aisle are committed to finding an answer to the problem of uninsured children in

this country, and this legislation represents an important agreement in this area. It creates a new program, a program that covers low-income, uninsured children. The process of providing insurance and health care coverage to vulnerable American children is complex. As I have said before, of the 71 million children in the United States, more than 86 percent are already covered by some type of health insurance. Two-thirds of our children are covered by insurance through the private sector. Twenty-three percent of all children in the United States under age 18 are covered by Medicaid, and another 3 percent are covered by other public insurance programs.

Our plan provides $24 billion over the next 5 years to be used by States in a manner that provides them flexibility in how they will expand health care coverage to our children.

Our States will have two mechanisms of establishing programs. They can expand their Medicaid coverage or they can create their own program to address the particular needs of the children in their States. And while the Governors are given certain flexibility in the way they can use this money, our bill requires that they meet specific standards regarding health care coverage for children.

Expanding Medicaid is certainly a choice States have made. Thirty-nine have expanded Medicaid eligibility for pregnant women and children beyond the Federal requirements. But States are also developing other strategies for increasing coverage of children as well. There are already public-private partnerships in more than half of our States. There are successful programs such as New York's Child Health Plus and Florida's Healthy Kids. These innovative programs and programs like them can grow with these additional resources provided by this legislation.

These, Mr. President, are the major provisions of this legislation. They signal a new beginning in Washington—real reforms to make programs more cost-effective, more efficient, more responsive to the needs of our people and our States. Great care has been taken to assure that the most vulnerable among us are protected, and this includes our provision to restore benefits to all legal noncitizens who were receiving Social Security when last year's welfare bill was signed into law.

With this legislation, we also restore the ability to receive benefits to legal noncitizens who were residing in the United States as of that date should they become disabled in the future. These protections, however, are handled appropriately and in keeping with our overarching goal of restoring fiscal responsibility to Government.

With this reconciliation package, we have establish the first balanced budget since 1969. We have met the criterion given us in the May 2 budget compromise, and we will give Americans the first real tax relief package that they have had in 16 years.

Did we accomplish everything I would have liked to accomplish? No. I would have preferred to see some deeper, more significant fiscal restraint. I would have preferred to see a few other major reforms to Medicare, reforms that would have gone a long way toward strengthening the program, and these include the provisions that were in the original Senate package.

But recall, Mr. President, the history of the balanced budget debate; recall Congress' effort in November 1995 to balance the budget by the year 2002; recall the consequent Government shutdown and Bill Clinton's veto; recall the President's 10-year balanced budget plan and Congress insisting that balance could be achieved 5 years earlier.

Keep the history in mind, and the success of this legislation becomes clear. We have a balanced budget. That balanced budget will be achieved in 5 years, not 10. And we have achieved it without acrimony, without Government shutdowns, and without vetoes.

This is a bipartisan effort. It is an excellent beginning. And I am grateful to my colleagues on both sides of the aisle for their work, for the spirit of cooperation that existed on the Finance Committee, on the floor of the Senate, and throughout the conference.

I am especially grateful to my friend, PAT MOYNIHAN, for his wise counsel, his leadership, and cooperation in helping to bring about the success of this package. I am also grateful to the professional staff members on the Senate Finance Committee, as well as the Senate Budget Committee.

Likewise, I want to thank the staffs of the Congressional Research Service and the Congressional Budget Office, the Office of Legislative Council in the Senate, the Prospective Payment Assessment Commission, the Physician Payment Review Commission, the General Accounting Office, and all others who have worked long and hard for this package. The list of names is too long to read here, but I ask unanimous consent that these names be printed in the RECORD.

There being no objection, the names were ordered to be printed in the RECORD, as follows:

FINANCE COMMITTEE

Lindy Paull, Julie James, Alexander Vachon, Gioia Bonmartini, Dede Spitznagel, Dennis Smith, Donna Ridenour, Alexis Martin, Mark Patterson, David Podoff, Faye Drummond, Rick Werner, Kristen Testa, and Doug Steiger.

SENATE LEGISLATIVE COUNSEL

Jim Fransen, Mark Mathiesen, Ruth Ernst, John Goetcheus, Janell Bentz, and the rest of the Legislative Counsel's Office.

CONGRESSIONAL BUDGET OFFICE

Murray Ross, Tom Bradley, Cyndi Dudzinski, Jeanne De Sa, Anne Hunt, Jennifer Jenson, Jeff Lemieux, Robin Rudowitz, Kathy Ruffing, Paul Cullinan, Sheila Dacy, Joe Antos, and Pete Welch.

CONGRESSIONAL RESEARCH SERVICE

Celinda Franco, Beth Fuchs, Tom Gabe, Jennifer O'Sullivan, Richard Price, Richard Rimkunas, Kathy Swendiman, Madeleine Smith, Melvina Ford, Jean Hearne, Jennifer Neisner, Pat Purcell, Vee Burke, Christine Devere, Larry Eig, Gene Falk, Carmen Solomon-Fears, and Joyce Vialet.

PHYSICIAN PAYMENT REVIEW COMMISSION

Lauren B. LeRoy, David C. Colby, Anne L. Schwartz, John F. Hoadley, Christopher Hogan, Kevin Hayes, Katie Merrell, Michael J. O'Grady, David W. Shapiro, Sally Trude, and Christine M. Cushman.

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Donald A. Young, Laura A. Dummit, and Stuart Guterman.

Mr. ROTH. Mr. President, it is my hope that the spirit of bipartisanship that carried us through this effort continues as we now consider the final package and send the bill to President Clinton for his signature.

I yield the floor.

The PRESIDING OFFICER. Who seeks time?

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KERREY. I yield myself such time from the Democratic side.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, I come to the floor and offer what I would call my reluctant support for this budget agreement.

Today, the subject at hand is the spending portion of this bill. And I wish it was completely different, I must say, than what is in here.

Yesterday, I spent most of the day in mourning for the loss of the provisions relating to structural changes in Medicare that would have added $8 billion to the HI hospitalization trust fund by imposing very reasonable and progressive change in the premium—it would have added $40 billion a year in spending relief in the year 2030 by accommodating this tremendous change in the baby-boom generation between 2010 and 2030—and other provisions. I spent the day grieving those. I have overcome my grief, and I am prepared to support this because I believe it does balance the budget by the year 2002. I believe it finishes the job that we started in 1990 and 1993. I voted for both of those bills, and I find myself compelled once again to come and vote for a bill that I am not altogether pleased with.

In this morning's New York Times there was an op-ed piece written by William Safire talking about an age-old problem in the West where cattlemen, because they had an interest in keeping the range open, and sheepherders, because they had an interest in keeping the range fenced in, were at constant odds and warring with one another. Their animals had different needs. They, as the guardians of those

animals, went to war in order to protect the needs of those animals.

It was not until just recently that the people who manage these range animals have come together. They came together as a consequence of a common enemy, in this case, a rather pesky weed called leafy spurge that has roots that can go down as deep as 150 feet, impossible to, by any reasonable estimate, get rid of once it is in the grassland. It will spread and take over the entire prairie.

So the cattlemen are out there saying the leafy spurge will eliminate the grass. "I'll have nothing for my cattle to graze on. What am I going to do? No herbicide is effective. No burning is effective. Nothing seems to work." Until one day they discover that what works is to put a few hundred sheep out on the grassland. As a consequence of the sheep's appetite for the leafy spurge, the sheep eliminates the weed, and thus is joined a battle between the cattlemen and the sheepherders. Suddenly they come together as a consequence of the common enemy.

I am impressed that Republicans and Democrats have come together with this bill to address a common enemy—the deficit. I wish that the 1993 bill had been bipartisan. I believe that if we had a few more spending cuts in 1993, that might have been possible. We missed an opportunity. It was bipartisan in 1990. It was not in 1993. And it is today. I am impressed with it.

I believe the Nation wants us to be bipartisan. I believe the Nation makes our greatest progress when we set aside not only our partisan differences, but we are able to find a common opponent, in this case, the deficit, a common objective, and we say that we are willing to risk a bit—in some cases, risk it all—for the larger goal.

I must say, after having made that observation, and to be specific, praising the distinguished chairman of the Budget Committee, Senator DOMENICI, the ranking Democrat, Senator LAUTENBERG, and on our Finance Committee, Senator ROTH of Delaware, Senator MOYNIHAN of New York, they have worked hard to say we have a common enemy—in this case, the deficit.

We see the connection between deficit reduction and jobs. We believe that jobs, and good jobs, can solve almost any problem that we have. And thus, we are willing to join forces against a common enemy.

I am reluctant to become enormously enthusiastic about this, as I say, because I do not believe it is asking of Americans the sort of tough decisions and choices that would enable us to say that we are tasking the American people to do something that is truly great.

We will balance the budget. It is true, we are reforming Medicare to give seniors more choice. I think the Federal Employee Health Benefit provisions in this bill will have long-lasting impact, give seniors more comfort as they make a choice to buy alternative care. The provisions for increased coverage for children, the provisions having to do with welfare reform, all these are good provisions and deserve attention.

We have, in addition, a lot of provisions—and I thank all four of the Members who have been involved with this for their assistance in making sure that rural America has an adequate reimbursement rate under managed care, that we are able to take advantage of managed care and see increased penetration in rural America. I appreciate, as well, the change to increase budget enforcement to tighten some of the loopholes that were in law.

There are a lot of things in this bill, in short, that are good. It does, it seems to me, represent a successful compromise between Republicans and Democrats, and we have produced a piece of legislation that all of us, or most of us, anyway, are going to be able to come down and be enthusiastic about.

There are four things, Mr. President, that I would like to discuss which I would put in the category of unfinished business. First is entitlements. I appreciate that there is a commission in this bill. I believe it is 20 months that they have. I can save them a lot of time. We had a bipartisan entitlement commission, Senator Danforth and I. The distinguished occupant of the chair was on that commission as well.

There are a limited number of choices that one can make. There are roughly 10 or 15 choices you can make. They are all ugly. They are all difficult. And they all accommodate a demographic problem, not a problem caused by secular humanists or by Phyllis Schlafly or Ronald Reagan or George McGovern. This is not an ideological problem. It is a problem of birthrates during the period of time 1945 to 1965, and the birthrates following that. It is called the baby-boom generation.

Seventy-seven million Americans will begin to retire in 2010. And what we attempted to do, with what I consider to be a relatively modest change in the law with eligibility age and means testing and a copayment on home health care, was to accommodate that large generation of people. The sooner you do it, the better. You do not do them any favors by saying, we will do a commission for 2 years and perhaps do something in 1999. Then you have a Presidential campaign going. You will probably have to wait until 2001. The longer you wait, the harder the choices are.

As I said, the choices are fairly limited. If you do not like moving the eligibility age, if you do not like doing some means testing, the only thing you can hope to do is get some increases in the revenue stream, proposing to increase taxes or increase the premium. If that is your choice, make it now, because the longer you wait, the more likely it is that the people you are trying to help are going to pay a lot more. They are going to pay a bigger price. They have not been warned.

We missed an opportunity, and I am hopeful that by surfacing this in the debate and getting strong support, bipartisan support here in the Senate, we can keep these issues alive.

In addition to the long-term problem of entitlements is another problem with entitlements inside of our budget. Yes, it is true, we will have taken the final step to balance the budget with this bill, although I note parenthetically that one of the curious things about this particular proposal is we are going to balance the budget by rather substantially increasing spending in some areas and lowering taxes in others. It is an exciting proposition. We are going to balance the budget, it is true, but the budget has another big problem, and that is the growing percent of that budget that goes for mandatory programs.

Many of my colleagues have come down to give great, impassioned speeches about why we should not do all of these things. But the question that needs to be asked in a very calm environment is, what are you going to do about these numbers?

In this budget agreement, the amount of money we allocate for mandatory, plus interest, will go from entitlements, plus interest, the mandatory portion from about 66 percent, as I understand it—I haven't seen the final numbers—to about 70 percent in 2002. The Senator from New Mexico is shaking his head, but it does unquestionably increase. I do not know if it goes to 70 percent, but it increases, and it continues to increase. And it will increase even more when the baby boomers retire. It is not a flat number.

The head of the Congressional Budget Office, June O'Neill, prepared a report some time ago that shows how the cost of these programs continues to go up as a percent of our overall budget, and they are squeezing out our capacity to keep our defenses strong, our capacity to invest in education or infrastructure, or research, and all the other sorts of things that are being done in the other part of the budget. One of the reasons it was made easier to do our appropriation this year is, we put a little more money in the appropriated accounts in this fiscal year than you are going to see in the outyears.

So I alert Members that see the appropriations bills sailing through this year and are wondering why, there is more money this year than there will be next year and the year after that and the year after that. In years 4 and 5, we will have very tough decisions to make in discretionary spending—far tougher than I believe people realize.

Thus, there is the second problem of the growing cost of entitlements inside of the budget. It sets up tough choices. It doesn't set up easy choices. It sets up very difficult choices that we have to make.

The second big area for me is, I must say, with the economy growing the way it is—and one of the great pieces of news for me in this budget debate is that as a result of the growth in the economy, I think there are very few people left that don't understand that, in addition to defending the Nation as the first order of business, whatever we do with our taxes, regulatory policy, and spending policy, we do need to ask ourselves: will this create jobs? Because if the economy is growing, it is producing jobs, and there is a demand for labor as a consequence of a growing economy. Lots of things get solved in a hurry. Not only does the Treasury have lots of revenue that makes our job easier, but the gap between rich and poor narrows, the number of people on welfare is reduced. A lot of problems we have get solved quickly if our economy is growing. If we recall from the recession of 1991, the problems are made a lot worse if you have the opposite in place.

So this growth we have out there in the economy is exciting. My view is that this is the time when we need to be investing in that public infrastructure—research, the transportation base, education, and all those things that will produce increased productivity and increased economic growth sometime out in the future. We may not get an immediate benefit from it, but we will benefit somewhere out in the future. It connects with this entitlement problem. For my friends on this side of the aisle who love to get up and get fired up and tell me why we can't do anything about entitlements, the question occurs: If you don't want to do that, Senator, where are you going to get the money to make these public investments?

I haven't heard many people that are enthusiastic about a tax increase. I have heard them being enthusiastic about going in the other direction. The only way you can find the resources to invest in the long-term growth of this country is by containing and controlling the pace of growth of entitlements. It is a question of whether or not we are going to endow the future, or are we going to convert the Federal Government into an ATM machine, entitling the present solving of the problems of me, me, me, now, now, now, but not solving the problems of future generations.

The third issue I speak of today is health coverage. I am of the opinion that the additional $24 billion that is in this particular budget is going to cover a lot fewer people than leading advocates predict. I don't believe that it is going to be a terribly efficient way to increase coverage. Again, I don't think you are going to be able to get the kind of increased coverage that is necessary, unless you come to grips with the rising costs of these mandated programs. For all the terrible things that were forecast and said about the proposal to add a $5 fee for home health, to add a means-tested and an income-related premium on Part B and increase the eligibility age, you thought we were not spending any money at all on Medicare.

No account in our budget grows as fast as Medicare. It will go up, on average, $24.5 billion per year for 10 years. Nothing grows that fast. We are allocating more and more of our gross domestic product into Medicare and other entitlements. Now, I am prepared to do more for low-income seniors, and help people who are in serious trouble out there, having a tough time paying the bills. But the choice that we have to make, not only when it comes to investing in our future, but also being able to provide additional coverage, is between one group of Americans and another, or allocating $24.5 billion of additional money for children over 5 years and $24.5 billion per year for 37 million people over the age of 65.

Now, I think that is the kind of debate we need to have on this floor. It is a tough debate, and it involves telling the American people and, very often, giving them the facts. And the facts may be painful and difficult for us to face, but they are the facts. I, for one, as I said, am skeptical that $24 billion over 5 years is going to result in the kind of increased coverage projected for children. I must say again that I think the only way we are honestly going to be able to increase the coverage for Americans is to get after entitlements. There is a question of the legitimacy not only of the means test, but we must ask ourselves fundamental questions about requiring an eligibility test on age, another program based upon poverty, the veterans' programs, saying if you get blown up in a war, we have a good program for you. The final one, of course, is the income tax deduction.

The fourth problem that I think this country faces, which is not in this bill, but it will be taken up in the tax bill and I will talk about it later, but I think it's a big problem. We have a window into the problem of looking at the estate tax issue, and that is the difficulty Americans are having generating wealth. I will talk about it at greater length when we get on the tax bill. But income and wealth are not the same thing. It is not uncommon to pick up a newspaper and hear a story talking about this tax bill does this or that for the wealthy, and what they are talking about is income. They are not the same thing. I can have a half a million dollars a year in income and have no wealth, just as I can have $20,000 in income a year and if I save a little bit, I can get wealth. The estate tax debate is focused on about 2 percent of Americans who have estates at $600,000 or over. I believe estate tax relief is reasonable. I support doing that in the tax bill. But there are 98 percent of the American people that do not have wealth in excess of $600,000. It would not take much of a change in the Social Security program to enable somebody in the work force, indeed from the moment they were born, to have a savings account that enables them to say that when it comes time for me to retire, as I look forward to growing old, I know that in addition to some kind of an income transfer I am also going to have the opportunity to have security as a result of wealth. I think wealth distribution, identified as a problem repeatedly, cannot be solved by simply transferring income. It can only be solved by establishing that we are going to try to help working Americans acquire the wealth and use the principal retirement program, Social Security, that we have in place to get that done.

Mr. President, I close by saying that I intend to vote "yes" on this bill, and I intend to vote "yes" on the tax relief bill that follows. I wish it had done considerably more. I have great praise and great appreciation for the work done by the chairman of the Budget Committee, by the ranking Democrat, the chairman of the Finance Committee and the ranking Democrat on that committee as well. They set the tone of bipartisanship, which must be set if you are going to deal with these controversial issues, if we are going to be able to go after the common enemy, not just of deficit spending but other tempting, irresponsible things that might produce a round of applause, but might not be good for the United States of America.

Mr. DOMENICI. Will the Senator yield?

Mr. KERREY. I am pleased to yield.

Mr. DOMENICI. Senator, first let me make an observation, perhaps not as eloquently. I believe the Senator from New Mexico could, someplace or another in the United States, make a very similar speech. I think most of what you talked about I agree with. But I would like to make sure that everybody knows just how much you can do in a budget resolution and in a bill that is forced by a budget resolution and how difficult it is to try to do more than fits the bill. I want to say to the American people that while I agree with your statement wholeheartedly that we have to do much more with the entitlements—and let's be very precise, the one that is really, really in need of a long-term fix is Medicare—not because anybody wants to deny anyone anything, but the stark fact is that it, by itself, can break this country in another 15, 20 years all by itself.

Frankly, I never believed that we could fix Medicare in its totality in a budget resolution and a bill that was thrust by a budget resolution. Senator GRAMM is chairman of the Subcommittee on Health. I think he would agree with me that, while we probably could have done better, and should have, on the three items that would have helped, we can't force the total change of Medicare in a bill like this under a budget resolution format. First of all, a budget resolution is only applicable for 5 years. You are permitted to project for 10. I assume when Senator GRAMM starts that reform, he is going to start beyond 10 in terms of the real dollar impact, because that is when it is in trouble. It is not in trouble in the next 5 years. One might have a different mix as to how you get it to a state of solvency.

Senator, I would like you to know I never thought that we could do much more in Medicare. But I think the three changes you made in the Finance Committee, with your support, if we could have held them, it would have been a good first step. I still believe the spirit of getting this done may get us, within the next 2 or 3 years, to facing the issues for major, permanent reform of the entitlement programs. I am hopeful you are not giving up because we can't do it in this budget bill, because it is a very, very big issue that requires much debate in the Senate. I don't know exactly how that debate is going to be framed, but I don't think it is going to be framed in a reconciliation bill with no debate to speak of and no amendments to speak of. That is just the U.S. Senate's way of doing things. I thank you for yielding. Maybe you can comment on that.

Mr. KERREY. Mr. President, first of all, I say that the man who taught me about entitlements is the distinguished Senator from New Mexico. I recall coming to the floor, I believe it was on a budget resolution that the distinguished Senator from New Mexico and the now-departed Senator from Georgia, Senator Nunn, when they had the famous Nunn-Domenici amendment that controlled the growth of entitlements. The first time he proposed it, I voted against it. I listened to the opponents of it and said, "That makes sense to me; this is not a good amendment, so I will vote no."

Then I started looking at the facts, and I was very uncomfortable to have to conclude that I voted wrong. The next time the Senator brought it up, I voted for it and I became interested in this issue as a result of both you and Senator Nunn and your elaborations and your education that you did 3 or 4 years ago.

The point that I am trying to make, which I am afraid is sometimes lost, is that the longer you wait, the harder the choice is. This is not a problem that you can avoid forever. The more time you let expire, the more difficult the choice is—that is, on Medicare. The same is true on the budget item when it comes to Social Security. We have people under the age of 40 who will be beneficiaries out in the future, 26 and 27 years from now, under current law, for whom we have to say, are we going to be able to keep the promise that's on the table? We have to say no. Social Security Commissioner designate Shirley Chater, in 1996, when asked about it, said, "You can expect Social Security to have to be reduced by 30 or 40 percent in benefits, unless some change occurs."

Well, there is a presumption that those of us who proposed altering these programs today are proposing cuts. But the truth is, if you do nothing, that is what is going to happen; only the cut isn't going to occur to a future beneficiary, it will occur to a current beneficiary. Long after the time has passed when you can plan and make adjustments, suddenly the Congress is going to pop up and say, "Sorry, folks, we have to cut the programs big time," in order to be able, as the Senator said, to save either the fiscal health or the program itself.

So my fear is that we missed an opportunity when the distinguished Senators from New Mexico and Georgia were down here. I recall people coming in the one year and pulling off veterans first, and once the floodgates were open, it was "Katie bar the door," everybody got down here and got exempt and there was nothing left. There was no group that is entitled to payment left, and they were all exempted and there was no real reform that occurred.

So I am not going to give up on the issue. I am not going to stop talking about the need for these long-term changes. But I am just saying to the American people, especially those who understand the importance of Medicare and these entitlement programs, who consider it a victory that the conferees were unable—and I know the Senator from New Mexico fought for these things, but the conferees were unable to hold these provisions. There are many people who are advocates of these programs that consider that a victory. It is not a victory. It weakens the program long term. And some beneficiary out in the future is not going to thank us for this action. Maybe it gains a few votes in elections. I doubt it. I believe the American people once they hear the facts of the matter will be persuaded.

Anyway, it is a much longer answer. I know the Senator from Texas is not very appreciative of the fact that the Senator caused me to talk longer than I intended to.

But I want to underscore in closing that I do appreciate the fact that the Senator from New Mexico, Senator Nunn, and others led on this thing. It probably torments the Senator now to see his student come back here speaking in this fashion.

I just close by saying that I am prepared to vote for this agreement on the balanced budget. I believe that is good for the economy. I wish and hope that we are able in a bipartisan spirit to do much more, if not this year sometime relatively soon.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I yield to Senator GRAMM as much time as he may desire.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, let me first thank our chairman for yielding.

I would like to begin by congratulating some people and thanking them for their leadership.

First of all, I want to thank Senator DOMENICI for his leadership. I have had the opportunity to serve with Senator DOMENICI now for 13 years. I have been on the same side as Senator DOMENICI. I have been on the opposite side of Senator DOMENICI. I have noticed that when we are together we generally win. I wish Senator DOMENICI could be right more often.

But I want to congratulate him for his leadership. I don't have any doubt in my mind that Senator DOMENICI will go down as one of the great legislators of this era, and that I will always be proud to tell my grandchildren that I served with him. I want to congratulate him for his great work on this bill.

I also want to congratulate Chairman ROTH. This is the first full term that Senator ROTH has been chairman. He became chairman in the middle of the last Congress. And I think he has done a terrific job in chairing the Finance Committee and in building bipartisanship to a level that I would not have thought beginning this process that we could have ever had on the tax bill. I want to congratulate Chairman ROTH for his leadership, which I really think has been outstanding, having had the opportunity to be in committee, to be actively participating in the debate on the tax bill on the floor, and having had a chance to be in much of the conference.

I think our colleagues ought to know, or at least hear someone say what a great job that Chairman ROTH did.

I also believe that our Democratic colleagues, especially Senator MOYNIHAN, have made a great contribution to this bill. Whether you like the product, or whether you do not like anything else we do—it is as thick as this package that many like and many dislike—I think you have to clearly say that a tremendous amount of work has gone into the process.

Let me begin by talking about what I believe in this bill is unambiguously positive, and what is clearly going to be greatly appreciated by the American

people—some of it immediately, and some of it over time—as people come to understand it.

I would like then to talk about the disappointments I have about some parts of the bill—opportunities lost, things done. And then I would like to conclude by simply talking about the future in the next 5 years as we try to implement what the Congress is clearly going to adopt, and then say a little bit about balancing the Federal budget. So I will try to do those things.

Mr. DOMENICI. Will the Senator yield?

Mr. GRAMM. I am happy to.

Mr. DOMENICI. I must leave the floor. I will tell the Senator that I look forward to reading the Senator's remarks. I think the Senator knows that I mean that. I believe what he has outlined is so typical. I mean the Senator is going to state the good things, things that are not as good as they could be, and he is going to lay them out with clarity. I say thank you for the generous remarks which the Senator made about me. But I also want to say I reciprocate.

It doesn't matter in the U.S. Senate whether you agree with another Senator half the time, all the time, or none of the time. What is important is that you respect them. That is all we can get in this place—is that somebody respects what we are doing. I want to tell the Senator from Texas, whether it is his way and I am not right enough, or whether it is my way and he is wrong too often, it doesn't matter. You can't be in the Senate and serve with PHIL GRAMM of Texas without respecting him. The Senator has a great mind, and he has learned to apply it to our problems in a way that really means something to a lot of us. It strikes our minds, and makes us think. I don't think the Senator from Texas can expect to do more, and he wins plenty of them because of the clarity and the philosophy, and the way he digs into the issues.

There are many things that we are experimenting with in this bill that may not work, and the Senator is going to certainly find them and tell us why. And they have an awful lot to do with the child health care package. The Senator is going to say something about that. And I am not trying to preempt him because I know there are problems there. I don't believe the people who say if it had gone straight under Medicaid that it would have covered many, many more. I don't believe that at all. The Medicaid Program that has not worked well in the past that we have been struggling to fix ought not be mimicked. It ought to be changed. And if you can, you ought to do the same thing in a different way. That is the theory of the Senator from Texas, and he has said that from the beginning. We are trying. But we are not there yet, and many other things.

I want to tell you, we struggled mightily on the welfare side, on the Fair Employment Labor Standards Act, and whether the myriad of laws should apply to trainees. And the Senator is going to speak about that. But I want to tell him, I couldn't win. I couldn't get it done. That is all there is to it. Everyone now knows, including the White House—and they will admit it—that the welfare program will not work in terms of the people that most need the training without some relief from some of the laws that apply across the board to people permanently employed in companies that make enough money to get by and have to pay them. And there is no doubt that the issue has been framed in a false way.

It is not a minimum wage issue. We have already agreed to the minimum wage. I heard the President yesterday speak of minimum wage again. That is not the issue. The issue is the rules that are going to govern a nonprofit organization that we asked to train 10 people. Isn't that right? They are going to say, "Why should we do that?" Every law on the books governs these trainees, and we didn't even pick them. You picked them for us.

So I am aware of those and many others. But I think the Senator is going to also say that there are some good things in this bill.

I thank the Senator very much for yielding.

Mr. GRAMM. I thank the Senator from New Mexico.

Mr. President, let me begin with the tax cut.

First of all, I think if you are going to judge what has been done, you have to first begin by looking at the fact that we are cutting taxes by approximately 1 percent. The tax cut on average over the next 5 years will lower the tax burden on the American people by slightly less than 1 percent.

So for all of those who are saying, "Well, the Tax Code becomes more complicated, the changes that are made are piecemeal," all of that was driven by the fact that with the bipartisan nature of this bill and the fact that we have a President who was adamantly opposed to cutting taxes until 3 years ago, who only endorsed the concept of trying to balance the budget 2 years ago, that we had a very limited amount of resources. Obviously, for people who have listened to much of this debate and have gotten the idea that we are talking about a huge tax cut, they are going to be disappointed. But there are some people who are going to be directly affected, and in a very positive way. Right at the top of the list will be people who have families and who have children. Nearly all of the $85 billion net tax cut we have in this bill goes directly to families with children.

Why single them out? I am sure there are people who say, "Well, children are important. Families are important. But why such a focus of this tax bill on children?" Let me explain why.

In 1950, the dependent exemption—the amount you got to deduct from your income because you had a dependent—was $500. As a result of that $500 dependent exemption for children in 1950, 65 percent of all income of the average income working family was not subject to income taxes in the average family of four in America. Today the dependent exemption is $2,500. But to cover the same expenses and to protect the same level of income that it did in 1950, it would have to be twice that big, or $5,000 per child.

So what has happened since 1950 is that the real dependent exemption in terms of letting working families keep their money to invest in their own children has effectively been cut in half.

If you look at the Tax Code, what has happened is this: In 1950, rich people paid a lot of taxes. And today rich people pay a lot of taxes. In 1950, poor people didn't pay any income taxes to speak of. And today poor people do not pay any income taxes to speak of. But the explosion of Government between 1950 and today has been almost totally funded by a massive growing tax burden on working families with children. And we have literally starved the one institution in America that really works—the family.

So our primary focus—first, in the Contract with America, then the budget 2 years ago, then the budget a year ago, and now the budget this year—has been to give a $500 tax credit per child and to let working families invest in their own children, their own family, their own future, recognizing that the best housing program, nutrition program, and education program is to let working families keep their own money and invest in their own children, their own family, and their own future.

Second, in this tax cut bill we begin the long process of eliminating the death tax. People work a lifetime to build up a farm, or a small business, or to build up assets. And they do it for their children and their future. And they make the country rich in the process. But when they die, even though they pay taxes on every penny they earned along the way, when they try to pass these assets on to their children, the Government comes in and takes up to 55 cents out of every dollar.

So it routinely happens in America every day that parents die, and then their children have to sell the fruits of their lifetime labors—their business, their farm, their home, their assets—in order to give Government 55 cents out of every dollar of its value.

Republicans believe that is wrong. We believe you ought to tax income once, and not twice. And I think the

changes we made in this area, especially for small businesses and family farms, is very, very important.

I believe that people who are trying to educate their children will be beneficiaries of this program.

Quite frankly, my favorite part of the tax bill in the area of education is not the President's initiative. It is instead an initiative that came from Senator ROTH. That is the initiative that lets people when they get out of school treat student loan interest payments as a business expense. Think about it for a minute. If you go out and buy a tractor, you can depreciate that tractor—write its value off against your income. But if you invest in going to college, or graduate school or medical school by borrowing a bunch of money on a guaranteed student loan, when you get out of college and you start to work with that big heavy burden of debt, none of the expenses you incurred in getting the education that economists call "human capital" can be written off as a business expense.

So our society's Tax Code has historically discriminated against investing in our own people.

One of the provisions of this bill that is critically important is the provision that for the first time will let a young wage earner who has gotten out of school, who has a big guaranteed student loan, to write off that interest against the income they are earning as a result of the earning power they got from going to college, or graduate school, or professional school. And I believe this is going to encourage people to go to school longer and to accumulate greater human capital.

There are a lot of provisions in the tax bill. I believe the tax bill is basically a good bill, and the American people are going to benefit from it. Not everybody is going to benefit. The top 5 percent of income earners pay 50 percent of the taxes. They are going to benefit from none of the general tax provisions. They will benefit marginally from the death tax change. They will benefit from the capital gains tax. But the focus of our benefit, quite frankly, with simply a 1-percent cut in taxes, is where it ought to be—on working middle-income families.

We have had a long debate with the President, and the President has won the debate in this bill. But what is the old saying? He, convinced against his will, is unconvinced still. And let me say I think it is a fundamental error, even though I am going to vote for the tax package, it is a fundamental mistake in a tax bill that only provides $17 billion of tax cuts a year, it is fundamentally unfair to take part of that tax cut away from working two-income families in order to give a tax cut to people who do not pay income taxes. I believe that tax cut bills should be aimed at cutting taxes for people who pay them. In any case, that is where we are in the tax bill.

Let me turn now to the spending bill. The best provision in the spending bill, from my point of view, is expanded choice on Medicare. Medicare has grown by 12 percent a year in cost in the last 20 years. No major program has ever grown that fast before, and, as a result, even with the reforms we have instituted, even under the best of circumstances, Medicare is destined to become the largest and most expensive program in the history of the American Government. But by letting our senior citizens have more choices, by encouraging competition, by allowing a broad range of choices between the traditional HMO and fee-for-service medicine, we are going to for the first time bring the forces of competition to bear on controlling the cost of Medicare.

Since 1965, we have tried to use Government regulation to control Medicare costs, and it has been a total and absolute failure. We are now going to try the forces of competition. I believe that they are going to be successful, and I believe that the most remembered part of the spending bill that is before us will be the expanded choices that we provide under Medicare. If we allow each of these choices to develop, if we continue to refine them and promote competition, I believe we can and will over time drive the cost of Medicare growth down to roughly the cost of medical care in the market system.

Last year, the cost of medical care in the private sector of the economy actually grew less than the Consumer Price Index. Medicare continues to outpace inflation by a wide margin. I believe that by bringing the forces of competition to bear, we have made a fundamental change in at least part of the Medicare problem. Our failure to deal with the long-term Medicare problem is my greatest disappointment with the bill before us.

Someone said in the newspaper this morning that the subtitle of this bill ought to be "Opportunity Lost." I agree with that. I believe that we have missed a golden opportunity to begin the reform that will be required to keep Medicare solvent. I am proud of the Senate. I am proud of the three votes we cast to keep provisions in our bill that would have raised the eligibility age on Medicare to conform to Social Security, that would have asked very high-income retirees to pay their full part B premiums, that being the voluntary part of Medicare that you don't pay a penny for during your working life, and finally to have a simple $5 copayment for home health care.

Home health care is the fastest growing part of Medicare. The President had a 10-percent copayment in his national health insurance bill. The Democratic leader, Senator MITCHELL, when he offered the final version of the President's plan 3 years ago, proposed a 20-percent copayment. Prior to 1972, we had a 20-percent copayment. And the rejection of a simple $5 copayment to try to induce people to be cost conscious was, I believe, a sad commentary on the lack of leadership both at the White House and in the Congress. I believe we missed a real opportunity to reform Medicare, and I believe that each and every one of these things will be done.

Going back to a point that our colleague, Senator KERREY from Nebraska, made earlier, the longer we wait to institute these reforms, the more difficult it is going to become to make these reforms work because the problem is going to get bigger.

Some people are encouraged by the fact that we have set up a commission in this bill. Forgive me for being underwhelmed at setting up yet another commission. We have already had an entitlement commission. It has already reported. We know what the situation is.

Let me just summarize it. Under the best of circumstances, if everything goes right, if the economy stays strong, if we have the best possible circumstances that we could expect over the next 25 years, our current policy on Medicare and Social Security will require the payroll tax to double from 15 percent to 30 percent on every working person in America. Under the best of circumstances, if we do not change policy, we are going to have a doubling of the payroll tax in 25 years, and nobody disputes it. Under the pessimistic scenario of lower growth, we are going to have to triple payroll taxes.

Let me remind you what that means. It means that a low-income worker who is paying 15 percent of his income in taxes and 15 percent in payroll taxes will go from a 30-percent marginal tax rate to a 45-percent marginal tax rate. What it will mean, if we do not do something to reform Medicare and Social Security, is that, with absolute certainty, 25 years from today the average working American will be paying over 50 cents out of every dollar they earn in payroll taxes and income taxes.

For those people who said, do not make these hard choices in Medicare, they are the people who are going to have to explain why we are doubling payroll taxes over the next 25 years.

I believe we have a crisis in this area, and let me say the first week we are back, as chairman of the Medicare subcommittee, we are going to hold a series of hearings on Medicare. Senator KERREY and I are going to reintroduce our reforms as a freestanding bill, and we are not going to let this issue die. I am also going to expand our hearings to begin to look at private investments and ownership of assets especially by young workers as a way to guarantee that they have Social Security benefits when they retire and as a way of guaranteeing that they have Medicare benefits.

If we do not change this program, with the baby-boom generation retiring in 14 years, we are going to have a generation of Americans that will be paying 30 percent payroll taxes to pay benefits to retirees who will never get benefits out of these programs that are in any way related to what they paid in. Only if we begin to reform these programs now and only if we begin to restructure the system so when a young person is setting aside money for their retirement, it is not going to some phantom account with the Social Security Administration but where it is going in a real investment in something they own and can depend on and trust, until we collateralize or securitize the Social Security and the Medicare contributions of our young people, their retirement is not going to be secure.

Senator DOMENICI said that I was going to talk about the welfare reform, and I am. One of my biggest disappointments in this bill is that, as it is currently structured, we have gone a long way toward killing welfare reform, and let me explain why. First of all, we made some tough decisions about denying benefits, setting higher standards and saying, especially to immigrants, you come to America. You have to come with your sleeves rolled up ready to go to work. You cannot come to America with your hand held out ready to go on welfare. We have partially reversed that in this bill, and we are going to spend tens of billions of dollars providing benefits to people who are denied benefits under our welfare bill, but that is the smallest part of the problem.

As a result of the administration responding to special interest groups, especially organized labor, we now have provisions that will make it virtually impossible for States to require welfare recipients to work, and let me explain why.

If a State has a mandatory work requirement, and let us say they want to require welfare recipients who are young mothers who have one skill, and that skill is taking care of children, and let us say they set up in Government housing projects a day care center, and they ask some welfare recipients to do part of the baby-sitting under supervision, under the provisions of this bill and under the new requirements that have been set by the administration, we would have to pay minimum wage. We would have to provide fringe benefits. We could not count all the welfare benefits they are getting like Medicaid and housing subsidies as part of those wages. And so it is going to cost States substantial amounts of money to put welfare recipients to work where they would acquire skills that would let them go out in the marketplace and work.

The net result is going to be that we are in reality coming very close to killing the very welfare reform bill that was the greatest achievement of the last Congress.

These are trainees. They are people who are receiving public benefits, and to ask them, in return for those benefits, to do productive work is the most reasonable thing imaginable. It was something that a large percentage of Senators and Congressmen on a bipartisan basis agreed to last year, and yet 1 year later, with administrative action by the President and through this bill, we are going to make it virtually impossible for the States to have a work program for welfare recipients.

Now, I am hopeful that we can in the future come out with a bill that will at least let the States count all the benefits that are received by people who are receiving welfare in calculating what their effective wage is by working. But this is a very, very serious matter.

I am also very concerned about this massive new program to give health insurance to children. Who can be opposed to health insurance for children? Nobody. Bismarck once said, never does a socialist stand on firmer ground than when he argues for the best principles of health. And I would just paraphrase Bismarck by saying, never does a socialist stand on firmer ground or higher ground than when he argues for the best principles of health for children.

But here is the problem. We started off with a bill that had a broad consensus and it was a bill where we were going to spend $16 billion to try to help the States get access for health coverage for children from very low-income families. What happened in the process is that the piling on of the tobacco industry got caught up in this, so, whereas the President started out with $16 billion, it has now already grown to $24 billion before we adopt the bill, and does anybody believe that this program is not going to explode in the future?

Here is the problem. Once you get up to roughly 200 percent of poverty, 82 percent of the children are covered by private health insurance. So, unless we are very fortunate, what is going to happen to us in this bill is that we are going to end up having four children who will give up, through their families, private health insurance, for every one new child we get covered. So 80 percent of our money will simply displace private health insurance. And how can you blame them? If you have a moderate-income family, having trouble making ends meet, and we are going to give their children private health insurance, what rational parents are going to continue to pay for it themselves?

So, we have the very real specter, here, of spending a tremendous amount of money and covering almost no additional children. Let me say, I totally agree with Senator DOMENICI. I think the worst choice we could have made was simply going through Medicaid, when all 50 Governors, 2 years ago, told the Congress that they could do what Medicaid was doing for 30 percent less if we would let them do it. But I think we have to be very concerned about this program. I hope we are as committed to monitoring what we are doing as we are to doing it. If it becomes clear that all we are doing is displacing private health insurance, I hope we will be willing to go back and try to adjust this program to try to prevent that from happening.

I am also very concerned about all of these new benefits. Again, they are not benefits anybody can be against. We are cutting the copayment for outpatient care under Medicare. We are adding a whole bunch of new benefits to Medicare. The problem is, Medicare is going broke as quickly as it can go broke. The only reason we can claim we have saved it for 10 years is we, in the process, were forced to give in to the administration's demand that we take the fastest growing part of Medicare and take it out of the trust fund and put it into general revenue. As I said when we first debated this, I can make Medicare solvent for 100 years by simply taking hospital care out of the trust fund. But have we changed anything by doing it? The answer is no.

I am concerned that, by creating these new benefits, all of which are popular, that we have to look and see whether, in fact, we made the problem better or worse. I am very skeptical that cutting reimbursements to doctors and hospitals will really save money. The reason I am skeptical is that, as we have gone back and looked at our reforms in the past, that has not been a very effective way to save money. Because what tends to happen is that doctors and hospitals—basically, doctors are smart people or they wouldn't be doctors; hospitals tend to be run by smart people—what they do is they figure out how they can change the billing so they end up billing for more and getting the same amount of money.

So, I am concerned about these add-on benefits. I am worried that these new programs are like little baby elephants, they are little and pretty now, but if we are not careful they are going to all grow, each one, into a big elephant. And, as we talk about balancing the budget, the final subject I wanted to talk about, this could be a problem for us.

Finally, let me talk about balancing the budget. I have been involved in budget debates since I first came to the House of Representatives. We have, on many occasions, claimed to have balanced the budget. Many of us on various occasions have thought we had really done it. And I think, on balancing the budget, it is important to

remember an adage that ABRAHAM Lincoln used to be fond of. ABRAHAM Lincoln once said, "The hen is the wisest of all birds. She never cackles until the egg is laid."

I believe that a lot of work is going to be required to make this budget ultimately produce a balanced budget. Much of this budget is based on assumptions about a strong economy—which today is very strong. Obviously, we all want it to stay strong and we are going to try to make it stronger. It is also based on the premise that these programs are not going to grow beyond the levels we have set out in our budgets, even the new programs, and that we are going to live up to these discretionary spending caps. Obviously, it is hard to live up to them. As everybody knows, we pass emergency appropriations bills for $8 billion, and we end up breaking the budget, not only in the year we are in but for the next 3 or 4 years. We don't write money for emergencies into the bill, knowing we will have an emergency bill. It is going to take a tremendous amount of concerted, bipartisan effort to live up to the commitments we made on discretionary spending. I hope our colleagues are as committed to living up to this budget as they are to adopting it. I think, if they are, we might have a fighting chance. But clearly, balancing the budget is not something you buy on a one-time payment. You buy it on the installment plan.

And the weakness of the program is it is based on the assumption that this very strong economy is going to continue into the future. It may and it may not. We are in the second-longest peacetime expansion in American history. I think it is highly improbable that we would go 5 years without an adjustment. But we could still balance the budget with a minor recession if we could control the growth of these programs. I wish, as I said numerous times during the budget debate, we could have done more to control spending. I wish we could have bought more insurance.

But, in conclusion, let me say that the reforms in Medicare, the expanded choices, represent a fundamental change in policy. And I believe we will all benefit from them. I think we did about as good a job, given that we had a Democrat President who had very strong goals in the tax bill, especially a belief that you can't cut taxes for people who pay taxes unless you give money to people who don't pay income taxes. I think, given that we had 1 percent of taxes to deal with and we had a President who didn't share our fundamental goal, I think overall we did a pretty good job on the tax bill and I think we have reason to be proud of that.

I think the reforms and choice on Medicare are good reforms. But I think there is really reason to be concerned about what we have allowed to happen on welfare reform, and much of our budget is assuming that the progress we have made on reducing the welfare rolls is going to continue. I think we have to be concerned about growth, especially in these new programs. We have to enforce the discretionary spending caps to have any chance of balancing the Federal budget.

So my message today is that there is a lot of work to be done. I look forward to participating with Senator DOMENICI and with our colleagues to try to get that work done.

I yield the floor.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, Senator KENNEDY has been waiting. I am only going to take a minute, Senator.

I did not get to hear Senator GRAMM's entire remarks. I pledged to him before that I would read them in their entirety, and I will. But let me make just a couple of quick observations.

I think everybody knows—my good friend from Texas said—you can't get a balanced budget overnight. You do buy it on the installment plan. When you buy it on an installment plan that is 3 years, 5 years, or 10 years, you have to make some assumptions. I think, distinguished economist that he is, he would know that.

The Senate should know we did not use optimistic economic assumptions. In fact, we used CBO's very modest economic assumptions. There is no way we could provide an assumption, outright, that, if we have a serious recession, that we provided for it. But CBO's economic assumptions versus others, more optimistic, at least build into their model that, indeed, there could be a slowdown and, thus, they take something off the growth edge. So I don't think we have an unduly high one.

Senator, I am agreeing with you that unless we seek to look at the new programs we created, in terms of are they performing as we expected, we won't make it. And, second, I am not terribly interested in being the enforcer on appropriations caps—which are very strenuous after 1998. In fact, I will give you the number. The baseline for discretionary, if we did nothing, is $2.943 trillion. Under this bill it is $139 billion less, which means for a period of time it is going to grow very little, in fact five-tenths of 1 percent.

But I am not going to run around being the enforcer if entitlements are going wild again. You might, and I would respect you for it. But, essentially, we cannot balance the budget on the appropriations accounts. We have to make sure we control the entitlements and I think you agree with that. You are not agreeing with me that we should not worry about appropriations. I would worry less than you about correct appropriations. But what the Senator has said about making sure we get there, and making sure we do some things to assure that this commitment and this path is, indeed, realized—which is what you are saying, I believe—I think that's correct.

I think—so long as everybody leaves knowing that, in terms of making sure we don't let things within this slip and say, "Oh, well, $10 billion didn't matter, we thought it was that but we are wrong," and just pass those tens of billions by—we will get there. And that's not an exceptional thing to expect of a group which is out claiming a balancing budget. Would you agree? We are out there claiming it. We ought to be willing to say we will do what's necessary. And I think if we do what's here that's enough. We don't have to do a lot more over the next 5 years, but if we are going to do less, it is not going to be enough and we are all going to be ashamed.

I thank the Senator for those observations which prompted me to say this because I believe that's absolutely true. I yield the floor and I yield to Senator KENNEDY.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself such time as I require.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KENNEDY. Mr. President, this is a great day for America's children. With this agreement, we have taken a giant step toward giving all American children the healthy start in life they deserve.

The establishment of a new, $24 billion program to provide low and moderate income families the help they need to purchase health insurance for their children is a landmark achievement. It represents the most far-reaching step that Congress has ever taken to help the Nation's children and the most far-reaching advance in health care since the enactment of Medicare and Medicaid a generation ago.

The funds provided under this bill are sufficient to assure that every American family has access to affordable insurance for its children.

President Clinton deserves tremendous credit for his leadership in achieving this milestone. His fight for health security for all Americans in the first 2 years of his administration laid the foundation for the progress we made in the last Congress and for today's agreement.

The Kassebaum-Kennedy legislation enacted in the last Congress guarantees that workers can change jobs without losing their health insurance coverage, or being denied coverage because of a pre-existing condition. The vast majority of Americans obtain health insurance for themselves and their families through their jobs, and ending insurance discrimination

against those in poor health was a significant step toward greater health security for all families.

Today's expansion of health insurance coverage for children could not have happened without President Clinton's strong support. The President fought hard to include a $16 billion commitment for children in the budget agreement. And it was his unwavering support that assured the additional $8 billion added by the Senate was included in the final bill.

I also commend several others who contributed to this victory for children. Mrs. Clinton has made the issue of good health care for children a lifetime of commitment, and I thank her for her strong support. Senator HATCH's courageous leadership in the battle for health insurance coverage financed by a cigarette tax was absolutely critical. Senator ROCKEFELLER, Senator CHAFEE, Senator JEFFORDS, Senator KERRY, Representatives NANCY JOHNSON, BOB MATSUI, and MARGE ROUKEMA and others were effective leaders in reaching this bipartisan goal.

Among many outside groups that worked to make this day possible, the Campaign for CHILD Health Now, cochaired by the Children's Defense Fund and the American Cancer Society, was indispensable in its tireless efforts to inform and mobilize the public in support of children's health insurance. Marian Wright Edelman, as always, was outstanding in these efforts.

When Senator HATCH and I introduced our children's health insurance proposal in March, we said that it would help guarantee good health care for millions of children who have been left out and left behind. These children come from hard-working families. Their parents work 40 hours a week, 52 weeks a year—but they still cannot afford the health care their children need. Whether the issue is eyeglasses, or hearing aids, or asthma, or prescription drugs, too many children do not get the care they need for the healthy start in life they deserve.

The agreement today brings new hope to these children and their families. It means that they will have a better opportunity to achieve a long and healthy life. It means that our country has at last given children's health the high priority it deserves.

I am also pleased that there will be an increase in the cigarette tax, but I am disappointed that the cigarette companies still wield sufficient power in the back rooms of Congress to roll back the tax below the 20-cent increase approved by an overwhelming bipartisan vote in the Senate. A higher tobacco tax is an effective means to discourage children from smoking. This issue will not go away, and I expect the Senate to return to it later this year, either in the context of legislation on the tobacco settlement or as part of other bills.

Finally, it is gratifying that the agreement drops the harsh and ill-thought-out proposals on Medicare, such as raising the eligibility age, imposing a means test on premiums, and requiring copayments for home health care that would have penalized the oldest, sickest, and poorest senior citizens. Long-run reforms are needed to keep Medicare strong, but any reform worth the name deserves careful deliberation by Congress, not the short-circuited consideration imposed by the strict rules on budget bills.

Finally, I express my very personal appreciation for the strong leadership that was provided by Senator DASCHLE, on our side, and for his strong commitment on health care. Senator DASCHLE had indicated that health care for children was going to be one of our Democratic strong priorities in this Congress. His unflagging strength and commitment and support for this program was invaluable in seeing its achievement.

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

Mr. DOMENICI. Mr. President, I ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, I want to take a few moments to talk about the budget agreement, and this reconciliation bill in particular.

Let me begin by complimenting the distinguished majority chairman, Senator DOMENICI, and the ranking member, Senator LAUTENBERG, for their outstanding work in this whole effort. As has been said now by many Members, this would not have been possible were it not for their effort and the leadership they have demonstrated.

Let me commend the administration's negotiators—Secretary Rubin, Chief of Staff Erskine Bowles, John Hilley, and others—for the extraordinary effort they have made in working with us on the President's behalf.

The majority leader deserves a great deal of credit. This would not have been possible without his direct participation. He ought to take great pride in this agreement's accomplishments.

Many others on both sides of the aisle have worked diligently over the last several weeks to bring us to this point, and they too deserve credit. I am very appreciative of their efforts. This agreement is one of the most extraordinary accomplishments achieved, at least since I have been leader and perhaps since I have been in the Senate.

I think the message in the last election on the part of the American people all over the country was very simple: We want Republicans and Democrats to cooperate, to work on major problems together, to address the major problems in a way that gives them and gives us hope that there is a better future, a stronger future. They recognize, as we do, that the deficit is a major problem and has been a major problem. I think this agreement—as spelled out in both the spending and tax reduction bills—is clear evidence that we understood that message and have responded as consequentially and as sincerely as we possibly can.

This agreement is the final downpayment on a budget process that has now been underway for several years. In fact, it goes back to the vote of 1993, as some of my colleagues have already articulated.

This chart, Mr. President, very clearly illustrates from where we have come and what we have left to do. The projected deficits prior to the enactment of the 1993 economic package are represented in the top line.

In 1993, we made the tough choices, the very critical decisions in 1993. As a result, we have been able to reduce the actual and projected deficits by $2.4 trillion over the period from 1993 to 2002. Were we to stop at this point and do nothing, annual deficits for the next 5 years are currently projected to remain in the range of $100 billion. If, as I expect, we pass this bill by week's end, we will have completely eliminated the deficit no later than the year 2002. In other words, the net savings over the next 5 years that will be generated by enacting this budget agreement will total over $200 billion.

So we will achieve our goal of a balanced Federal budget by the year 2002, if not sooner, as a result, first, of adoption of the 1993 budget agreement, and, second, enactment of the 1997 budget agreement. Passage of these two pieces of legislation will bring us to a balanced Federal budget for the first time since 1969.

There were many fears expressed about what would happen to our economy and the deficit if we were to enact the spending and tax policies contained in the budget agreement of 1993. I will not belabor the point or go over those fears at this time. Instead, I will simply concentrate on what has been said about the economy since the passage of the 1993 package by people outside of the Senate, in particular the Chairman of the Federal Reserve Board, Alan Greenspan.

Here's what he says about the state of our economy since the adoption of our 1993 budget plan: we are "now in the 7th consecutive year of expansion, making it the third longest post-World War II cyclical upswing to date."

In addition, he said:

This strong expansion has produced a remarkable increase in work opportunities for

Americans. . . . Our whole economy will benefit from their greater productivity.

Finally, he said:

Consumers are also enjoying low inflation . . . financial markets have been buoyant . . . in a relatively stable, low-inflation environment.

That is about as optimistic a series of statements as I have ever heard the Chairman of the Federal Reserve make. He has a reason for making them—the economy is strong, we have been able to reduce the deficit, and we have an optimistic outlook about our future. And it is universally held. Whether we turn to the Chairman of the Federal Reserve Board, or Members of Congress, or the business community, or members of labor, the response is the same: Our country is stronger today.

There can be no doubt that we are strong.

Unemployment and inflation right now are at a combined rate of 8.7 percent. That is the best since Lyndon Johnson was President of the United States.

Inflation is at a 2.8 annual percentage rate. That is the best since John Kennedy was President.

The employment picture, with 12 million new jobs, is the best employment situation our country has faced in its history. Construction jobs are stronger now than at any time since I was born, since Harry Truman was President.

Consumer confidence has increased 14 percent in the last 4 years, which is the best we have seen since President Eisenhower.

Deficit reduction has been reduced to under 1 percent of gross domestic product in 1997. That is the best we have seen in all the years that I have lived. One would have to go back to Harry Truman's Presidency to find a time when it was this good.

Home ownership has increased from 63 percent to 65 percent, the best ever. Never in our Nation's history have two-thirds of all Americans lived in their own homes.

The stock market has gone from 3,500 to more than 8,000, a growth record that has been matched only once, and that was during World War II.

Median family income is up $1,600 since 1993, the best since Lyndon JOHNSON was President of the United States.

So, Mr. President, we feel very good about the circumstances and about the economic progress and performance of the last 4 years.

At the same time, we have said repeatedly over the last several months that there are four categories by which we would judge any agreement that would attempt to make further progress on the deficit: fairness, fiscal responsibility, education, and how we target the investments that we will make as a result of this legislation. Those are the four criteria. How fair is it? How responsible is it fiscally? How good an educational program can we achieve? And how well are we going to be able to target our investments?

Let us take the first category. How do Americans do under this agreement on the issue of fairness? Many of us talked for some time about how important it was that we benefit all income categories, not just the top income category, but those working families in the $20,000 to $30,000 income categories, people who pay a portion of their income to income taxes but an even greater portion to payroll taxes. Are we going to be able to provide tax relief to families such as those?

We will provide a child tax credit to 27 million working families. Families who pay thousands of dollars in payroll taxes, families who pay income taxes, families who try to make ends meet, each and every week, each and every month, those families are going to benefit very directly as a result of what we were able to do with the child tax credit.

And $24 billion has been committed in the first 5 years for a children's health program, which is the largest single investment in health care since the passage of Medicaid in 1965. That is just the beginning, because we have also committed another $24 billion in the second 5 years. For the first time in history, thousands of South Dakotans and millions of Americans are going to benefit from a Federal health program that for the first time will provide meaningful health care to children who are not getting it today.

And $1.5 billion is going to be committed to low-income seniors to help pay for Medicare premiums.

So, Mr. President, from a fairness point of view, there can be no doubt, when it comes to health, when it comes to the array of opportunities that we present working families, this bill deserves our support.

Mr. President, we also, as I indicated, made a very important point of arguing the need for targeted investment. Indeed, this legislation provides opportunities for targeted investment in environmental cleanup, in enterprise communities, and targeted job tax credits, ensuring that family farms and family businesses are going to be protected as one generation transfers its property to the next.

Employer tax deductions are going to be made available for employee education and training.

In a number of ways, we say we are going to take the resources available to us and target them to where they can be used to the greatest advantage—on environment, on communities, on jobs, on farms and small businesses. We provide an array of opportunities in that regard to do what Democrats said was very critical: provide the kind of targeted investment that is so essential to ensuring that all aspects and all elements of our American society benefit from what we are doing today.

The third criteria we spelled out was fiscal responsibility. How well do we do in that regard? We said at the very beginning, we do not want to see an explosion of deficit in the outyears. We wanted to be absolutely certain that, regardless of what else we do, we did not want to pass a tax cut we cannot afford and place ourselves back in the same box we created for this country in the 1980's. We did not want to relive the bad old days of those extraordinarily high deficits. Instead, we now recognize that achieving a balanced budget in 2002 is only the first step in maintaining a balanced budget in the years beyond 2002.

So we do not index capital gains. We put income limits on individual retirement accounts. We do not index the estate tax exemptions, simply because we were afraid of the extraordinary explosion in outyear deficits that these changes would trigger.

I recognize the fact that we did not go as far as some of us would have liked to ensure fiscal responsibility, to ensure with a high degree of confidence that we will be able to maintain a balanced budget. However, I also believe we took a number of steps that allow for some confidence that once we have balance the Federal budget, it will stay balanced in the years 2003, 2004, 2005, and beyond.

Mr. President, the last category is one that is probably of greatest importance to many working families because they are trying to make ends meet and still send their children to college. In this information age, it is important that we do all we can to make available to working families the tools and the resources necessary to allow every child who graduates from high school the opportunity to get more education. So this bill provides the single largest investment in higher education since Harry Truman passed the GI bill almost 50 years ago.

We provide a $1,500 HOPE credit in the first 2 years of college and a 20 percent tuition credit for college juniors and seniors and lifelong learning opportunities. There are families of all ages with many different sets of circumstances involving children who want to go to college, involving a spouse who may want to get additional education. An array of different challenges confront all working families as they attempt to cope with the circumstances we are facing in this information age. We provide that mechanism and those tools to working families in ways that we have not done in more than four decades.

So, Mr. President, as a result of this President's advocacy, we are committing resources to education that we have not done in the period I have served in the Congress.

There are no Pell grant reductions. There are opportunities for people to

use other tools as well and not be penalized for using the credits that we now make available.

In the end, Mr. President, it all comes down to real names and real families, people that are truly going to be affected. While there are many families who have come before us over the course of the last several weeks to describe their situation, and talk about their circumstances, I think the Richards family in Sioux Falls, SD, who talked to us via television camera just a couple of days ago, is a clear example of what this legislation means for a typical American family.

Charlie Richards is a teacher. He is not only a teacher; he has two extra part-time jobs. There are many people in South Dakota who work not just one job, but two and three jobs in order to make ends meet. Charlie Richards is that kind of an individual, hard working. He believes that his family must have the very best that he can provide them, and he is willing to commit the extra time and effort and hours to see that provides his family with a quality of life that he now only dreams of.

His wife Karen is pregnant with their second child. Their income is about $24,000 a year. As a result of what we are doing this afternoon and what we will do this week, Charlie and Karen will get a $975 child tax credit. This figure was zero under the legislation originally drafted and passed by the House. Both children, once the second child is born, will get health care coverage, perhaps for the first time. Both children will be eligible for HOPE credits when they are ready for college. Both children will be eligible for KidSave and other individual retirement accounts when savings increase.

For the first time, Charlie and Karen will be able to perhaps set a little money aside for savings, maybe to buy a home, maybe to improve the home they are living in now, maybe to give their family just a little bit more hope that they are going to be able to make ends meet and do the kinds of things that every family dreams of doing, not just with the one child they have now, but with two.

So to Charlie and Karen, and to families just like them across the country, let us say today that we give them hope of a better future, a brighter and more realistic opportunity of achieving their goals.

We heard our constituents last year when they told us we have got to work together to solve problems, when they told us it is important that they have the kind of economic strength and security that they want so badly, when they told us we have got to continue to work and put our best effort forward to reduce the debt. We heard them on all these fronts. As a result of the extraordinary leadership and work done on both sides of the aisle, we are responding today in a way that makes me very proud.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, this conference report comes before the Senate in an atmosphere of near euphoria. While I have signed the conference report—I was a Democratic conferee from the Finance Committee on these matters—and while I will vote for each of the bills, I cannot share the elation. I say this with the greatest respect for the Senators who managed this through the Budget Committee and, of course, for our own revered chairman of the Finance Committee—Senator ROTH—and others who have worked so very hard on the legislation. Surely, there is much to applaud in both bills. But the agreement does little to address, in a serious way, either short run or long-run budget problems.

In the short run, the Federal budget is already on the verge of balance. This is due to a strong 7-year economic expansion. The expansion is attributable, in part—very probably in large part—to the budget decisions made by the President and this side of the aisle in the Senate in 1993. Indeed, my respected colleague, BOB KERREY, suggests that the Omnibus Budget Reconciliation Act of 1993 be renamed the Balanced Budget Act of 1993. The deficit reduction brought about by OBRA 93, as our usage has it, is expected to reduce the deficit by a cumulative $924 billion through 1998. That is almost a trillion dollars.

I stood on the floor at this desk, with my great and good friend, Senator Sasser, as the chairman of the Budget Committee at that desk. I was chairman of the Finance Committee. In the end, we enacted that measure by one vote, which has brought us to where we are today. I don't know that the Nation, having heard so much for so long about deficits, had been properly concerned about them so much and for so long. It is not easy to grasp the possibility that the deficit for this fiscal year, which will end September 30, will come in under $30 billion. That is about one-third of 1 percent of gross domestic product—an insignificant number. If the present trends continue, we could well be in a surplus in a year's time—the first such surplus, if I rightly recall, since 1969.

And then having reached the point where we have free resources, we would be in a very proper position to turn to questions of, do we want to cut taxes, which clearly we might do? I would much prefer to see tax rates reduced—and I will talk about that tomorrow—or to provide new benefit programs of the kind that we are providing, but not before we have done what we said we would do first, which was to balance the budget.

Over the long run, too, this legislation does less than many of us on the Finance Committee would have liked. Indeed, I can say, sir, that all of us on the Finance Committee would have liked, as the measure I am referring to, passed unanimously in the Finance Committee, 20 to 0, on June 18. In particular, we chose to confront the long-run issues in Medicare. We are told that our two major retirement programs—Social Security and Medicare—are in grave difficulties. That is not so clear in the case of Social Security.

Four rather simple steps would bring us into actuarial balance for a full 75 years—the usual way solvency is measured for the Social Security program. It could be done by four simple measures.

Construct an accurate cost of living index—rather than a consumer price index—in the manner that has been proposed by the chairman of the Federal Reserve Board, the previous director of the Office of Management and Budget, Dr. Rivlin, and the Boskin Commission established by the Finance Committee when Senator Packwood was chairman—he and I jointly did that.

Tax Social Security retirement benefits in the way that all other pensions are now taxed.

Include all workers in the Social Security system. To this day, in a kind of exasperating holdover from the 1930's, there are several million State and local government employees who are not in the Social Security system as government employees, but who acquire the benefits, in any event, through part-time work outside.

Increase the computation period from 35 to 38 years.

Just take those four measures, and a few other odd things, and we put Social Security in fine fiscal condition into the second half of the next century.

This is not the case with Medicare. Medicare is a health program, and it provides health care to a population that grows older and does so in the setting where medical science grows ever more successful in the treatment of the diseases associated with aging. But those treatments are, of necessity, ever more expensive. There is a true problem in Medicare. We have made many changes in the present program, so as to provide another 10 years of trust fund solvency. But in fact, sir, since 1992, the revenues from the Medicare payroll taxes have not equaled the outlays. And we have used general revenues to fund the shortfall, and since the Federal budget has been in a deficit

situation, we have had to borrow money to do it. We can say, if you like, that we have 10 years of solvency. There is not now and there won't be until we do very important things.

We began that effort in the Finance Committee on June 18. We took the decision to increase the age of eligibility for Medicare from 65 years to 67, in very gradual steps over the next quarter century, and bringing it into line with the increased age of eligibility for Social Security benefits, provisions adopted in 1983 in the aftermath of a commission, headed by Dr. Greenspan, on which Senator Dole and I served, among others. That measure just responds to the age profile, the demographic profile of the American people. We are living longer. And I would say, Mr. President, also, while we are living longer, we are retiring earlier. The majority of Americans now retire at age 62, when a reduced benefit on Social Security is available, and some 70 percent have retired by age 65. It is not entirely clear why. Some have sufficient resources and they simply want to stop working, and others have not gotten work, or others find the work no longer possible for them. But the fact is that most people now are retired before age 65, and on actuarially reduced benefits, so the trust funds are left unaffected. We proposed to do that with Medicare.

If there is a problem of interim insurance from the time you leave employment to the time you are retired, well, we can resolve that problem. We could be thinking about it right now, in terms of those who retire early on Social Security. The problem of health care insurance does not deter, so far as we can tell, persons from doing that. It is not an admirable fact; it is a distressful fact that the last time the Social Security Administration did a survey asking persons the reasons why they retired early was about 15 years ago. The Social Security Administration is very slow in providing the kind of information we would like to have to make these decisions.

We also, in the Finance Committee, unanimously agreed to increase the part B premiums for upper-income beneficiaries. That is to say, to reduce the part of the Medicare Program paid for by general revenues. When the program was begun—and I was involved if not peripherally, but with some measure of consequence as an Assistant Secretary of Labor for Policy Planning and Research in the Johnson administration—we provided that this program, Part B, should be paid for half by premiums paid by beneficiaries and half by general revenues. Over the years, as a technical result of having constrained the increase in premiums to the same percentage increase in Social Security benefits, while the cost of medical care increased faster than the consumer price index—which itself was an inadequate measure of the cost of living—that 50/50 share dropped to 25 percent for beneficiaries and 75 percent for the Government.

We would simply provide that persons with higher incomes would pay more than the simple 25 percent that the great majority of persons would pay. We are talking about a very small number of people—about 6 percent of all beneficiaries—but the principle is that if you have the income, you don't need the subsidy. Indeed, the overall subsidy would still be much greater than it was originally envisaged in 1965—with the Federal Government financing 72 percent of program costs out of general revenues. The time has come to do that.

Equally, the time has come to provide some measure of copayment for home health care, which has been growing at extraordinary rates, and which is evidently subject to serious abuse. This was widely reported in the press just this week. These items have come to be known as the big three Medicare changes. They were adopted on June 25 here on the Senate floor by a vote of 73 to 27. However, they are not included in the conference agreement. The House was not willing to do this, and I can only regret that we have not done so. I stand here and say, however, that the Senate has led the way and has shown you can do it. The response in public opinion has been quite moderate. The comment in the press has been almost unvaryingly supportive.

These are necessary, sensible things to do. And it is time we set about doing them. There is an opportunity that we will not miss, particularly if the Finance Committee—under the leadership of Chairman ROTH—continues to work in a bipartisan manner.

About 80 percent of the savings in mandatory programs in this bill before us, this extraordinary large bill—I would hate to see it dropped on anyone's foot—about 80 percent of those savings came from actions by the Finance Committee. The 5-year savings for Medicare are $115 billion. That is a decrease in the increase, in a manner we have come to be familiar with, and, as I have said, the trust fund will be in technical balance for about 10 years.

This does buy us time for an important provision in the bill, the provision for the creation of a national bipartisan commission on the future of Medicare—time for such commission to do its work. The statute provides that it issue its report by March 1, 1999, a year and a half from now.

The commission is required, in the first instance, to review and analyze the long-term financial condition of the Medicare Program, which is not an easy matter because we are talking about the long-term progress of medicine in an age of discovery that has proved extraordinarily creative and fruitful but equally and not unsurprisingly costly, and to identify the problems that threaten the financial integrity of Medicare, including the extent to which Medicare update indexes do not accurately reflect inflation.

If I could say parenthetically, Mr. President, we have had a great deal of talk about the accuracy, or inaccuracy, or sufficiency, or insufficiency of the Consumer Price Index. The fact is, we have at least four distinct price indexes in our present statutes and in our practices. They are spread all over the Government. One of them indexes Medicare expenses in ways that it seems to me probably overstate inflation.

Next the commission is asked to make recommendations regarding the financing of graduate medical education, including consideration of alternative broad-based sources of funding for medical education. This could not be a more important matter. The question of medical schools and medical education is absolutely essential as we begin the process of economic rationalization in the provision of health care, as we do in this measure making a wide range of HMO's available to Medicare beneficiaries and Medicaid recipients.

In this regard, Mr. President, might I just go back to 1994 when the Finance Committee was taking up the health care proposal sent to us by the administration in the last days of the first session of the 103d Congress. I was in New York City and asked the distinguished head of the Memorial Sloan-Kettering Cancer Center in New York—Dr. Paul Marks—if he would arrange a seminar to bring me up to date on the thinking of medical deans and medical academic researchers in the area of health care generally. We met one morning in a conference room in January at 10 o'clock. And at about 10:20, one of the deans, who comes from another part of the country, said, "You know, the University of Minnesota may have to close its medical school." That was said to me and I knew I had heard something important. Minnesota is the kind of State where they open medical schools. They don't close them. I asked, "How could that be?" They said, "Well, managed care is making its way from the west coast to the east coast. It has reached the high plains, and is now widely used in Minnesota."

Persons enrolled in managed care plans are not sent to teaching hospitals because they are, by definition, more expensive. If you do not have a teaching hospital, you can't have a medical school. And, indeed, the teaching hospital at the University of Minnesota has since merged with another health care institution.

We are dealing with something profoundly important. An ancient practice of medicine goes all the way back to

the Greeks. The establishment of medicine doesn't go back just to the Greeks, but the idea of a profession of medicine with a code of ethics, a Hippocratic oath, certain responsibilities, certain immutabilities in medicine—something of a mystery, something of a guide. In my youth, doctors would prescribe medicines taken from drugstores in a handwriting that was illegible to the laymen. Only the pharmacist could read it. All of that is disappearing.

In our hearings in the Finance Committee, Msgr. Charles J. Fahey, a professor at Fordham University said to us, "What you are seeing is a 'commodification' of medicine." There is a striking image here on the Senate floor. For generations, we have argued the issue of whether labor is a commodity. Finally, in the Clayton Antitrust Act of 1914, we said labor is not a commodity. Well, medicine is becoming one.

The next week, Dr. Raymond G. Schultze, at the time the head of the UCLA Medical Center volunteered, and said, "Can I give you an example of that?" We were discussing it with our witnesses, saying that is a new idea. He said, "In southern California, we now have a spot market of bone marrow transplants." Well, when you get into that, that is good. It keeps control on prices. It brings rational decision-making into this market. But it doesn't provide for the public good. Markets won't provide for the public good that a teaching hospital and a medical school constitute.

So our commission must pay special attention to these institutions.

Finally, we ask the commission to make recommendations on modifying the age of eligibility for Medicare so that it corresponds to the changes in the age of eligibility for Social Security. I would simply suggest that this provision—the instruction to the forthcoming commission to deal with this matter of age of eligibility—obviously reflects the decision in the Finance Committee and the Senate that it ought to be increased to be in harmony with that of Social Security.

The Medicaid changes in this legislation will save about $10 billion over 5 years by providing greater flexibility to the States, and at the same time, as I have remarked earlier, the Medicaid recipients will be encouraged to participate in HMO's just as Medicare recipients do. When we began Medicaid and Medicare, there were very few arrangements which we now call health maintenance organizations. Fee-for-service medicine was almost the universal experience. So, naturally, when people retired, they continued it, and Medicaid recipients took it up. That has changed with the general population and ought to change with this population as well.

To the one bit of really strikingly good news in this measure, we have taken action to provide health coverage for uninsured children, $24 billion over 5 years. This will be the largest expansion in Government health insurance since the enactment of Medicare and Medicaid in 1965. We have done something that has not been done in a generation, and something that is needed. It will be financed by an increase in the cigarette tax that will eventually reach 15 cents per pack. Both of these measures were also an initiative of the Senate Finance Committee.

I would also note that the conference committee, even prior to our commission, includes provisions to ensure an adequate stream of Federal funding for teaching hospitals. Financing of health care continues to undergo dramatic change. We will have a more comprehensive proposal from our commission. But we have done some things in this bill.

Medicare payments to HMO's now reflect the higher cost of providing care in teaching hospitals. Under the legislation before us, these payments will be carved out, as we say, and sent directly to the teaching hospitals, thereby ensuring that the money will go where it is intended.

In addition, while payments for medical education have been reduced as part of the overall reduction in payments to hospitals and physicians that are inevitable in a deficit reduction bill, the conference report includes the Senate language which limits the cuts to about $5.5 billion rather than $6.5 billion recommended by the House.

Again, sir, I would say that had we not decided to go for a large tax increase, which we will talk about tomorrow, we wouldn't have had to make some of these reductions which I think we will find difficult, if not indeed painful.

Finally, it should be noted that this bill sensibly increases the statutory debt limit from $5.5 trillion to $5.95 trillion, which will be sufficient to take us through December 1999—a much smaller increase would be required if we decided simply to stay the course that we set in 1993.

So, Mr. President, I will support this conference report. It is the product of a long and difficult effort to reach compromise between the Congress and the President. It was characterized by extraordinary unanimity in the Finance Committee, where 80 percent of the mandatory program reductions are to be found, and by very large majorities here on the Senate floor.

I think that speaks to the sincerity of the participants and, I hope, to our knowledge. If I consult my hopes in this matter, there is no real alternative. And, in the meantime, we have done some things that we surely can be proud of.

I see my friend, the Senator from West Virginia, is on the floor. I know what particular pleasure he will take in the provision of $24 billion in health insurance for children, the largest such increase in health care in a generation since the enactment of Medicare and Medicaid was done.

With that, Mr. President, and seeing that there are other Senators present, I yield the floor.

I thank the Chair.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DOMENICI. Mr. President, I do not know who is controlling time, but certainly the Senator can take as much time as he desires. There is nobody here on your side. I give it to you off my side.

The PRESIDING OFFICER. The Senator from North Dakota is recognized under the time under the control of the Senator from New Jersey.

Mr. DORGAN. Mr. President, I thank very much the Senator from New Mexico for his courtesy, and I will take the time under the control of the Senator from New Jersey.

Mr. President, I will make a couple of general comments first, and then I want to speak specifically about a provision in the conference report which is before us that is enormously troubling.

First let me explain that I intend to vote for this legislation. The Senator from New Jersey and the Senator from New Mexico and others have, I think, done a remarkable job of crafting a bill that represents a compromise with the White House, with the Republicans and the Democrats, putting together a piece of legislation that tackles this budget deficit, and is the second step of several steps that we have taken, first in 1993 and then now in 1997, which will lead to a fiscal policy that is under control in this country—not only tackling the deficit but doing so in a way that makes a great deal of sense, cutting spending in some areas and increasing investment yet in other areas.

This builds on accomplishments that we began earlier by tackling the budget deficit effectively but also by saying there are several other things in this country that are enormously important. One is children's health, what to do about children's health care in this country. The fact is this piece of legislation and the accompanying piece of legislation will make available a substantial amount of money to provide health insurance for children who are not now covered with health insurance. The question of whether a sick child gets health treatment or gets treatment in the medical care industry when that child is sick ought not ever be a function of whether that child has a parent with money in their checkbook. This piece of legislation will provide substantial additional coverage to provide health care to children, especially those who come from impoverished families.

This piece of legislation also says education matters, education is a priority in this country. This bill puts on track 1 million additional kids to be enrolled in Head Start by the year 2000. Head Start matters and Head Start works. Anybody who has been to a Head Start center and seen those bright little eyes of children who are getting a head start, coming from circumstances of difficulty getting a head start, understands this program works. This program saves money. And this program invests in the young lives of young people who otherwise would not have had an opportunity.

Mr. President, 300,000 more eligible college students will get additional help in Pell grants. This agreement places a priority on education, and that is exactly where the priority in this country ought to be. And finally this agreement solves a problem that caused me to vote against this legislation when it left the Senate. When the legislation left the Senate, it had two things that I did not support. One, increasing the eligible age of Medicare from 65 to 67 and, two, means testing Medicare.

Let me explain quickly I am willing to support means testing of Medicare. I am not willing to support providing a means test for Medicare for any purpose other than making Medicare solvent—certainly not for the purpose in a reconciliation bill of making room for some tax cut somewhere else. We will have to and we must find a way to deal with the ticking time bomb, the demographic time bomb that is going to cause us problems both in Medicare and also in Social Security because of the aging of our population. I understand that. In the construction of solving these problems, I am willing to cast hard votes on the issue of Medicare with respect to means testing. I am unwilling to do so in the construct of a reconciliation bill. This is not where that sort of thing should have been done, and I did not support it when it left the Senate. That has been solved. Those provisions are out of this legislation. This legislation is better because of it.

Let me mention one additional point. Senator ROCKEFELLER, from the State of West Virginia, is here to discuss another subject with me, but the point about health care and Medicare especially is one that all of us ought to understand. Even though it is a challenge, we ought to understand that this is born of success. Mr. President, 100 years ago, the average life expectancy in America was 48 years of age. Nearly a century later it is 78 years of age. Why? A lot of things. Better nutrition, better lifestyle, breathtaking changes in health care, new knees, new hips, cataract surgery, open up the heart muscle when it has been plugged, give people additional life, breathtaking medical advances, and therefore a 30-year increase in life expectancy in our country in one century. It is wonderful. It is born of enormous success. It is also very expensive, and that is also causing part of our strain with respect to the Medicare Program, and we must make that program solvent for the long-term because it is too valuable a program for us not to fix it for the long-term.

So I wanted to make a few comments. I intended to make more, but I will abbreviate them because we have another subject that is critically important. I want to make a few comments about the job that I think was done by the Senator from New Mexico, the Senator from New Jersey, the President and many, many others. It is nice for a change to be talking about something that is bipartisan. The American people tend to believe, and in many cases rightly so, that instead of getting the best of what both political sides have to offer we often end up with the worst. At least in this circumstance we have engaged in a bipartisan agreement that I am going to vote for, I am going to support.

Is everything here the way I would like or the way I would write it? No. But we have advanced in the area of education and health care and tackling the deficit and a number of other areas in a way that is significant and in a way that will be beneficial to this country's future, and I am going to vote for it.

Now, having said that in laudatory terms, let me say there are a couple things that give me enormous heartache here, and one of them is a problem the Senator from West Virginia and I want to talk about for a couple of minutes. And at the end of this I intend to make a point of order under the Byrd rule against the universal service provisions in this conference report.

Let me describe it very briefly and then yield to the Senator from West Virginia. There is, in my judgment, a fundamental mistake being made in the conference report in this reconciliation process. And that mistake is this: This conference report will use universal service funds in the Telecommunications Act for the purpose of plugging a hole in the budget process.

In my judgment, that is totally and completely inappropriate and without foundation. Those who were involved in it were repeatedly told this is inappropriate and yet somehow through the mechanisms of the Congressional Budget Office and the Office of Management and Budget and a range of other interests it got stuck into this piece of legislation.

Let me describe it very briefly. We have in this country something called the universal service provision in the Telecommunications Act. What does that mean? It means that in this country, even if you are in an area where it is very expensive to provide telephone service, we want to make sure you have good telephone service at an affordable price. If you happen to live in an area where it is very expensive to provide telephone service, we have a universal service fund that collects resources from all of the users in the country and uses it to drive down the cost to those in the highest cost areas of the country so that everyone in this country has affordable telephone service.

That is what universal means. It has been around forever and for a good purpose. Every telephone in this country is more valuable because there is a telephone in the smallest highest cost area of this country and we have decided to drive down those costs so that telephone service is universally affordable.

Now, the universal service fund produces the money to do that. It is not a fund that comes into the Federal Government. It is not Federal money. It is not a fund that has money that the Federal Government spends. It is completely apart and separate from the Federal coffers.

Two years ago, we passed something called a Telecommunications Act and now we are told by the Congressional Budget Office and by some others that the way the universal service fund is worded in the Telecommunications Act there is justification for the Congressional Budget Office and the Office of Management and Budget to rule that the universal service fund can be used in the construct of a Federal budget as both revenues and outlays.

That is pure nonsense. This has nothing to do with the Federal budget—nothing. And those who believe it does have either misread the law or don't know the foggiest thing about what they are reading.

Now, we have tried very hard to pull this out of this conference report because it is a couple, I guess it is a $3 billion plug they stuck in, just like a cork in a big hole. They walk around with corks in their pocket down at OMB or CBO, and say, well, here is a big hole we can't explain; we will stick a cork in there. This cork is the universal service fund. And the minute you start using that as a cork the cork will get bigger every year they manipulate it. This is a misuse of the fund. And the Congressional Budget Office and the Office of Management and Budget had no business and no capability of suggesting that this is a part of the Federal Treasury.

Now, I would like to yield for purposes of discussion. At the end of the process, I am going to make a point of order, a Byrd rule point of order. And let me, as I yield to the Senator from West Virginia, say that the Presiding Officer, who is on the Senate Commerce Committee and was integrally involved in the issue of the construction of the Telecommunications Act

and the universal service fund, has been involved in signing letters and discussions with other Members of Congress about this very subject. The Senator from Arizona, the current chairman of the Senate Commerce Committee, feels the same way I do. It is inappropriate to have it in this conference report in this manner. The Senate minority leader feels the same way. A good number of us feel the same way. And yet we seem powerless at this point to pull it out of this conference report. I expect that my challenge on the Byrd rule is probably not going to survive for reasons that I will understand, but I think it is critically important that we raise this issue now so it will not become habit forming; this will happen once and only once. And between now and the next time someone has an urge to do this with the universal service fund, I hope we have the law changed to disabuse anybody that they can interpret any language in the Telecommunications Act with the universal service fund in any way which suggests it is part of the Federal Treasury assets receipts or outlays.

Mr. President, the Senator from Arizona I notice is in the Chamber. I just mentioned him. He is the distinguished chairman of the Senate Commerce Committee. I know the Senator from West Virginia also wishes to be recognized. I would be happy to yield the floor so the Senator from Arizona may speak.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. How much time would the Senator like—10 minutes?

Mr. McCAIN. Three minutes.

Mr. DOMENICI. I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is yielded 5 minutes from the time under the control of the Senator from New Mexico. The Senator from Arizona.

Mr. McCAIN. Mr. President, I understand and appreciate Senator DORGAN's concerns. I would disagree with the action of challenging it. The Senator from North Dakota is quite correct in one sense; Federal finagling with the universal service fund ought to raise concerns over any potential impact on the provision of essential phone service to rural and high-cost areas and low-income consumers.

Mr. President, I think it is important to put its genesis and its likely real life effect into perspective.

I reluctantly concurred with the last-minute—I emphasize reluctantly—inclusion of this provision in the bill. I am sure I am telling the worst-kept secret in town when I tell you this provision was dreamed up by the Clinton administration and essentially imposed on the Commerce Committee conferees by OMB. It is not a provision we liked and not a provision we wanted, but it was made very clear to us that our failure to include it would likely result in our losing control of the bill. And if this were to occur, the probability was that not only this provision but numerous others that would be worse, such as spectrum fees, would get added to the bill if that happened.

So including this provision was by far the lesser of two evils. This is particularly so because it is hard to see how this provision is likely to have any real life effect on maintaining essential telephone service. Basically, what this provision does is shift $3 billion in funds between the Treasury and the universal service fund in alternating fiscal years in an attempt to cover a residual $3 billion savings shortfall in the outyears.

Because industry universal service fund subsidies today total over $6 billion and are projected to soar as high as $12 billion to $20 billion, there can be no doubt that the telephone industry will be financially able to sustain a $3 billion loan for the limited time period prescribed. Similarly, if we really think that the Treasury will not be in a position to repay a $3 billion loan, we have far worse deficit problems than this bill can ever hope to cure. And because the bill explicitly provides that telephone companies may not raise their rates to recover this $3 billion, it attempts to assure that telephone rates will not increase, at least for this reason.

So, I believe it extremely unlikely that essential telephone service is likely to be hurt in any way by the enactment of this provision. In saying this, however, I do not wish to trivialize the validity of concerns over the Federal Government reaching into private, nongovernmental pockets to help plug a budget hole. That's a terrible precedent to set, regardless of whether it is the universal service fund or the airline safety funds, and I have consistently voted against such schemes in the past.

I suggest the better remedy is to pass this bill today, then enact new legislation that will prevent this kind of action in the future. We should not risk bringing down this historic agreement because of one such scheme that, however objectionable in concept, will have no practical impact on the public.

Let me emphasize again, this administration provision is designed to have no adverse effect on the consumer. For the information of my colleagues, I have already stated I will hold conference committee hearings early next year to make sure that we need do nothing more legislatively or in terms of FCC oversight to further assure that the universal service provision before us will not, in fact, cause any loss in essential service or raise telephone rates.

I want to tell my colleague from North Dakota, we will have hearings. We will take action to make sure that this provision does not raise phone rates nor impair the ability of people to have universal service. I want to point out that the Presiding Officer in the chair, the distinguished chairman of the Appropriations Committee, also a member of the Commerce Committee, has pledged to do exactly the same. I don't like it. You don't like it. He doesn't like it. In fact, in a rather unusual move, the chairman of the Appropriations Committee was more vociferous in his opposition to this provision than I was.

So I want to point out I think it is important the Senator from North Dakota raised this concern. I know the Senator from West Virginia has the same concern and will articulate it. But I want to say that we will have hearings. We will do whatever is necessary to make sure this does not impair—either raise phone rates or impair the ability of people to obtain universal service. I also want to reiterate, as did the Senator from North Dakota, it's a lousy way to do business, Mr. President. It's not a good way to do business. But I also, with some sympathy to my dear friend from New Mexico, realize that he was in a position where they were $3 billion short and they had to make it in order to make this budget work.

So I want to thank my colleague from North Dakota. I want to thank the Senator from Alaska as well, for his commitment to fix this situation. There is, quite simply, no reason to endorse this provision or the kind of tactic it employs. But neither is there any reason to vote against this balanced budget bill because of it. I urge my colleagues to take that into consideration.

I yield the floor.

Mr. DOMENICI. Mr. President, I thank my good friend from Arizona. I am sorry if we waited until the last minute to notify you. We had plenty of time. You could have come down slowly and taken your time.

Mr. President, I yield myself 5 minutes, and then I will yield to Senator ROCKEFELLER.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 5 minutes.

Mr. DOMENICI. I surmise the distinguished Senator from West Virginia is going to stand up and agree with what has been said. I just ask him if he would consider seriously, with me, what the miner protection fund looks like. It is exactly like this, and it is on budget. The Federal Government orders mining companies to pay into a fund, but the Federal Government does not disburse the money. That is your bill. You are famous for it, Senator. That is on budget. It has been on budget from the beginning.

Now, let's look at this. It's exactly the same. We order companies to pay

into this fund so that we can get universal service out of the fund. Who disburses the fund? The companies; not the Government. That resonates very well with a mining bill, miners' protection, the same way it has been on budget for 4 years. Frankly, it doesn't matter to this Senator.

But the point of it is, we are bound by an interpretation that essentially was this. The reason I didn't cite this is because it never became law. But you might recall, I say to the Senator, when we had the universal health plan from the White House, noted by some as the Hillary health plan, the distinguished chairman, then, of the Congressional Budget Office—not this one; one that you-all had appointed from the other side—ruled one morning, to the amazement of everyone, that the bill had a tax in it because the procedure was that we were ordering money to be paid by somebody, and then, in the various States, we would disburse the money. The Federal Government was not disbursing the money.

So the White House thought they would have a bill that was without taxation in it. And what did he rule? He ruled that if the Government orders payment of money into a fund, then the fund is on budget, even if the Government doesn't control the fund.

I know my friend in the chair does not agree. I might not agree. But I am merely explaining what the facts are. I understand that you would like to make a point of order. I will be here and we can talk a little more about it, Senator. I do believe we have just reason to ask the Senate not to impose that point of order under the circumstances surrounding it, but I understand you, and I will speak to that later.

I yield the floor at this point.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I yield myself, off the time of the Senator from New Jersey, 10 minutes.

The PRESIDING OFFICER. As the Senator present and in charge of the bill he has that right. The Senator is recognized for 10 minutes.

Mr. ROCKEFELLER. Mr. President, I appreciate that very much. I also appreciate very much, as I always do, what my good friend, the Senator from New Mexico, said. I would draw one small point, however of difference. That is, in the miners' health retirement bill there has never been any thought, any action, any suggestion that any of that money should be used for anything but the health care of miners, period. It doesn't go anywhere else. In the case of what we are now talking about, the universal service fund, it is something which was set up for one purpose and which is being used for an entirely different purpose. The Senator may wish to come back—

Mr. DOMENICI. Will the Senator yield?

Mr. ROCKEFELLER. Of course.

Mr. DOMENICI. Senator, when we first proposed this, we could find no way to do this without doing exactly what you said. But the White House came along, and they are a little more ingenious than are we. They offered us a proposal that is now in this bill. It does not change universal service, nor does it use that fund in any way other than what it was originally intended to do. All we have is, those who were paying into it get a 1-year reprieve, to the tune of $3 billion. Then they pay it in the next year. I think they are delighted. They get a reprieve because we lend them the money for the year and everything is exactly as you want it, and in the following year the companies that would have been paying it pay into it the next year. That happens to give us the $3 billion credit on the budget. That was dreamed up by the White House. We said, "It's extremely ingenious and it fits all the tests," and that is why we are here.

Thank you for yielding.

Mr. ROCKEFELLER. I thank my friend and ask unanimous consent the time used by my friend from New Mexico be used on his side and not from the time of the Senator from New Jersey.

The PRESIDING OFFICER. It has been so accounted.

Mr. ROCKEFELLER. Mr. President, I strongly agree with what Senator DORGAN of North Dakota has said. I expect that, if the Presiding Officer were in a position to take the floor, he might say something not that dissimilar.

There is an enormous amount of anger among those of us who worry about rural America, that for the first time in its history —hopefully for the last time in its history—the universal service fund is literally being raided for the purpose of a gimmick. The Senator from New Mexico is correct, I think, in the way he describes the process of what will happen. He is incorrect in one small matter, which doesn't really make that much difference but happens to make some difference to me as a Democrat, and that is that the idea came first from the Congressional Budget Office, not from the White House. It came from the Congressional Budget Office, this so-called gimmick fix. Then it was upheld by, so to speak, the Office of Management and Budget, which is something that I am very angry about, as a Democrat, because that happened on the President's watch.

I think the problem with this is that universal service is sacred. When the Senator from North Dakota described equal phone calls—as he sometimes says, Donald Trump can call into Minot, ND, and that is good for Donald Trump in New York City and that's good for Minot, ND, and the possessor of that phone. But the purpose of universal service is, in fact, that rural areas are able to be sustained in part of their rate-paying because some States have to be more generous than others. That is what universal service is about. That is what the money is there for. It is not there for black lung, it's not there for retired miners, it's not there for environmental purposes. It's there for one purpose, and that is to guarantee that universal service on the telephones is available and affordable by people no matter where they live, and people particularly in rural areas.

Part of my objection to all of this, of course, is that this whole process of working out this reconciliation bill—which I do support. I am not jumping up and down, but I do support it. That will be another speech at another time. But basically there were a lot of meetings held in a lot of rooms in which a lot of us were not allowed to be. I have a feeling that this decision was made at the last moment by OMB. Their people tried vainly to convince Senator DORGAN and his folks and myself and my folks that this was all really nothing but just a shifting of money here and there. But that is not the case. If you look at the historic proportions of raiding the universal service fund, no matter for what purpose—it's not for telephone service, it's not for making it possible in rural New Mexico or rural West Virginia or rural North Dakota for people who have telephones not to have to pay exorbitant rates.

So here we have this one very unfortunate example. It's a budget gimmick. It's lousy policy. It's using the service fund as a piggy bank. There is no excuse for it. It's in the bill. I understand that we are probably not going to be able to do very much about it, but it is wrong. It is not only wrong because of what it does to universal service, but it's also very wrong because of what it does to libraries and schools and health care center telemedicine programs, which I will talk about in a moment.

I will say the fact that Senator MCCAIN was on the floor, that Senator STEVENS has strong feelings about this, and Senator HOLLINGS has strong feelings about this, Senator DASCHLE has strong feelings about this, Senator DORGAN, myself, many others, Senator SNOWE—many others—this is a problem that we are going to come back to and fix. As the Senator from Arizona indicated, he's going to hold hearings. But we are going to come back on this until we can fix this problem. We can't fix it today, but we will be back, we will be back again, until we get this eliminated—eliminated and changed. Because it is wrong.

I recognize the universal service fund isn't recognized by most people. They don't know what it means. But it's something of such incredible importance to affordable phone rates for rural citizens that it is something people better understand very, very thoroughly. When a group of us passed and fought hard for something called the

Snowe-Rockefeller-Exon-Kerrey amendment, we extended the promise and the idea of universal service to something which fits in that category; that is, schools, libraries and rural health care facilities that use telemedicine. There are 116,000 schools in this country, Mr. President, and we are going to make every classroom applicable and every one of those classrooms, every one of those schools, we are going to make them fully wired up, ready for Internet, so there won't be any first- and second-class society in our country.

I never, ever thought during the battle that we had to get to pass that Snowe-Rockefeller-Exon-Kerrey amendment, I never ever for a moment thought that we would be dealing with budget negotiators, but much more significantly I think, in this case, the Office of Management and Budget and their intransigence in trying to work out some kind of a Federal budget worked out that was not—I was shocked when I heard about that.

Unfortunately, the budget has a neat trick, and as the Senator from New Mexico points out, it will work. It will loan universal service funds in the year 2001 and it will repay that in the year 2002, solely to have enough money appear on the books to make it possible to say that the Federal budget was balanced in that particular year, 2002. It violates the promise made to telecommunications providers that the universal service money was for telecommunications only. They are offended by it.

I ask unanimous consent to have printed in the RECORD a letter from Bell Atlantic and Nynex expressing exactly that view.

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

BELL ATLANTIC,
Washington, DC.
NYNEX,
Washington, DC, July 25, 1997.

Hon. JAY ROCKEFELLER,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR ROCKEFELLER: We urgently request that you delete the universal service "tax" from the budget reconciliation legislation. This proposed "tax" is a direct assault on the policy of universal, affordable telephone service for all Americans.

Section 3006 of the Budget Reconciliation Bill is bad public policy and it should be deleted from the Budget Reconciliation legislation. This budget gimmick borrows money from a fund established to ensure universal telephone service in order to "balance" the federal budget.

Because this fund is privately administered and not funded through the federal budget, it is questionable whether the federal treasury can "borrow" from this fund. If passed, this provision would surely be the target of litigation.

This section sets a dangerous precedent of using funds intended to support affordable phone service as a "trust fund" or "piggy bank" to balance the federal budget each cycle. As a result, this proposal raises serious concerns for the future viability of universal telephone service.

We urge you, in the strongest terms, to delete the universal service section from the budget reconciliation legislation.

Sincerely,

AUBREY L. SARVIS,
Vice President, Federal Relations, Bell Atlantic.

THOMAS J. TAUKE,
Executive Vice President, Government Affairs, Nynex.

(Mr. ABRAHAM assumed the chair.)

Mr. ROCKEFELLER. The provision that will probably become law, in this gigantic stack of papers, is opposed by telecommunications companies. It is opposed by education groups. It is going to be opposed by a lot more groups before this process is finished.

The universal service fund is private money. It comes from telephone companies. We don't own the telephone companies. They are their own property. It is managed by nonprofit NECA, the National Exchange Carriers Association. This is private money—private money—that should not be used for budget gimmicks.

At this point, we are caught between a rock and a hard place. The bill is before us. It is a good bill on balance. It is a bill that I am going to vote for. It is something that all of us have worked hard for since 1993, and probably before that. It is going to have to be changed, I fear, in the future. I tried to reach Franklin Raines this afternoon. I could not do so. I have spoken to the Vice President about it. I have spoken to everybody I possibly could, because it is terribly bad public policy.

I am committed to protecting the integrity of universal service, and I intend to work with Senator DORGAN, Republican colleagues, industry leaders, and advocates to protect universal service and its promise of affordable access to rural America.

I urge interested parties to join me in this fight. Universal service is not just about putting computers in classrooms. It is about fairness to rural Americans. It is a sacred trust. The universal service fund has been briefly violated. One can hope that this will be the only time, and one can hope that even this time, it will only last for about a year before we clear it up.

Mr. President, I thank the Presiding Officer and yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Will the Senator from New Mexico yield me 10 minutes?

Mr. DOMENICI. I yield as much time as the Senator from Alaska desires.

PRIVILEGE OF THE FLOOR

Mr. STEVENS. Mr. President, I send to the desk a request for privilege of the floor for my staff for today through August 1:

Antonette Advincula; Kai Binkley; Larissa Sommer; Matt Hopper; Melissa Kassier; James Hayes; Kate Williams; Bronwyn Rick; Jay McAlpin; and Jessica Huddleston.

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

Mr. STEVENS. Mr. President, first, let me thank the distinguished occupant of the chair. I was fearing that this issue might come up for a ruling while I had the privilege of sitting in that chair and was fearful what I might do, because I can tell the Senate that if one examines the signatures sheets for reporting this bill, you will find that I excepted from my approval of the bill as a conferee on the Commerce Committee side this provision on the universal service fund.

Mr. President, I am not going to raise a proper point of order, and there is a proper point of order, but it would bring down the whole bill, and it is not timely. I would raise it if this went into effect next year. It will not go into effect until October 1 in the year 2000. So we have time to work this out and find a way to make peace on this subject.

I intend to pursue that after the hearings that the Senator from Arizona has announced, as chairman of the Commerce Committee, he will hold.

I don't think anyone really realizes what this does. I will say, and I know the Senator from New Mexico was trying to get it to me, the first time I saw this was today, although it had been described to me, and that is why I would not approve the Commerce Committee portion of the bill pertaining to the service fund. As a matter of fact, this is the old interstate rate pool, Mr. President. People in the business still refer to that in many ways. It became the universal service fund. I was the one who dreamed this up about 5 years ago when we first introduced the bill to modify the old Communications Act of 1934, and really that was carried through in the Telecommunications Act that passed.

I am pleased to have been part of that, because what this does is it gives us a fund which the industry itself can use to equalize the costs of assuring service anywhere in the United States so that our telecommunications will, in fact, be capable of being delivered wherever there is a person seeking to send or receive communications as defined by our act.

This money is kept by the National Exchange Carriers Association, [NECA]. It is not Federal money. It is not subject to Federal control. As a matter of fact, it is not even enforced by the Federal Government in terms of payment into the fund. It cannot be a tax.

With due respect to my friend from New Mexico, I think we have a Supreme Court of the United States that

will determine eventually what is on budget and what is not. The Director of the Congressional Budget Office, in my judgment, has made a serious mistake, and we are pursuing that mistake here. But there is more than just his mistake. The basic mistake has been made by the White House itself, when it conjured up this new approach to using this fund which is not Federal money, it is not taxpayer's money. It is paid by the ratepayers, not the Federal Government. You might have dipped into the Postal Service surplus in the bank right now under this theory. That is ratepayer money, too.

It is not on budget, but, as a matter of fact, this money is not subject to Federal control. But this bill says there is appropriated $3 billion to put into this fund that NECA manages for the telecommunications world, and it sits there for a year, Mr. President. Of course, it is going to earn interest, right? At the end of the year, it is paid back by the fund, and the fund can keep the interest it earned during that period.

Once more, the people who would have paid into the fund don't have to make a payment for a year. They keep that money that they would have paid the fund in their own banks and they pay it to NECA the following year, and guess what? They make money off it, too. So this is one of the greatest shell games I have ever seen with Federal money. The Federal money being fooled with is the $3 billion from the Treasury that goes into the fund before the game begins, and these guys get to play poker with this for a year, and then after a year, they can keep whatever they earned with it and pay back $3 billion to Treasury. It is a win-win thing for everybody but the people who should be served, because the earnings for the fund ought to accrue to the fund, the people who are the recipients of universal service, and this is just too cute. This, in my opinion, is the worst gimmick since the Budget Act was enacted, and I am glad the Senator from New Mexico has indicated he really didn't dream this one up, because I think he is smarter than that, and I think he is embarrassed to have to carry it, as I would be.

The proper point of order, Mr. President, is a constitutional point of order. I will not raise it because it will pull the whole bill down, and we have to have this to bring about a balanced budget. It will take place in the year 2000, as I said. But I warn the Senate, before 2000 gets here, we will raise a constitutional point of order to take this out of here unless it is straightened out, because it is nothing but smoke and mirrors. It is the worse case of smoke and mirrors that ever came out of the White House.

Somehow or another, someone has to understand that it is not right to play with money, that $3 billion of taxpayer's money goes into this fund, managed by a private association; it stays there for a year, the interest on it accrues to private associations, and at the end of the year, they pay back $3 billion. Meanwhile the people who should have been paying in for a year have earned their own money, and guess what? It is not a wash in the sense of everybody who keeps their own checkbook and everyone who pays bills and the people who need this service, this universal service; it is a wash under the Budget Act, which I thought was a stupid act to begin with, and now I know it is a stupid act, if it can conjure up something like this. It is not in the public interest.

So, Mr. President, I am now satisfied that I was right. I signed this bill and approved it, except for this provision. I urge everyone to read it, section 3006. If there is anything that demonstrates we need a new Budget Act, this is it, if people can sit in the basement of the White House and dream up a charade like this and say that it balances the budget. This is why people don't believe us. They really don't believe us, because they think we play funny games with their money, and this demonstrates they are right, Mr. President, unfortunately.

I will swear to you—I am glad you came, Mr. President, because I would be hard pressed not to approve the point of order that is raised by the Senator from North Dakota, and I would have hated to be in that chair and to have said what I don't believe. I am not saying you have to believe it either, Mr. President, just follow what the Parliamentarian tells you and we will pass this bill, and we will live to the year 2000.

Meanwhile, someone has to put down a marker on these people. They have to stop using smoke and mirrors. That is why we don't have a balanced budget now, because people play games with money, and those of us who don't have much money don't understand it.

It took me a little time to find out what they were trying to do, I say to the Senator from New Mexico. I see him smiling a little bit. He is my great friend, and I know he is embarrassed to have to carry someone else's brainchild like this. I hope we will find some way to stop this business, to give us a chance to deal with straight up-and-down money, and straight up-and-down provisions and not more smoke and mirrors.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I just say to my good friend—who is my good friend, perhaps one of the best here—there are plenty of smoke and mirrors in the appropriations bills, and I am not here saying we should abolish the appropriations process. If you would like a debate someday, we will go through 20 bills, and I will find you more smoke and mirrors than $3 billion in any given year in the appropriations process. I yield the floor.

Mr. STEVENS. Mr. President, if the Senator will let me have a couple minutes, it would be nice to have this discussion. There are no smoke and mirrors in the appropriations bills. We sometimes have devices in order to enable us to meet the objectives of the Budget Act, but we never end up by appropriating money to an account that is not controlled by the Federal Government, nor do we give up interest on that $3 billion for a year and expect just to get the straight $3 billion back. If there is something like that going on in an appropriations bill, I don't know about it.

He is right, we have our devices for making sure that we have control on spending money, and sometimes that is subject to criticism, similar to what I have just given him.

Mr. DOMENICI. I appreciate that. That is plenty for me. I appreciate it very much.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator from North Dakota, the Senator from West Virginia, and the distinguished chairman from the Appropriations Committee, the Senator from Alaska, as to the point being made relative to the universal service fund.

In the 4-year tour of work of trying to reconcile and bring up into the modern technological age communications law, there was one thing that was sacrosanct and generally agreed upon by everyone—and there really are no exceptions to it, because it was sort of a private endeavor. I know the distinguished occupant of the chair believes very strongly in the private market and the forces of private industry vis-a-vis those within the Government. But those within the telecommunications industry, years back, by way of the entities in which they belong, determined the volume of business, and with that volume of business and the costs, they then factored in each month through this private universal service fund the amount to be contributed thereto. And it is operated that way. From time to time the FCC has rules and regulations about it, but, generally speaking, it is a well-administered fund, not participated in, really, by Government law. The Government does not say or the 1996 Telecommunications Act does not require this.

So it came with some amazement that, in all the machinations in trying to work for the Balanced Budget Act of 1997, we were hearing that they were going into the universal service fund. We raised the point in discussions. We had resolutions about it. We put amendments up. And we thought we

had gotten the clear, crystal word through to the negotiators and conferees. Now it appears that that has been disregarded.

For one, we can see what was really bringing it about. They came in with the spectrum auctions, which this Senator and the Senator from Alaska joined in in the original instance, tried to raise money and factor in the market forces. But we have found in the more recent auctions that we sort of are scraping the cupboard dry or bare, as the expression is, whereby on an auction of last year, agreed upon in October to bring in $3.9 billion, only factored in or received $13.1 million instead of billions up there—few millions. So when they came with the factored-in $26.1 billion in spectrum auctions, they realized that the Congressional Budget Office, and anyone else estimating it, was going to have to downgrade it, so they put in a catchall, the universal service fund with a blank amount, until now, I guess. It is marked at the desk.

I understand from the debate it is $3 billion. This cannot happen. You do not want to take what is really working and turn it into a slush fund for budgeteers or for conferees or for any other kind of nonsense that is going on along here—smoke and mirrors, as they call it.

So I am glad the point is being made here in a most eloquent fashion by the distinguished Senator from North Dakota, Senator ROCKEFELLER of West Virginia, and now Senator STEVENS, who was the ranking member on our Commerce and Communications Subcommittee for many, many years. We worked in this field. We fashioned out some funds that would be available for the schools, for the libraries, the hospitals, and otherwise.

We really have, I would say, one of the finest elements of the 1996 Telecommunications Act, passed by a vote of 95 Senators here in this body, that the outstanding innovative feature was the agreed-upon embellishment of the universal service fund in order to bring in the libraries and schools and hospitals and otherwise of America, to bring to all of America communications services in the Internet and otherwise.

Now, we just passed that early on, and we turned our backs, and, heavens above, budgeteers have turned it into a slush fund. I hope that does not occur. I hope the point is made. I do appreciate the leadership of our colleagues who pointed it out this afternoon.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I appreciate very much the comments made by the Senator from West Virginia, the Senator from South Carolina, the Senator from Alaska, the Senator from Arizona, and others. I say that the Senate minority leader, Senator DASCHLE, feels very strongly in opposition to this particular provision.

I was very careful when I began this discussion. I was not critical of the distinguished chairman of the Budget Committee. I said that I thought they had brought a product to the floor that is a compromise which represents the best of public service.

There is much in here to commend this. I am going to vote for this. This is what we are going to vote on. It is a pretty good piece of work. This page is what I am talking about, coming right out of the middle of this provision, "Universal Service Fund Payment Schedule."

There was a story once about a fellow—I do not have backwoods in North Dakota. In fact, we rank 50th in America in the amount of our native forest lands. So we do not have any backwoods stories. But down in your part of the country, we hear all these backwoods stories.

There was a story I heard once about a fellow that came over a hill in the backwoods, and he found a couple of old codgers there sitting over a pot that was hanging over a fire, and they were making something. He said, "What are you fellows making?"

They said, "Stew."

"What kind of stew?"

"Horseradish stew," they said.

"How on Earth do you make horseradish stew," they asked.

"Well," one said, "You take one horse and one radish."

That is the menu here—"horse" and "radish."

You have to look through this whole thing to find out what has been brewed, what has been cooked. And I like a lot of this. I think a lot of this advances this country's interests. The provision I brought to the floor today to talk about is a terrible provision. It is a terrible provision and ought not be here.

Mr. President, I heard discussion earlier by the chairman of the Senate Commerce Committee, chairman of the Senate Appropriations Committee, and others, that there will be legislation—first a hearing, and then legislation to deal with this. We may never again be back at this intersection, an intersection where we are having to come to the floor to say, "You can't use money, you can't count money that never comes to the Federal Treasury as part of a calculation to balance the budget." Why, in my hometown of 300 people, you would be laughed out of the cafe in 2 seconds. You can't count money that does not come to the Federal Government.

So, despite the fact that I am going to offer a point of order under the Byrd rule—and my understanding is that I will probably not prevail—I do not intend to ask then for a vote to appeal the ruling of the Chair. I will accept the ruling of the Chair as a ruling, and will disagree with it, I suspect, if the ruling is what I expect it to be. But I will say this: I expect us never to be back to this intersection because I expect that those of us on the authorizing committee who know what the fund is and what it is for and what it is about, we will never again allow a discussion to go on somewhere in the bowels of this building in which OMB and CBO bring to the table a menu of items that say, "By the way, here is a way to count money to make things look different than they really are."

I say, the Senator from New Mexico talked about this being a White House creation. My understanding is that, indeed, the Office of Management and Budget and the White House have agreed that this provision is part of this budget process. In fact, the latest provision, which is, I think, the third provision of this type, this was, in fact, brought to the table by the White House. Originally, I understand it came from the Congressional Budget Office, agreed to by the Office of Management and Budget. But notwithstanding what its conception was, I think it is terrible, terrible public policy, and I hope that we never again are at this point.

I think the discussion we have had is a useful discussion, which has served notice to every Member of Congress that while we cannot get at this provision at this point, there will be a time when we will no longer debate this because we will have changed Federal law to prevent this sort of thing from happening.

Mr. BURNS. Mr. President, the Federal Government should not manipulate the universal service fund to balance the Federal budget. I believe this for several reasons.

The provision in the conference reconciliation package which manipulates the Federal universal service fund and allows the Federal Government to use this fund to balance the Federal budget is outrageously bad policy, and is, I believe, an unconstitutional takings.

In States like Montana, the universal service fund is absolutely critical to the provision of basic telephone service at reasonable and affordable rates. However, lately it seems that this fund is becoming the "ox that gets gored" to resolve a variety of high profile problems or issues. Universal telephone service is a privately funded support system that works without Federal monetary aid. Unfortunately, due to its present on-budget status, this privately financed program is subject to the whims of the budgeteers. A couple of months ago, the FCC, at the urging of the Vice President, decided to add a further burden of $2.25 billion a year on the contributions to the fund to pay for linking schools, libraries, and rural health care facilities to the Internet. Now the Congress, by this reconciliation package, is seeking to balance

the budget at the cost of universal telephone service. This will have extremely negative impacts upon basic telephone service in rural and remote areas of the country which depend upon the fund to keep prices for telephone service reasonable; consequently, here we are, in the name of balancing the Federal budget, effectively raising rates for telephone service for all customers who happen to live in states like mine. This effectively targets the rural customers and is simply unacceptable. Sound telecommunications policy must not be manipulated to comport with fleeting budgetary concerns. Rural Americans—and those others who receive affordable service as a result of universal telephone service—must not be subjected to the uncertainty of this process.

Furthermore, I believe that, even if this provision were not such outrageously bad policy, we should not adopt it because it will likely be struck down by the courts as an unconstitutional taking of private property. Contributions to the Federal universal service fund are made by telephone companies and wireless telephone providers and, as such, are not the property of the Federal Government. The Telecommunications Act clearly establishes the manner in which universal telephone service funds are to be collected and disbursed. Pursuant to the act, universal telephone service moneys logically should not be classified as either Federal receipts or Federal disbursements and thus should not be associated with the Federal budget, as the administration has insisted, and as some in Congress have allowed. Clearly these are not Federal funds.

Thus, the Federal Government's use of these funds interest free is, in effect, a governmental taking of that interest. Consequently, I believe that a constitutional challenge to this provision will likely be successful. Regardless, there is one thing of which we can be absolutely certain: this provision will end up in the court system, thus wasting phone company, and by extension phone company customer, and taxpayer money. Folks, this provision is a bad idea for any of a number of reasons, and I urge my colleagues to join me in opposing any efforts by either the administration or Congress to use the universal service fund to balance the Federal budget.

Additionally, this ill-advised raiding of the universal service fund sets an absolutely terrible precedent. While I am confident that the budget agreement is based on sound numbers, what will happen if the economy takes a turn for the worse and the economic assumptions on which the balanced budget plan is based come up short? Will the budgeteers not look to increase the amount of money that is borrowed from the universal service fund? Even if that's not the case, and even if the money borrowed from the fund will be repaid, this amounts to a back-door tax increase levied on every American through his or her telephone bill. I don't believe that we need to raise taxes in order to balance the budget—that's why I joined every other Republicans member of Congress in voting against the ill-conceived Omnibus Budget Reconciliation Act of 1993—but if we're going to raise taxes, we ought to be forthright about it. This scheme to raid the universal service fund is anything but forthright.

UNIVERSAL SERVICE

Mr. KERREY. Mr. President, I support the Dorgan point of order against the provisions in the reconciliation bill which manipulate the universal service support system to create a bookkeeping gimmick which is disguised to look like deficit reduction.

Universal service support is the complex system of intercompany payments between phone companies designed to ensure that telephone rates are reasonable and affordable. The universal service support system assures that phone rates and services are comparable in rural and urban areas. This system of payments and shared costs does not touch the U.S. Treasury.

For the first time, the reconciliation conference agreement would manipulate the universal service support system for budgetary gains. This is a terrible precedent which if abused will drive up phone rates, especially for rural Americans.

The idea of universal service is profound. It is one of the most fundamental principles of telecommunications law and economics. The concept was introduced in the original Communications Act of 1934 which promised "to make available to all Americans a rapid, efficient, nationwide and world-wide wire and radio communications service * * *"

From 1934 to 1996, regulation and monopoly were the primary means of ensuring telephone services to all Americans. In 1996, the Congress embraced the idea that competition would best deliver telecommunications services to all Americans at affordable rates.

The Congress also recognized that there were some markets which competitive companies would not serve and some areas where costs are so high that rates would drive citizens off of the phone network. In those markets, universal service support would keep rates affordable and comparable to urban areas.

The principle of universal service is that all Americans should have modern, efficient, and affordable communications services available to them regardless of where they live.

Universal service support is not a subsidy, and it is not a tax. It is a shared cost of a national telecommunications network.

What makes the American phone network valuable is that almost anyone can be reached. Affordable phone service is not just important to the citizens of Valentine, NE or Regent, ND, it is of value to the citizens who live in New York, Chicago, and other urban areas who need to reach Americans in all 50 states.

The basic bargain of the Telecommunications Act of 1996 was that the gates of competition would open, provided all telecommunications carriers contribute to the support of universal service. Under the act, support would be sufficient, predictable, and the burdens would be shared in a nondiscriminatory manner.

To assure that all Americans shared in the benefits of the information revolution, the Congress also adopted the Snowe-Rockefeller-Exon-Kerrey amendment which provided for discounts to schools, libraries, and rural health care facilities. The bottom line was that no American would be left behind.

The precedent that the reconciliation conferees have set is dangerous. It threatens to undermine the promise of sufficient and predictable support for universal service. It does so to gain a smoke and mirrors bookkeeping advantage in the budget.

If the universal service support system is manipulated for this purpose, consumers will lose.

The very system which assures affordability should not be jeopardized by an attempt to avoid the real choices necessary to produce a balanced budget.

Mr. DOMENICI. I ask the Senator, are you ready to at least make your statement about this? I understand your points. I hope everybody knows—I should have gotten recognition. Are you through?

Mr. DORGAN. I ask the Senator from New Mexico if he could hold for a moment. I will be happy to yield the floor and take a moment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. I would like to ask the Senators, we have now been on this bill since 12 o'clock, which has been for 5 hours, 25 minutes, all of which I believe is counted against the 10 hours. I very much wonder what Senators would like to do with reference to the bill.

Are there more Senators who would like to speak? The bill is not subject to amendment. There is a list of BYRD rule violations that is around. It is not hidden. I just am wondering what the pleasure of the Members is. I think that most of the Byrd rule violations have been clearly worked by Democrats and Republicans and are consistent with the bill and should be waived. But we cannot do that without conferring with a number of Senators, including the distinguished Senator BYRD, in due course.

There is a conference going on, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. Mr. President, I appreciate the indulgence of the chairman of the Budget Committee. I was prepared to make a point of order, a Byrd rule point of order, on this universal service provision. I am persuaded that making a point of order, in which the Parliamentarian would likely rule that this provision is not violative of the Byrd rule, would put us in the position of having a ruling by the Chair blessing an approach that I think deserves not a blessing but condemnation. So I am not going to proceed to make the point of order.

I am persuaded to decide that by the fact that the Senator from Arizona, the chairman of the authorizing committee, of which I am a member, indicates, first of all, a determination to hold hearings in support of changing the law to prevent this from occurring again and statements by the Senator from Alaska, Senator STEVENS, and Senator ROCKEFELLER and others, including Senator HOLLINGS.

It is clear to me that we will not likely come to this point again. We will likely see a law change that says universal service funds cannot be used for this purpose. For that reason, I will not require the Chair to rule on a Byrd rule point of order on the universal service provision because I simply don't want anybody to believe there was any blessing applied to this approach in this piece of legislation.

Let me make one additional point. The Senator from New Mexico made a point some while ago, and I suspect he thinks that we are here in some ways jabbing away, and so he made a point that, gee, this isn't the only place this stuff goes on. Everybody in the Chamber would agree with that assessment. We understand that there are games and there are games. We also understand that this piece of legislation, the reconciliation bill, this year provides significant traction toward the goals we all want for this country: getting our fiscal house in order, making the right investments, cutting spending, and doing other things. I understand all that.

My point was—and I was not critical of the Senator from New Mexico—there is a provision right in the middle of this, which is a tiny provision, that is fundamentally wrong and ought to never be put in a piece of legislation like this. I am now believing from this discussion this afternoon that we will not likely be forced to discuss this again on the floor of the Senate, because those of us who are involved in describing what a universal service fund was in the Telecommunications Act will join and conspire, in a thoughtful way, to change the law, so no one—OMB, or CBO, or anyone—can misinterpret whether those revenues touch the Federal Government. They do not and they cannot, therefore, be used to plug some kind of a hole in the budget process.

Mr. President, I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I yield myself 5 minutes. First, while Senator STEVENS is on the floor, he has made some very good points, and, certainly, the distinguish Senators on the Democrat side have made some good points. The Senator from New Mexico wants to do nothing in this budget bill that will adversely affect our movement toward universal service. There is no intention in this budget reconciliation bill, which I ended up agreeing to—and I have already explained why—but there is nothing in it that is going to deny the march toward universal service that is prescribed and was your thoughtful, visionary idea, Senator STEVENS. I just ask you, so we have the record straight, is that your interpretation, also?

Mr. STEVENS. Mr. President, I say to the Senator from New Mexico that we have studied this and there is no impact on any universal service provider or universal service beneficiary that is adverse. There may actually be a beneficial effect, in terms of some of the providers. But it is not a provision that harms universal service. It is a provision that tinkers with the funding of universal service, but not adversely to the system. I will agree with that.

Mr. DOMENICI. Now, Mr. President, might I say while a number of Senators are present—and hopefully others have access to what we are saying—we have now been on this bill on the floor for 6 hours, or we will be in 15 minutes. As everybody knows, there are 10 hours on reconciliation. Frankly, there are no amendments in order, and, clearly, the Senator from New Mexico will stay here if there are other speeches or other comments that people want to make. But I very much think we ought to be able to vote at a time certain tomorrow morning.

Now, I am just wondering if there is anybody who—Senator BYRD?

Mr. BYRD. Mr. President, I thank the distinguished Senator. I have a question. Under the rule with respect to extraneous material, I read an excerpt therefrom:

> The Committee on the Budget of the Senate shall submit for the RECORD a list of material considered to be extraneous under subsections b(1)(A), b(1)(B), and b(1)(E) of this section to the instructions of the committee as provided in this section.

Is that list available?

Mr. DOMENICI. Senator BYRD, that list is not only available, it has been sent to the desk in accordance with the statute.

Mr. BYRD. May I see a copy of it?

Mr. DOMENICI. Yes, indeed. This is the list that we submitted.

Mr. BYRD. I thank the distinguished Senator. Now, I have been supplied by the minority with a list of extraneous provisions, and it appears that, on a cursory examination, they are not the same; the two lists are not in agreement on all fours.

Mr. DOMENICI. Senator, we don't know what might be different, but we are certainly willing to look and see what is different. We have been in contact with them and working together, as you might suspect.

Mr. BYRD. Mr. President, I think if there is going to be a list, it should be a complete list, and I am only raising the question because I have been supplied with two different lists—one list by the minority and one by the majority—and there may be some of the same things on both lists, but I am not sure. It appears to me that some of the items on the minority list are not on the majority and perhaps vice versa.

Could we have a clarification of this matter?

Mr. DOMENICI. Staff for the minority is approaching. I will ask him the question.

Could I get a quorum call?

Mr. BYRD. Absolutely.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. 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. DOMENICI. Mr. President, I yield to the other side.

Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I request such time as I may consume from the Senator from New Jersey.

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

Mr. DOMENICI. Could the Senator kind of guess? How much; 15 minutes?

Mr. REED. No. Close to 5 minutes.

Mr. DOMENICI. Why doesn't the Senator ask for up to 10?

Mr. REED. I ask for 10 minutes.

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

Mr. REED. Thank you, Mr. President.

Mr. President, I rise to speak in favor of this bill. As one who voted against the Senate version of this legislation, I am especially pleased today to be able to support this initiative—an initiative

that, among other things, provides 10 years of solvency to the Medicare Program, and makes a substantial investment in the health care of our children. I would like to remind my colleagues that we were able to craft this agreement because of the tough vote that I and others cast in 1993 for President Clinton's deficit reduction plan—a plan that has reduced the deficit from almost $300 billion to approximately $40 billion or perhaps lower.

I am particularly pleased that this bill makes a remarkable investment in the health care of our children by providing $24 billion to States to spend for children's health care. This new program represents the most significant and far-reaching expansion in our social programs since the passage of Medicaid and Medicare in the mid-1960's. These children's health provisions will give our children the healthy start that they deserve, and the healthy start that is necessary to help young people become effective students and help these students become effective workers, and help all of us raise a generation of American citizens who will serve this country and lead the world.

Congress is committing significant resources to children's needs. And now we must turn our attention to the days ahead to ensure that these resources are used wisely. I remain cautious about this new initiative. As with any investment of our taxpayer's dollars, the Federal Government needs to ensure that the investment is well spent. The plan which is being offered today provides a wide array of options and benefit plans with a high degree of flexibility. And it is crafted in a such a way that it could perhaps be gamed—not for the benefit of the children but for the benefit of those who will be enriching themselves from the system. As this program is implemented, we need to provide adequate oversight to ensure that the children are the beneficiaries of this program, and that they receive the benefits they need, that their health care is protected, and that we as a Nation can prosper. The Secretary of the Department of Health and Human Services, along with the Congress, has her work cut out for her. And together we must ensure that this program is implemented wisely and benefits the children that we so desperately and appropriately want to serve.

In addition, this conference agreement makes significant changes in the Medicare Program. Most importantly, this bill brings 10 years of solvency to the Medicare Program—a program that more than 30 million Americans depend upon, and that more than 170,000 Rhode Islanders depend upon.

Like the amendment I offered during the debate on the Senate version of this bill, this legislation does not include the provisions which I believe take the wrong approach to solving our Medicare problems—provisions like raising the eligibility age, means testing for the part B premiums, and a home health copayment for home health services. This legislation strikes those provisions, as my previous amendment struck those provisions.

A home health care copayment would have negatively impacted the sickest and poorest of Medicare beneficiaries. And an increase in Medicare's eligibility age is a step in the wrong direction. Simply put, raising the eligibility age for Medicare increases the ranks of the uninsured. Already, 13 percent of the 21 million people age 55 to 64 lack health insurance. It makes no sense at all for Congress to eliminate Medicare as an option for seniors who have nowhere else to turn. These and other issues will be debated in the context of long-term Medicare reform as we address the problems faced by Medicare for the next generation.

During the Senate debate on this bill, as I indicated, I offered an amendment to strike these provisions. My amendment failed. But I am glad to see that today we have reached an agreement which protects Medicare, extends the life of the program for at least 10 years and does not attempt an ad hoc approach to structural reform.

This bill includes many improvements to Medicare. For example, it has expanded preventive health care benefits for mammography, pap smears, diabetes, prostate, and colorectal cancer screening, bone density measurements, and vaccines. This bill also requires the Medicare Program and managed care plans to give more information to beneficiaries about their choices and their coverage, and the quality of that coverage. All of these are welcome developments.

I am also pleased that this bill contains $1.5 billion for protecting low-income Medicare beneficiaries against an increase in Medicare premiums. However, I am disappointed that this comes in the form of a block grant to the States that ends after 2002. This approach has the potential to fall short of providing real protection for low-income Medicare beneficiaries. Any increase in Medicare premiums can result in significant hardships for low-income seniors, and these individuals deserve a permanent guarantee of protection.

This bill also includes numerous changes in Medicare reimbursement policies—changes that will have a great impact on those individuals and institutions that provide health care to Medicare beneficiaries. I will keep a vigilant eye on the implementation of these changes, paying particular attention to their impact on the access to and quality of care provided to Medicare beneficiaries.

This legislation also establishes a bipartisan national commission to examine the long-term solvency of the Medicare Program. The creation of this commission lays an important foundation to work on long-term reforms and solutions, and to tackle those issues that are not suitable for the narrow confines of a budget debate. Such reform is needed to address the challenges that the Medicare Program will face as members of the baby-boom generation become recipients of Medicare. This commission provides that framework, and I am encouraged that the commission is established by this legislation.

I am prepared to vote in favor of this bill. As with any piece of legislation, it is not perfect. Indeed, many individuals will benefit from various provisions of the bill. Medicare beneficiaries will have the security of an additional 10 years of solvency in the program. The families of uninsured children will now have new State programs to turn to. Medicare beneficiaries will have new choices and increased preventive health care benefits.

But this is no time to rest on our laurels. To ensure that Medicare beneficiaries continue to have access to high-quality care in the face of constrained payments to providers, to ensure that the $24 billion for children's health care is well spent, and to ensure the long-term viability of the Medicare Program, we will need continued vigilance on the part of many, including the Congress, the Secretary of Health and Human Services, and those persons served by the Medicare and Medicaid Programs.

We also must recognize that within this budget, as we continue to draw down discretionary spending over the next several years, harder and harder choices will ensue. We have to ensure that we make the right choices. We have to ensure that the spirit today—a spirit that reaches out to help our children, a spirit that reaches out to help and maintain our seniors—will be the spirit that dominates our future budget deliberations as it has ennobled our past efforts to strengthen America.

I yield the remainder of my time.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, on behalf of Senator DOMENICI, I yield myself up to 15 minutes. I don't believe I will take that long.

But I also ask that the Senator from Montana be allowed to take a minute to introduce legislation.

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

Mr. BURNS. I thank my friend from Indiana.

(The remarks of Mr. BURNS pertaining to the introduction of S. 1090 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Indiana.

Mr. COATS. Madam President, I don't believe I will take all 15 minutes.

I want to express, however, the reason I am voting against this budget agreement. When the budget resolution came before the floor of the Senate initially, I voted against it because it did not contain the entitlement reforms—the structural reforms that I felt were absolutely necessary if we are ever going to have a sustained, consistent effort at balancing our budget. Clearly, we all know that the entitlements—the mandatory spending—have not been structurally reformed for a long, long time, and we are on a collision course with their ability to meet the demands on those funds in the future. Some changes were made in this bill. I want to talk about those in a minute. But they were not the structural reforms.

Then when the budget reconciliation bill came before the Senate, I supported the budget reconciliation bill because the Senate had the courage to stand up to the plate and address the need for entitlement reforms. I doubt that there is a Member of this Congress, House or Senate, or anyone else who has paid attention to this issue, that doesn't recognize that this is something that we have to do. We are on a collision course with bankruptcy for Medicare.

We hear all of this wonderful talk about preserving Medicare for the benefit of our elderly. Yet, the quality of Medicare services continue to decline because we continue to impose restraints and restrictions on the providers, and it squeezes the quality of care. And we fail to have the will to step up to the plate and deliver any kind of structural reform in the program—even reform that takes place well into the next century. The Senate addressed that issue. The Senate by a fairly substantial vote passed legislation which would begin that process of structural reform. So I supported the bill on that basis, hoping that it would survive conference. Due to a number of factors which I will talk about, it didn't survive. And it is back here now without those reforms.

All the wonderful promises and rhetoric about addressing the Medicare problem is more of the same that we have been promising for the last several budget resolutions, most of which has not come to fruition.

So I approach this conference spending bill with a sense of sadness and feeling of resignation—a sense of sadness because I know that the Senator from New Mexico and others who have been involved in this process have worked very, very hard to put together a bill which moves us toward a balanced budget. They have incorporated a number of provisions in here which I believe are important provisions, and provisions which I support; but a sense of sadness because we have dropped in the negotiations what I think were the most important parts of this budget reconciliation bill—the structural reforms and entitlements.

It is entitlements that are eating up our revenues. It is the entitlements, were it not for a booming economy which is pouring revenues into our coffers for the present time—it is the entitlements which would be squeezing other aspects of the budget, whether you are for education, or roads or safe water, or environmental issues, or a whole number of other things. Those are being squeezed because we don't have the political will and courage to address the entitlements.

It is resignation that I feel because lasting structural reform of Government spending seems to be beyond the ability of the Congress and the executive branch.

The measure before us today is significant not for what it contains but for what it does not contain—commitment to fundamental institutional change. And that failure is most obvious, as I have said, when we look at the entitlement parts of this bill.

Here, for whatever reason—probably a lack of political will—we have dropped the three measures which maybe signaled the best hope of future ability to contain entitlement growth. Instead, we have what is estimated as a $115 billion reduction in Medicare spending, but this is an evasion, not a reform, because these projected savings are achieved by the typical way we have done this: decreasing payments to providers. It has been tried over and over again, and it has failed. Costs have continued to rise under reduced payment schemes while the quality of care has decreased.

The plan also shifts the home health care program, the fastest growing part of Medicare, from Medicare part A to part B. That is a shift, at taxpayer expense, by the way, that simply delays the overall failure of this program by not reforming its faults but simply making it sustainable. In addition, the measure drops the Senate provisions that would have set the stage for future reforms, measures that, as I said, were adopted as a result of the leadership of Senator GRAMM, who offered the amendment, and support on a bipartisan basis—Senator KERREY of Nebraska and others—for these reforms. The Senate bit the bullet. The Senate exercised the political will. The Senate put itself out on a limb only to see all of these reforms dropped in these negotiations.

Means testing provision dropped, the increase, very gradual increase in eligibility from 65 to 67 that would not affect anybody 46 years of age and older, and the increase in copayments for home health care service dropped, all killed, and along with that any hope for meaningful reform.

The President bears some of this responsibility, a lot of this responsibility, because we all know that we cannot accomplish this without Presidential leadership, and that leadership was tepid at best. There was no sustained active involvement on the part of the executive branch and the President to bring about these reforms. And support from the House, not this body, but support from the House was weak, and I regret that. It falls on the shoulders of both parties.

Left unchecked, CBO projects that Medicare spending will explode to $470 billion a year by the year 2007, representing an average annual increase of 8 percent over the next 10 years. This is a growth rate of nearly double the estimated growth of the overall economy for the same period. In the period from 2010 to 2030, when 80 million baby boomers move into retirement, Medicare's expenses are expected to surge to 14 percent of our gross domestic product as compared with 2.5 today. This cannot be sustained. This is a train coming down the track headed for a wreck, and yet time after time after time, as we are faced with the prospect of that train wreck, we blink. We pass it off to the next Congress and the next Congress, and we defer and pass that debt off to future generations.

The $115 billion in promised reduced payments does nothing to avert this long-term disaster. By dropping the reforms passed by the Senate, budget negotiators have brought the looming crisis one step closer to reality. And just yesterday in the Washington Post, there was an article entitled, in fact, "Billions Wasted, Medicare Audit Says." The article opens by stating that nearly 40 percent of the home health care services provided to frail elderly Americans under the Medicare Program are unjustified either because the service is not necessary or the agency administering the care is not sanctioned to do so or the person is not covered—40 percent. I think the figure was $23 billion a year in fraud and waste and abuse of one part of the Medicare system.

We had a provision in the bill that began to address the problem, and we passed on it. We could not even turn to seniors and say that the program which benefits you, home health care—and I used that for my father when he was home in need of that health care—the program that benefits you is so fraught with waste and abuse it is jeopardizing the entire Medicare system. And yet, the Congress refuses to even impose the most minimal of corrections to try to address that problem.

So what do we offer our seniors? A so-called bipartisan commission to study the problem. Madam President, there is nothing left to study. We have studied this thing to death. The problem is not a lack of knowledge. It is a lack of political will. Confronting the Medicare crisis will take political courage and it will take sacrifice. But these values, which should come easier in a time of economic growth and prosperity, are absent in the spending plan.

That is to say nothing about Social Security. That is another problem that we don't even touch here and we also need to address.

All of this, as I said, is deeply disturbing, but then when you add to that a new entitlement program, a $24 billion health care entitlement, paid for with a tax hike on cigarettes and tobacco, you compound the problem—not because we do not need a health care program for children; we do, but because this one was designed with no rational basis. It was created without an assessment of the need. The level of funding was arbitrary. We were throwing figures around here—how much can we add? How much can we subtract? Pulling figures out of thin air in a mindless bidding war rather than having an adult policy debate.

We are creating in this measure future entitlement problems that we cannot even imagine because we have not taken the pains to consider those problems.

I am not speaking against the need for health care for children. I am saying let us determine what the need is and tailor a program that addresses the specific need without just throwing a new entitlement program in place that will probably go the way of all other entitlement programs and that will grow beyond our means to check it, and we will not be able to put reforms in that either.

What is absent from this agreement is any type of fundamental, lasting structural reform in our Government and its spending. That reform is now possible because of the strength of our economy. This is when we ought to be putting these reforms in place.

We always hear that we cannot make structural reforms during times of economic slowdown, because that would have too much negative impact on our economy. And now we hear the argument that we cannot make reforms during economic prosperity because it is too difficult, because a strong economy signals to us that we do not need to make reforms. We will just reap the benefits of the new revenues that are coming in. And so when the economy is down, we cannot do it because it hurts the economy, and when the economy is doing well, we say we do not need to do it; there is no sense of urgency anymore.

Our entitlement crisis is lurking around the corner, just below the surface of this strong economy. The same irrational and bloated bureaucracies that choke our economy in hard times hide in the shadows of economic boom because this legislation does nothing to reform and limit the Federal Government.

Sooner or later the economy is going to slow. I wish it would not, but it will. And when it does, the reckoning will be even more severe. We have squandered a unique opportunity—a President who is not running again, a Congress led by Republicans who are willing to walk out on a limb again for entitlement reform, who will support a President if he would just provide leadership on entitlement reform, a prosperous economy where people are at work, revenues coming in.

Is there ever going to be a better time to bring entitlement reform to our budget process? I doubt it. And yet we are squandering this marvelous opportunity to make changes now that will be incremental and small in nature but will provide great dividends and great benefits for the future. Instead, in the interest of political expediency, we postpone those tough decisions to a future Congress, to future generations, and we look myopically at the immediate election consequences, what we perceive them to be. I do not believe they are there. I think people are looking for politicians who will exercise political will, make the tough decision, step up and do what is right, and I think they will be rewarded in the polls. Instead, we say let us pass on this one more time.

We will never have a better moment. We will never have a better opportunity. We will never be in a position where we are 3 years out from a general election, more than a year out from the next off-term election, with an Executive who does not ever have to stand for election again in his life, with a Senate that has already made the decision to go out on the limb. We will never be in a better position, and yet we have squandered this moment.

For that reason, for all of the hard work that the Senator from New Mexico and others have put in this agreement, for all of the benefits in this agreement and the positive things in this agreement, I cannot support this resolution, because my litmus test, as I stated when I voted against the budget resolution and for the budget reconciliation, included entitlement reforms. But now, because they have been drawn out, that litmus test was not met.

That is a minimal litmus test. I was willing to accept minimal reforms, anything, anything that moved us in a path of structural reform, addressing a problem that we know is going to impact negatively on the people of this country and the economy of this country. We know it passes on debt to future generations. We know it places our elderly people in a precarious position for the future of Medicare. And yet at this golden time, which may not come again, for political expediency or whatever reason—I wasn't in the budget negotiations—we once again pass, we once again take a powder on this and say we will do it another time; let's form a commission; let's study it some more; let's have some more recommendations.

How many studies, recommendations and conditions do we have to put in place to keep telling us what we already know?

So, Madam President, I know I am a skunk at the party here, the celebration for the passage of this so-called balanced budget agreement, and I hope it does balance the budget, and it may, mostly, I think, not because of new spending we put in place but because the economy is roaring along and pouring money into the coffers of the Government. I wish we could get more of that money back to the people who have earned that money. Instead, we are creating new entitlements. We passed on the opportunity to reform existing entitlements, and I just regret that very much.

So I may be a lonely voice in this vote, but I cannot for the reasons I have stated support this resolution.

I yield back whatever time I have remaining.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Madam President, I have spoken with the distinguished chairman of our Budget Committee. He has allocated 20 minutes. I think I will take far less.

Madam President, when Alice in Wonderland asked the cat where they were headed, the cat replied, "before you decide where you are going, you must first decide where you are."

And as we look at this so-called Balanced Budget Act of 1997, we should look to see, before anything is enacted, exactly where we are. At this very minute, we have a pretty good estimate from the Congressional Budget Office.

We know, Madam President, that as of May 19, CBO estimated the deficit for this year, 1997, to be $180 billion. We also know that both the CBO and the Office of Management and Budget have agreed that this year's revenues are now exceeding their original estimates by as much as $40 billion. So, the August estimate for 1997 will be revised to show a deficit of about $140 billion.

The idea is to balance the budget and remove the deficit. If you are going to remove your deficit, you have to do it one of two ways—or both ways; namely, you have to cut back on your spending and you have to increase your revenues or do both. The present Balanced Budget Act of 1997 proposed increases in spending, rather than cuts in spending. And, instead of increasing the revenues, it reduces revenues by some $90 billion.

So, Madam President, I have studied this document, and I have to stand here as a matter of conscience, because I have been the chairman of the Budget Committee. I have been in the committee itself since its institution in 1974. I cannot mislead the people with a vote that would approve what this budget resolution is all about. I could go at length as to the various smoke

and mirrors, backloading, excessive spectrum auctions and other deceptions contained in this bill, but let me go to one that is not just a simple smoke or a simple mirror. The fact of the matter is, it is an illegal smoke and an illegal mirror. Why do I say that? We had some struggle during the original enactment of the Greenspan Commission report in 1983. Social Security was about to go broke, but its bankruptcy was avoided by the National Commission on Social Security Reform. I hold a section of the report, dated January 1983, in my hand.

Section 21 of the Greenspan Commission report recommended taking Social Security off budget. That is the core of the misunderstanding—or the understanding. We stated categorically, in accordance with the Greenspan Commission, that when we were calculating deficits, whether or not we were in the red or in the black, that we would not include Social Security trust funds.

I ask unanimous consent at this point to have printed in the RECORD a table of the various pension fund moneys that have been expended and, so there will be no misunderstanding, I would also like to include the "Budget Reality" table that I referred to earlier which contains the CBO figure of a $180 billion actual deficit this year.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

TRUST FUNDS LOOTED TO BALANCE BUDGET

[By fiscal year, in billions of dollars]

	1996	1997	2002
Social Security	550	629	1,095
Medicare:			
HI	126	116	−58
SMI	27	22	34
Military Retirement	117	126	173
Civilian Retirement	394	422	561
Unemployment	54	61	77
Highway	21	23	40
Airport	8	5	−28
Railroad Retirement	17	18	20
Other	60	62	78
Total	1,374	1,484	1,992

HOLLINGS' BUDGET REALITIES

[In billions of dollars]

President and year	U.S. Budget	Borrowed trust funds	Unified deficit with trust funds	Actual deficit without trust funds	National debt	Annual increases in spending for interest
Truman:						
1945	92.7	5.4	−47.6		260.1	
1946	55.2	−5.0	−15.9	−10.9	271.0	
1947	34.5	−9.9	4.0	+13.9	257.1	
1948	29.8	6.7	11.8	+5.1	252.0	
1949	38.8	1.2	0.6	−0.6	252.6	
1950	42.6	1.2	−3.1	−4.3	256.9	
1951	45.5	4.5	6.1	+1.6	255.3	
1952	67.7	2.3	−1.5	−3.8	259.1	
1953	76.1	0.4	−6.5	−6.9	266.0	
Eisenhower:						
1954	70.9	3.6	−1.2	−4.8	270.8	
1955	68.4	0.6	−3.0	−3.6	274.4	
1956	70.6	2.2	3.9	+1.7	272.7	
1957	76.6	3.0	3.4	+0.4	272.3	
1958	82.4	4.6	−2.8	−7.4	279.7	
1959	92.1	−5.0	−12.8	−7.8	287.5	
1960	92.2	3.3	0.3	−3.0	290.5	
1961	97.7	−1.2	−3.3	−2.1	292.6	
Kennedy:						
1962	106.8	3.2	−7.1	−10.3	302.9	9.1
1963	111.3	2.6	−4.8	−7.4	310.3	9.9
Johnson:						
1964	118.5	−0.1	−5.9	−5.8	316.1	10.7
1965	118.2	4.8	−1.4	−6.2	322.3	11.3
1966	134.5	2.5	−3.7	−6.2	328.5	12.0
1967	157.5	3.3	−8.6	−11.9	340.4	13.4
1968	178.1	3.1	−25.2	−28.3	368.7	14.6
1969	183.6	0.3	3.2	+2.9	365.8	16.6
Nixon:						
1970	195.6	12.3	−2.8	−15.1	380.9	19.3
1971	210.2	4.3	−23.0	−27.3	408.2	21.0
1972	230.7	4.3	−23.4	−27.7	435.9	21.8
1973	245.7	15.5	−14.9	−30.4	466.3	24.2
1974	269.4	11.5	−6.1	−17.6	483.9	29.3
Ford:						
1975	332.2	4.8	−53.2	−58.0	541.9	32.7
1976	371.8	13.4	−73.7	−87.1	629.0	37.1
Carter:						
1977	409.2	23.7	−53.7	−77.4	706.4	41.9
1978	458.7	11.0	−59.2	−70.2	776.6	48.7
1979	503.5	12.2	−40.7	−52.9	829.5	59.9
1980	590.9	5.8	−73.8	−79.6	909.1	74.8
Reagan:						
1981	678.2	6.7	−79.0	−85.7	994.8	95.5
1982	745.8	14.5	−128.0	−142.5	1,137.3	117.2
1983	808.4	26.6	−207.8	−234.4	1,371.7	128.7
1984	851.8	7.6	−185.4	−193.0	1,564.7	153.9
1985	946.4	40.5	−212.3	−252.8	1,817.5	178.9
1986	990.3	81.9	−221.2	−303.1	2,120.6	190.3
1987	1,003.9	75.7	−149.8	−225.5	2,346.1	195.3
1988	1,064.1	100.0	−155.2	−255.2	2,601.3	214.1
Bush:						
1989	1,143.2	114.2	−152.5	−266.7	2,868.3	240.9
1990	1,252.7	117.4	−221.2	−338.6	3,206.6	264.7
1991	1,323.8	122.5	−269.4	−391.9	3,598.5	285.5
1992	1,380.9	113.2	−290.4	−403.6	4,002.1	292.3
Clinton:						
1993	1,408.2	94.3	−255.0	−349.3	4,351.4	292.5
1994	1,460.6	89.2	−203.1	−292.3	4,643.7	296.3
1995	1,514.6	113.4	−163.9	−277.3	4,921.0	332.4
1996	1,560.0	154.0	−107.0	−261.0	5,182.0	344.0
1997	1,622.0	110.0	−70.0	−180.0	5,362.0	359.0

Historical Tables, Budget of the US Government FY 1998; Beginning in 1962 CBO's 1997 Economic and Budget Outlook, May 19, 1997.

Mr. HOLLINGS. Fortunately—and we are all enthused about it—the deficit is going to come down to about $140 billion this year. It may come down to $135 billion, but I doubt that. I have talked to the authorities. But we know we are spending over $100 billion more than we are taking in. We cannot, under the law, use Social Security trust fund surpluses to mask this deficit. The Senate voted on October 18, 1990, by a vote of 98–2, to take Social Security off budget. It took us quite a while in the Budget Committee, but we finally got it done. That is a law, section 13301, signed by President Bush, to take Social Security off budget.

So, this was a very deliberate act. I am not just trying to impassion senior citizens or any of that nonsense. I am trying to inflame the intellects and the consciences of the Senators. Because every Senator present here today who was here in 1990, voted and said, I believe in that particular policy. No Senator since 1990 has tried to change that; there has been no amendment or bill or otherwise. We had the policy itself reaffirmed in the Retirement Protection Act of 1994 which barred businesses from using the pension moneys to pay the debt.

Then, the Senate passed an amendment in the budget bill, barring corporations from pension misuse, known as the Pension Reform Act of 1994.

Madam President, when I look at this particular budget, I say how in the world, if you are spending over $100 billion more than you are taking in, can you remove the deficit by increasing spending and decreasing revenues? It is quite obvious it cannot be done, except under subterfuge, misuse, misappropriation or other fraudulent acts. Because the Balanced Budget Act of 1997—and we have examined the document now—uses $465 billion of Social Security trust funds to make it appear balanced.

There is no gimmickry here about Government moneys and buying bonds. When you spend the money out of the fund—and that is what we are doing because we don't have it—then it has to be replaced. Under the chart I included earlier, you can see that over $600 billion from the Social Security trust fund has already been expended, and now they will spend an additional $465 billion in this bill. This means that by the year 2002 we will owe Social Security over $1 trillion.

They say, "Oh, it's the baby boomers in the next generation that are going to bankrupt Social Security." No, not at all, my colleagues. It is the senior citizens, the adults on the floor of the U.S. Congress that are decimating Social Security. It is going on. It continues to go on. It is absolutely fraudulent. It is absolutely illegal.

I ask unanimous consent to have section 13301 printed in the RECORD.

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

SEC. 13301. OFF-BUDGET STATUS OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.".

Mr. HOLLINGS. Then, Madam President, I refer to the document itself. They do not have to list in this reconciliation bill the annual deficits, the outlays, budget authority, and the debt itself. But the document of last month, the conference report, does—and I refer to Mr. KASICH's bill: "From the committee of conference submitted on the conference report on the concurrent resolution on the budget for fiscal year 1998."

If you turn to page 4—and I am going to ask the first 15 lines, just those 15 lines, be printed in the RECORD at this particular point. I ask unanimous consent to have that printed.

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

(4) DEFICITS.—For purposes of the enforcement of this resolution, the amounts of the deficits are as follows:

Fiscal year 1998: $—173,000,000,000.
Fiscal year 1999: $—182,200,000,000.
Fiscal year 2000: $—183,200,000,000.
Fiscal year 2001: $—157,100,000,000.
Fiscal year 2002: $—108,300,000,000.

(5) PUBLIC DEBT.—The appropriate levels of the public debt are as follows:

Fiscal year 1998: $5,593,500,000,000.
Fiscal year 1999: $5,841,000,000,000.
Fiscal year 2000: $6,088,600,000,000.
Fiscal year 2001: $6,307,300,000,000.
Fiscal year 2002: $6,481,200,000,000.

Mr. HOLLINGS. Madam President, on line 1 it says, "fiscal year 2002"; line 2, subsection 4, it says "deficit."

Then you look down on line 8 at "fiscal year 2002," and you will not see a balance, but a deficit of $108,300,000,000.

The reason it shows this deficit is because of section 13301, which says you cannot include Social Security trust fund surpluses.

But, if you go down to line 15 and see that the fiscal year debt, from year 2001 to 2002, goes up, not into balance. The debt doesn't go into balance from the year 2001 to 2002. Instead, the debt increases $173.9 billion. This is not a balanced budget.

It's a tragic thing that you can't get this reported. It is a matter of fact. It is a matter of law. It is a matter of conscience. We should all come together and say we won't use pension funds to pay off our debt. We passed a formal rule here some time ago for all corporate America which made this illegal. Denny McLain, the Cy Young Award winning pitcher for the Detroit Tigers, when he got out of baseball, became the head of a corporation, and, unfortunately, used the corporate pension fund to pay off the debt. He was sentenced to 8 years in prison. Tell our friend Denny, if you can catch him in whatever prison, to please run for the U.S. Senate because, rather than sending us off to prison here when we use the pension funds to make the debt look smaller, we get the Good Government Award. Everybody is standing up with the President and the Speaker and the majority leader and saying, "How wonderful, boys. It is Christmas in July." It is a total fraud, absolute farce, and everybody ought to know it. Because what we are doing is breaking into the airport trust fund, the highway trust fund, the military retirees' pensions, the Civil Service retirees' pensions, and everything else I have included in the record. There it is. I have had it typed up.

As a matter of conscience I cannot engage in this deception. I was always taught, some 50 years ago when I got into public service, in 1948—that public office was a public trust. I believe Social Security is a public trust. I think the consummate 98 Senators said we ought to make it a public trust. They said, not only for us but for corporate America, we ought to make certain that some fast-moving merger artist can't come in on a takeover and abscond with the pension funds to pay the debt and pay himself a good bonus and leave everybody else hanging.

So we have it in formal law, we have it in formal policy. But, when it comes to us, we run around and say "unified, unified." There is nothing unified. It is expended moneys in violation of the formal statutory law of the United States of America, section 13301 of the Budget Act.

I can't vote to violate that law and, therefore, will have to oppose the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I would like to offer my congratulations to the leaders on both sides of the aisle, the chairmen and ranking minority members of the Finance and Budget Committees, for all of their hard work in consummating this very significant, bipartisan budget agreement. While this bill is not everything I had hoped for, it is an important step toward getting our fiscal house in order.

Moreover, it is grounded in a philosophy that I strongly believe in—that bipartisanship is the key to making government work. On difficult national problems, such as balancing the budget, neither party alone can get the job done, nor garner the public consensus needed for such action.

Indeed, this was the genesis behind establishing the so-called Chafee-Breaux centrist budget coalition, which I believe deserves considerable credit for advancing the terms of debate on the issue of long-term Medicare reform. Regrettably means-testing of the part B premium, increasing the

age of eligibility from 65 to 67, and the $5 home health copayment were dropped from the final package. However, the credit for getting them into the Senate version of this bill belongs to the centrist budget coalition. Each of these provisions was added to the Senate bill with a big, courageous bipartisan vote—something which would have been unthinkable just a few years ago.

As a result of these pioneering Senate votes and the growing national consensus on the need for long-term reform, President Clinton has now pledged to stand with those Members of Congress who vote for means-testing of the part B premium, an important step toward creating the political environment which will be needed to secure this program for future generations of retirees.

I would further urge the President, as well as Democratic party leaders, to disavow and distance themselves from candidates who resort to mediscare demagoguery in their future political campaigns. The American people deserve a responsible debate on this difficult subject, and the centrist coalition will be working to see that this happens.

This bill does include a number of helpful changes for Medicare beneficiaries, low-income children, and legal immigrants which I would like to briefly highlight.

Medigap provisions included in this bill, which I was pleased to author earlier this year, will do for Medicare beneficiaries much of what the Kassebaum-Kennedy health insurance bill did for working Americans: It vastly improves portability and bans preexisting condition limitations for Medigap policy holders.

This bill also improves access to emergency services for Medicare beneficiaries enrolled in managed care plans, which is derived from legislation Senator GRAHAM authored and I was glad to cosponsor earlier this year. This provision establishes a prudent layperson definition of emergency medical conditions to ensure that emergency services are properly covered.

This legislation also includes expanded preventive health care benefits for Medicare enrollees, including mammography, colorectal and prostate cancer screening; testing for osteoporosis; and improved coverage for diabetes and other important prevention measures. These enhanced services will be helpful to the more than 174,000 Medicare beneficiaries in Rhode Island.

One of my most important priorities, that of expanding access to health insurance for low-income children, is also addressed in this bill. I am especially pleased that we are providing $24 billion for this purpose. This is a critical step forward for Rhode Island's children, 19 percent of whom live in poverty. Many of these poor children—38 percent—live in families where at least one parent is working, yet they are still poor. These funds are targeted to help these families especially.

While I would have preferred greater specificity in terms of the benefits to be provided to children under this program, the final package is a significant improvement over some of the earlier proposals. I want to thank and acknowledge Senator ROCKEFELLER for his leadership and expertise in working to advance the cause for children's health insurance. He was a strong partner in helping to make this a stronger and better program than it otherwise would have been.

I also want to thank Senator ROTH for helping me to ensure that Rhode Island can take full advantage of the funding provided under this program to continue its children's health initiatives. The Finance Committee chairman was very responsive to the problems this legislation posed for States, like Rhode Island, that have already expanded coverage. We were able to work together to ensure that Rhode Island will not be penalized for choosing to expand coverage on its own.

This bill also gives States critical new flexibility by allowing them to enroll Medicaid beneficiaries into managed care without obtaining a waiver from the Department of Health and Human Services. At the same time, the legislation includes important safeguards for these beneficiaries, many of which were contained in legislation I introduced earlier this year. For example, disabled children, children in foster care and special needs children who have been adopted are protected from mandatory enrollment in managed care. Women enrolled in Medicaid managed care programs will continue to have the freedom to choose their family planning provider, even if that provider is not part of their managed care plan.

This bill also restores Medicaid coverage to thousands of children who were removed from the SSI rolls as a result of eligibility changes made in the 1996 welfare reform law. This will be enormously helpful to many low-income families whose children may no longer be considered statutorily disabled but who nevertheless have significant special health care needs.

Let me take a moment to describe the provisions of this bill dealing with legal immigrants. As my colleagues know, the 1996 welfare reform law placed severe restrictions on the Federal benefits that legal immigrants may receive. Among these restrictions was a complete and immediate cut-off of supplemental security income [SSI] and food stamp benefits, not only for future immigrants but for those already in this country legally.

For the elderly and disabled legal immigrants who last August were in the United States—including nearly 4,000 in my own State of Rhode Island—the new SSI ban represented nothing short of a crisis. For many, the loss of this critical Federal aid would mean losing the ability to live independently. In turn, this would present a serious community and fiscal challenge to State and local governments, as immigrants who had lost benefits and faced destitution turned to nursing homes or other costly facilities for support.

I was sorely troubled by these restrictions on immigrants, and pledged to do what I could to mitigate the most harsh of these during this Congress. I am delighted to say that in this regard, we have been successful. The conference report before us now is identical to the Senate-passed bill on which I and others of my colleagues worked very hard.

It restores benefits to those legal immigrants who were receiving SSI as of last August. It also allows immigrants who were in the United States last August and who may become disabled in the future to receive SSI. For my State, this means that 3,753 currently elderly and disabled Rhode Island residents—and many others who may become disabled in the future—will be able to receive basic SSI assistance to allow them to live with dignity.

Now, the immigrant provisions of this bill are not perfect. And I am disappointed that it does not contain the Chafee-Graham amendment on legal immigrant children and Medicaid, or the provision dealing with SSI for those too disabled to naturalize. But the bill before us goes a long way toward restoring fair treatment for the thousands of legal, tax-paying immigrants who were in the country and playing by the rules when welfare reform was enacted.

I want to commend Senators D'AMATO, FEINSTEIN, DEWINE, and GRAHAM for all of their hard work in helping to solve this problem. Since the introduction of our Fairness for Legal Immigrants Act in April, we have been working as a united team toward fair treatment for legal immigrants. With passage of this bill, our efforts will have met with success.

In closing, I am hopeful that we can build upon the bipartisanship that was necessary to make this bill a reality when we turn to the more challenging task of advancing long-term budget and entitlement reforms in the future.

I particularly want to address the entitlement reforms I strongly believe are necessary for Medicare. Although the provisions we worked hard on—means testing the part B premium, increasing the age of eligibility from 65 to 67, the $5 home health care copayment—were dropped in the final package, nonetheless, I think it behooves all of us to continue our work on each of these measures, and certainly I will do everything I can to advance them. I thank the Chair.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. GRASSLEY. I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator is recognized.

Mr. GRASSLEY. Madam President, I rise to address the Balanced Budget Act of 1997.

This is an important moment. This bill represents the triumph of the idea that we must get our national accounts in order. This is an idea that Republicans, with the help of many Democrats, have labored for years to put at the top of the national agenda.

Finally, it is close to being done.

As a member of the Finance and Budget Committees, and as a Budget Committee delegate to the conference, I have been deeply involved in the consideration of this bill. And I have been in a position to witness the dedication Senator ROTH, Senator DOMENICI, and Senator LOTT hve brought to the difficult task of giving birth to this balanced budget legislation. I want to congratulate them on the success of their efforts.

I would particularly like to thank Chairman DOMENICI, Chairman ROTH, Senator LOTT and the other Senate conferees for protecting a number of excellent Senate provisions in the conference committee. Believe me, Madam President, it wasn't easy.

The Medicare portions of the bill will bring about very positive changes in the program.

The bill calls for necessary savings in Medicare, and thereby will help put Medicare, and particularly the Medicare hospital trust fund, on a sounder financial footing. The bill also contains a number of innovations that I think will improve the Medicare Program.

First and foremost is the new Medicare Plus Choice Program, reforming Medicare managed care.

From my perspective, representing the State of Iowa, the inclusion in this bill of a 50–50 local/national blended rate for Medicare managed care reimbursement is extremely important. Also critical is the bill's inclusion of a minimum payment of $367 in 1998, with annual updates thereafter.

The opportunity for additional types of health plans, other than HMO's, to participate in the Medicare Choice Program will open additional opportunities to Medicare beneficiaries. Based upon what I have been hearing from Iowa, I think the reformed payment system and the additional types of plans should truly broaden choice for Medicare beneficiaries in Iowa.

These provisions together should go a long way toward giving Iowans the same kinds of choices Medicare beneficiaries in other parts of the country have.

I also want to thank the chairman and my colleagues on the Senate Finance Committee and the House and Senate conference committees for including many provisions contained in S. 701, legislation I introduced earlier this year regarding Medicare managed care standards. I am especially pleased to see that, beginning in 1998 and annually thereafter, beneficiaries will receive comparative user-friendly charts listing health plan options in their area. The only way to foster consumer choice and competition is by informing Medicare beneficiaries of their options and their rights under the Medicare Choice Program. The lack of information currently distributed to Medicare beneficiaries is astonishing.

The Medicare conference agreement will ensure that beneficiaries have the information they require to make the right health plan choice for their individual health care needs.

Another important protection for Medicare beneficiaries is a fair appeals process. I have been advocating for an objective review of health plans' decisions to deny care.

I am pleased that the Medicare conference agreement adopted my provisions to provide Medicare beneficiaries increased protections during the appeals process. Now, all Medicare beneficiaries will have the assurance that the Medicare program will provide an independent review of all denials of care by health plans prior to beneficiaries appealing to the Department of Health and Human Services.

This increased protection will hold health plans more accountable in their decision making process regarding medically necessary care and will give beneficiaries greater confidence in Medicare managed care, if they choose this option.

Madam President, I am also very pleased that we have preserved in the conference agreement rural health provisions that I have been working on for several years.

These provisions include:

My Medicare dependent hospitals bill, which will help a large number of rural hospitals in Iowa suffering from negative Medicare margins;

Senator BAUCUS' bill on critical access rural hospitals, on which Senator ROCKEFELLER and I have been close collaborators;

Reform of the Medicare disproportionate share hospital program, so that deserving hospitals will be treated fairly whether they are located in urban or rural areas——

Mr. DOMENICI. Would the Senator yield on that point?

Mr. GRASSLEY. Yes.

Mr. DOMENICI. I say to the Senator, I have been listening to your remarks and analysis.

I want to tell the Senate, and anybody interested, if not for CHARLES GRASSLEY, the Senator who has been speaking, we would not have gotten that provision. That is a fair provision because those parts of America—your State, my State, and others—that have done a good job of keeping costs way down, can't make it if we build the program on keeping them down while the very expensive States do not come down. And this is a formula we did not get exactly what we wanted, but thanks to your efforts we came very close to something that you can say is fair and much better for your people.

Mr. GRASSLEY. Yes. I thank the Senator from New Mexico for his kind remarks. And he has spoken better than I can on that issue. But basically what his constituents do not realize and my constituents do not realize, is that we have a very cost-effective delivery of medicine in rural America, very high quality by the way, but because of the historical basis for the reimbursement of Medicare, based upon that cost-effective medicine, we are at a very low level, and the options that metropolitan areas have will not come to rural America; but the provisions of the legislation he just described will make that possible now.

And so I can say this, that in 1995, it would not have been included in the legislation without the intervention of the Senator from New Mexico, even though it was my basic legislation. And he helped us this time at a very, very critical time in the negotiations between the House and the Senate. So I may have authored this legislation, but the fact that it is in the final package is a tribute to the leadership of Senator DOMENICI.

I will continue on and say that we have also for rural areas the provisions for:

Expanding the existing telemedicine demonstration project, in order to improve the delivery of health care to underserved areas;

Reform of the eligibility requirements for rural health clinics, enabling this vital program to operate as originally intended; and

My legislation assisting rural referral centers.

I am also pleased to finally see my legislation to provide direct reimbursement at 85 percent of the physician fee schedule to nurse practitioners, clinical nurse specialists, any physician assistants is finally going to become law. Similar measures were included in the President's Medicare proposal and in the House Ways and Means Medicare bill and were part of the Balanced Budget Act of 1995.

Senator CONRAD and I introduced these bills in the last three Congresses. We reintroduced them again in this Congress and were successful in getting them included in the Senate Finance Committee bill. This legislation will reform Medicare policies which, under certain circumstances, restrict reimbursement for services delivered by these providers.

Direct reimbursement to these nonphysician providers will improve access

to primary care services for Medicare beneficiaries, particularly in rural and under served areas.

There has been much deliberation in this Congress over proposals to address the problem of uninsured children in our Nation.

I am very pleased that the bill before us today includes a strong bipartisan package addressing this matter. This bill includes a total of $24 billion to be spent on children's health insurance initiatives for those who are not currently enrolled in Medicaid or who do not have access to adequate and affordable health care coverage. This is $10 billion more than the President's original proposal.

We should view this achievement not only as an important piece of health care policy, but also as a giant step toward improving the quality of life for our Nation's children. I commend the Senate leadership, particularly Chairman ROTH and Chairman DOMENICI, for their leadership and commitment to this important matter.

These funds will be provided to States in the form of block grants. States are allowed considerable flexibility in designing health insurance programs, yet States must meet important Federal guidelines in their efforts to provide quality health care coverage.

I am confident that this proposal will be successful in meeting our goals to cover our Nation's uninsured children.

Yet, it is important that Congress remain committed to this goal and we must closely monitor the developments of the proposal set forth in this legislation.

This budget bill includes a number of improvements to the Medicaid Program to ensure that high-quality of care is provided to our Nation's most vulnerable population. And, this bill reforms Medicaid to give States much more flexibility in managing their programs.

In recent years, States have undertaken numerous initiatives to control spending in Medicaid. As a result, Medicaid spending has slowed significantly. This budget saves a total of $13.6 billion in the Medicaid Program over 5 years. Most savings are achieved through new policies for payments to disproportionate share hospitals. Funds have been retargeted to hospitals that serve large numbers of Medicaid and low-income patients.

Other improvements made to the Medicaid Program include changes to last year's welfare reform law so that benefits are restored to legal immigrants needing long-term care services. Also, a number of important reforms were made to managed care policies for Medicaid programs serving children, people with disabilities, and other Americans.

Of course, I do have a number of concerns, Madam President. Does this bill represent a long-term solution to the problems facing the entitlement programs? No, it most certainly does not. But I note that the proposal of Senators ROTH and MOYNIHAN to establish a Medicare Reform Commission is included in the conference agreement. We will look to the work of this commission to make proposals for reform and to help us produce the consensus we need to act to put the Medicare Program on a sound footing for the retirement of the baby-boom generation. Make no mistake: we will need to do more. But on balance, I believe that we have made a good start.

I want to conclude by again thanking Senators ROTH and DOMENICI and their hard-working staffs for the efforts they have made, for several years now, to bring us to this point.

RESTORING BENEFITS FOR LEGAL IMMIGRANTS

Mr. KENNEDY. Mr. President, the balanced budget agreement represents major progress in restoring benefits to legal immigrants. The harsh welfare law passed last year wrongfully denied access by legal immigrants to most Federal assistance programs. It permanently banned them from SSI benefits and food stamps. It banned them for 5 years from AFDC, Medicaid, and other programs. And it gave the States the option of permanently banning them from these programs.

Americans across the country were rightly concerned about these unfair provisions, and Congress soon agreed that the legislation had gone too far.

If the provisions of last year's welfare law remain in effect, many elderly legal immigrants would be forced out of nursing homes. Legal immigrants injured on the job and those with disabled children would lose assistance. Some 500,000 legal immigrants who were already living in the United States would have been affected. In Massachusetts, 15,000 elderly and disabled legal immigrants would have lost their SSI benefits.

Some said in last year's welfare debate, "Let the immigrant's sponsor support them." But, Congress now realizes that legal immigrants often do not have sponsors. Refugees, for example, do not have sponsors. In cases of many older immigrants, their sponsor has died or is no longer able to provide support.

Immigrants affected by last year's harsh cuts are individuals who came to this country legally. Many are close family members of American citizens. They play by the rules, pay their taxes, and serve in our Armed Forces. They are future citizens trying to make their way in this country.

The $12 billion restored for legal immigrant assistance over the next 5 years in this bill is urgently needed. It will allow most legal immigrants who currently receive SSI benefits to stay on the rolls. In addition, legal immigrants who were in the United States at this time last year's welfare bill was enacted in August 1996 can receive SSI in the future if they become disabled. These changes will help a very large number of people hurt by the welfare law.

Unfortunately, those who are too disabled to go through the process of naturalization to become citizens are left out of the final bill. I proposed an amendment, which was accepted by the Senate, to receive SSI benefits after their first 5 years in the United States, and I hope we can revisit this important issue in the near future.

I had also hoped the final budget agreement would allow legal immigrant children to continue to receive Medicaid. Currently, they are banned from Medicaid for 5 years. Some States may even act to ban legal immigrant children from Medicaid forever. The Senate bill included a Chafee-Graham amendment to enable these children to receive Medicaid benefits, and I regret that it was dropped from the first bill.

There is still much more to be done to correct the problems created for legal immigrants by last year's welfare bill. The Senate version of this bill restored less than 50 percent of the cuts made last year in their benefits. We are making worthwhile progress in this legislation, and I intend to do all I can to see that additional progress is made in future legislation.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. DOMENICI. How much time does the Senator desire? Fifteen minutes?

Mr. CRAIG. Yes.

Mr. DOMENICI. I yield 15 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, let me thank the chairman of the Budget Committee for yielding, and let me also recognize him this evening and the chairman of the Finance Committee, Senator ROTH, for the work that both Senators have done with their ranking members over the last good many months to craft the legislation that is before us today, tomorrow, and through the balance of the week dealing both with the budget and with tax cuts.

I rise in support of H.R. 2015, the Balanced Budget Act of 1997.

Madam President, in 1993 and 1994, we had a President who said balancing the budget probably was a bad thing to do. We had a high administration official who actually had written a book that said it was a loophole whenever children could inherit some of their parents' money. Congress had increased spending and joined with the President in the passing of the biggest tax increase in the history of our country.

That was not a decade ago. That was just a few years ago.

Then came November 1994. And what a difference an election makes. What a great transformation of the mind and the political thought can occur when the American people have spoken and said, "We've had enough."

We asked the Congress to change their thinking. And we changed the Congress to think differently. And the first Republican Congress in 40 years began in 1995, with promises to do several very important, necessary things—to reform welfare, to cut back bureaucracy, to balance the budget, and to provide some tax relief for American taxpayers who work hard, have families, and create jobs.

In 1996, the voters rewarded a Congress and President who accomplished the first two of these items and who promised to bring about the rest.

This week, the Republican majority in Congress, joined by now many reform Democrats in a bipartisan majority, will deliver on those promises.

Madam President, this week, as we consider the Balanced Budget Act, and especially the Tax Relief Act of 1997, we are talking about more freedom for more of America's people.

Freedom is not something that the Government gives the people. Our Nation's founders knew that the people's freedom is, in the words of the Declaration of Independence, "self-evident," "unalienable," and "endowed by their Creator."

Freedom comes from limiting Government to its necessary functions. Freedom is what remains when Government is not excessively burdensome or coercive.

This week, we take modest but very significant steps toward restoring freedom to the American people—freedom from the most severe tax burden on families in our Nation's history, freedom from an oppressive national debt, freedom from the growth of an ever-larger, ever-more intrusive Federal Government.

A couple from Idaho and their four daughters visited my office just this week and we discussed taxes, and particularly death and inheritance taxes. They told to me they run a small farm in Idaho that their great-grandparents had established in 1882. And they reminded me that people turned to Government to take care of them when the Government, usually through taxes, takes away their ability to take care of themselves.

And as Ronald Reagan said: A Government big enough to promise you everything you need is a Government big enough to take away everything you have.

The Tax Relief Act that we will begin debating tomorrow, combined with balancing the budget, will help more families take care of themselves the way they want, by keeping more of their own hard-earned money; by bringing about the ability to save more for their retirement, their children's education, and other priorities they have; by making it easier to own your own family farm or small business or home; by making it easier to do the kinds of things that Americans like to do, without having to think twice or three times whether they can afford to, or worry whether the Government will take more of their money; by creating, in other words, the economic atmosphere that will allow Americans to invest in creating more and better jobs for themselves, their children, and the future of our country.

The bills we will pass this week mark the triumph of the principle that the Federal budget should be balanced and should stay balanced.

In 1994, when the American people spoke so clearly about changing the political thought in this country and the political attitudes, the Dow Jones was hovering at about 3000. Today, it is at 8000. We have, by these efforts to balance the budget and provide tax relief, unleashed a dynamic of this economy that is, without question, historic.

We are now seeing the reverse of what happened about 40 years ago, when an elite group of liberal economists sold liberal politicians on the idea that you could promise your voters a free lunch. Their intellectual justification was the so-called enlightened discovery that unlimited borrowing could pay for unlimited social spending without much consequence.

It's easy to understand the political appeal of this proposition. What is incredible is that anyone really believed it, or that they would follow it for nearly 40 years and create a $5 trillion borrowed debt—almost beyond understanding.

But that is where we are today. That is clearly why the American people have spoken, and that is why this Congress and this Senate finally said we have to change the way we do business.

You can't borrow your way to prosperity over the long term. We tried and we saw our economy grow even more sluggish. We saw people become even more dependent on Government largess. Thank goodness, Americans, enlightened as they always are, recognizing that they are the Government, took charge and said, "No more."

A huge national debt means our Government has spent the last generation mortgaging the future for the next generation.

That is not a matter of green-eyeshades accounting; it really is an immoral assault on the well-being of our children and their ability to produce for themselves and their prodigies.

Balancing the budget is not about numbers, it is about people. Balancing the budget means more and better jobs, making it more affordable to buy a home, and more families affording a good education for their children without having to come to the Government and say, please help me. They can do more of it for themselves. Balancing the budget means that essential Federal programs like Social Security and Medicare will be there for those who need it and not become a liability and a burden on future generations.

There will be more freedom because of a balanced budget, because people will get no more Government than they are willing to pay for. Balancing the budget means Americans—all Americans—win. And we have the actions of the last 3 years now—an economy responding to spending restraint and real efforts to balance the budget and cut taxes—to demonstrate that what I am talking about tonight has a very strong foundation of truth.

I want to pause for a moment and review one critical reason why we are here this week passing legislation that promises to balance the budget by fiscal year 2002. This die was cast when Congress, by the narrowest of margins, defeated the balanced budget amendment to the Constitution.

Only the threat of the ultimate legal sanction—a constitutional amendment—and the overwhelming public support for that amendment finally convinced Congress, most important, some of my colleagues and some in the administration, that we had to quit talking the talk and start walking the walk.

In other words, I have heard so many on the other side throw up their hands and say, we do not need a constitutional amendment to make us balance the budget; all we have to do is do it; all we have to do is exert fiscal responsibility. But we also have to have this program and we have to have that program, and we have to spend here and there. And 2 years running, by one vote, the people almost began to take control of their Government again. It frightened the Congress.

A President who once said a balanced budget is a bad idea is now out strutting around talking about his balanced budget and all of the wonderful things that will be reaped by it. Well, it is always surprising to me that people like our President think the American public has such a short memory. They don't. His record suggests he doesn't believe it is a good idea. He also knows politically that he has to do it. And there are some in Congress who sometimes choose to do something differently than we otherwise may like to do, but who know what they have to do because the American people expect it. Balancing the budget has always been the right thing to do. We are here tonight because it is now also, at last, the politically correct thing to do, and I suggest that that vote occur.

Mr. LAUTENBERG. Will the Senator yield?

Mr. CRAIG. No, not at this time. I'd like to finish my thoughts. I know that

2 years running, with the House having passed a balanced budget amendment and this Senate missing by just one vote—finally, it is recognized by all in a bipartisan gesture that, the closer the people come to changing their Constitution and exerting that control over Congress, the more motivated Congress becomes in doing it, doing it ourselves, and that is exactly what is occurring here. I believe that, without the constitutional discipline, we will always risk the return to more spending and more borrowing. Ultimately, to safeguard the future, the balanced budget amendment to the Constitution must come into place.

Some may suggest that passage of this year's balanced budget agreement means we no longer need the constitutional amendment. I suggest that is not true. One balanced budget in 30 years hardly means that we have fixed the system or that we have systemically changed the attitude of some who serve here. It will never be easier than it is right now to balance the budget.

In the past, the temptation always was to put off the hard choices; Members have thought, it will be easier in the future than it is now. But in fact, it will never again be as easy as it is right now to begin that long march to arrest the growth of a $5 trillion national debt.

That is what the long-term economic and demographic trends tell us. This year's budget discipline and hard choices are nothing compared to what Congress must wrestle with in just the next few years.

For what we have committed ourselves to tonight and for the balance of this decade will not be easy choices. It was difficult enough to arrive at the agreement that we now have, and I will say, even though I differ sometimes with the President and others, that this is now a bipartisan effort, and I accept that and I honor them in their recognition that, finally, they are willing to offer to the American people what the American people have asked for.

When we finally pass this balanced budget and then the balanced budget amendment and send it out to the States for ratification—and I believe that will occur in my lifetime and probably within the decade—we will show we understand, as the American people clearly understand, that a nation so indebted ultimately cannot survive, and that to clean up our debt, to balance our budget was ultimately the necessary thing to do.

The Balanced Budget Act of 1997 is a mixed bag. I don't support every portion of it. I have reservations about some of it.

It creates new social spending; it locks in, in the form of entitlements, that social spending. It could use stronger enforcement provisions. For example, I continue to support the idea that caps on spending should extend to spending overall and not only to annual appropriations. It does not address the long-term economic and demographic trends that drive entitlement spending and cry out for reform.

The chairmen of our committees and some Senators tried hard to get those reforms. That was bipartisan. Some partisans on my side, too, could not accept that. But, ultimately, we will get there. We have to get there. I don't want my grandchildren turning to me and saying, Grandpa, we love you dearly, but we can't afford you and afford to provide for ourselves. We want to buy our own home, educate our children, and we cannot afford the amount of money that would come from our paycheck to go to the Federal Government because that government promised to provide for everyone's future. I don't want that to happen, and the chairman doesn't want that to happen. The future demands that we address it, that we help people prepare themselves for it, and that we will try to do.

Today, annual discretionary appropriations make up only one-third of the total budget, and that share will continue to shrink. The Kerrey-Danforth entitlement commission of a couple of years ago estimated that in just 14 years, 2011, entitlement spending and interest payments will consume all available tax revenue. That means we will either have to borrow incredible amounts for deficit spending; or go without defense, highways, law enforcement, parks, forestry, education, science, and medical research; or raise taxes to ruinous levels.

We are not going to do that. We are smarter than that. More important, we wouldn't be here to do it if we tried, because the American people won't tolerate it. They will demand reform before we get to that point, and if we can't give it to them, they will find the candidate willing to do so.

While this bill before us today does establish another commission to address the need for long-term entitlement reforms, we have already had that kind of commission, chaired by Senator KERREY of Nebraska. We already know what the current trends are and have some idea of what needs to be done.

But there is also considerable good in this bill. It does accomplish more in the way of spending control and entitlement reform than many thought possible even a year ago. There are significant repairs to the Medicare System. Medicare will be solvent for at least another decade and will continue to be there for seniors who need it.

Last, we will begin the process of injecting consumer choice into the system. Why should our seniors not have some of that? The Medicare System, based on market principles, means better care and more economic care. I am always amazed when the bureaucracy thinks it can outperform the marketplace. We know it can't, we know it never has, and, in this instance, we finally recognize that by putting some market principles in.

The fundamental reforms in last year's historic welfare reform bill will remain in place. We continue to move toward a system that rewards work and allows the States the freedom to develop new and better approaches.

Enforceable caps on discretionary appropriations spending—virtually the only thing out of the 1990 budget agreement that worked—will continue through the year 2002.

Overall, the growth in spending will slow by $270 billion over the next 5 years and $1 trillion over the next 10 years, a saving that will be locked in by permanent law and not be subject to year-to-year political whims.

New spending will be accomplished with a minimum of bureaucracy and a maximum of State flexibility.

This is far from the ideal balanced budget bill. But it takes the first major step away from demagoguery and toward genuine entitlement reform. It delivers on and locks in the promise of a balanced budget, something I have demanded and worked for my entire time here serving the State of Idaho.

Why do I demand that? Because the citizens of my State know that a government that continually spends beyond its means, a government that mounts a $5 trillion debt, a government that allows interest on debt to rapidly move toward becoming the largest single item in its budget, is a government that cannot sustain itself. That we recognize. The chairman of our Budget Committee and the chairman of our Finance Committee recognize that. We all recognize that. That is what our party has stood for. That is what the majority here in Congress has demanded because the citizens of our country have said it is a requirement of government.

I must say that the Balanced Budget Act of this year and the Taxpayers' Relief Act of this year are responses to demands of the American people. I am proud to have been a part of helping craft them. I look forward to the opportunity to vote for them, to cause them to become law, and to see this economy remain dynamic, create jobs, and provide opportunities for this generation and generations to come.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, let me say to my friend, Senator CRAIG, perhaps if we had adopted what he has been recommending for many years—a constitutional amendment to balance the budget—we wouldn't be here with the kind of circumstances that confront us.

I don't think the Senator from Idaho has to stand up here, or with his people, and talk about where he stands in terms of overspending by our National Government because his record is excellent in that regard. I think his remarks today indicate that, when you have a Democrat President, a Republican Congress, and a strong Democratic minority in both Houses, you can't get everything that you want. As a matter of fact, the Democrats differ from their President, and the President differs from us.

What we have done, I think, is borderline on being a miracle. The only thing that keeps me from saying that is that I don't know whether the product deserves being labeled a miracle. But in terms of getting it put together, coming here today and getting it finished and voted on tomorrow—I am sure we are going to get in excess of 75 votes tomorrow—that is pretty good.

As I said this morning when I opened up, even the Washington Post finally said, "That Is a Big Deal." I think it is.

I am very glad that the Senator from Idaho is going to support it and that he has been helping us as much as he has. I thank him for that.

Mr. CRAIG. Mr. President, I thank the Senator from New Mexico. I recognize the bipartisan nature in which this was created, and I support that. I hope that we can sustain that in years to come to truly get our budget in balance and to do so in a way that remains or creates or participates in a vibrant economy.

There is no question that this effort was accomplished not by us alone but in a bipartisan effort. Certainly the ranking member, who stands here this evening, was a major contributor. And I recognize that.

I am always a bit surprised when for the 17 years that I have been here I have always heard, "Oh, we don't need to worry about that. We can balance the budget. We have the will to do it." Well, we didn't have the will until the American people demanded it of us. Now we do have that will. It will only come by a bipartisan effort. I recognize that this evening. I appreciate it. I think it is a great accomplishment, and the Senator from New Mexico is to be congratulated for it.

I thank both Senators.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I mentioned that this was a "big deal." Every time I say that I want to make sure that I say, "and a good deal for all Americans" because that is what is important—not that it is big, not that people think it is a big deal, but that it is good for our people. And that it is.

I yield the floor. Senator LAUTENBERG wants to speak.

Mr. LAUTENBERG. Just for a few minutes, Mr. President.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, in the almost afterglow of feeling pretty good about things, we worked hard, everybody together. There were no fingers pointed.

I chided the chairman of the committee this morning when he excerpted from the headline of the Washington Post. He said that the headline in five words said, "This is a Big Deal." I asked a question. Was the intonation properly affixed, or did it say, "This is a good deal?" It is quite a different meaning.

Mr. DOMENICI. We read the story. They were saying it is a "big deal."

Mr. LAUTENBERG. It is a big deal; a giant deal. I think, without breaking our arms or patting ourselves on the back, there was a lot of goodwill that was injected into the discussion and into the debate.

My colleague from Idaho, who is a man who has a way with words, kind of laid it on us and included the President in there as someone who did buy into the balanced budget notion but was dragged kicking and screaming.

Mr. President, I wish it was 1 o'clock in the afternoon and we were all energized and we had a chance to talk a little bit. But I will not prolong the process except for a minute or two to say, since it took what I thought was a slight partisan turn—it makes me unhappy when things have gone this well this way to say that I have been here long enough to remember Presidents Reagan and Bush. I like them both. They are nice people. But people on their watch, as we say, who managed to have this deficit of ours skyrocket right up into the air—turn up the tax cuts and let the deficits run. That is what they did.

When our President and the Democratic Party took over in 1992, 1993, he inherited a deficit that year of $290 billion without a balanced budget amendment but with the interest that was generated. Yes, we were profligates, and we spent too much money, and perhaps we did a few things wrong. But it was an honest try all the way. And the assertion or the insinuation that these guys didn't care or those guys didn't care, it is not a way to do business. I don't care if we never get a balanced budget amendment. I want to tell you right now. As a matter of fact, I hope you don't. I love the Constitution, and the Constitution loves America, and it is the best document ever written. The fact that we have altered it so few times is a testimony to the strength and the wisdom of the Founders and those who have written amendments.

The only time we wrote an amendment that kind of restricted our activity was prohibition, and it was soon canceled. It is a wonderful prescription for how a society should function, preserving individual rights and making sure that the freedoms as much as possible are extended to every citizen in our country.

So I just felt like I had to respond. No one worked harder than the man on my right, the distinguished chairman of the Budget Committee, Senator DOMENICI. I didn't always agree with him, but nobody worked harder, and no one assembled a more honest attempt to do it in a bipartisan fashion. There were things that he wanted that we on my side of the aisle didn't want. But he was willing to explain them and willing to take a deep breath when necessary not to fight them. I have gained great respect for him, as well as personal affection, honestly.

Mr. President, I just want to change the tone for a minute, and let off a little steam and say that I hope we will move on to pass this document into law and make sure that everybody understands there was a good attempt by everybody working in this place to get it done with, to get on with the task that we have a very good start on because of the shape of the deficit that we see now.

So, Mr. President, I yield the floor. I know the Senator from New Mexico has a UC that he would like to propose. I hope that we will have a chance to hear that.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I note the presence on the floor of the junior Senator from Oregon. Might I ask, did he desire to speak on the budget?

Mr. WYDEN. On the budget.

Mr. DOMENICI. I wonder if I could propose a UC regarding the budget. When I am finished I will try to work in an exception for him.

How long does the Senator desire to speak?

Mr. WYDEN. Fifteen or twenty or minutes would be plenty.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate resume the pending conference report at 9:15 a.m., Thursday, and that the remaining hour be equally divided between the chairman and the ranking minority member of the Budget Committee; and that, at 10:15 a.m., the Senate proceed to vote on adoption of the conference report without any intervening action. I further ask consent that this evening Senator WYDEN of the State of Oregon be allowed 15 or 20 minutes on the bill after which we will be finished for the evening.

Is that satisfactory with the Senator?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, there will be no further votes tonight.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Thank you, Mr. President.

Mr. President, first, let me say to my good friend, Senator DOMENICI, the chairman of the Budget Committee, I just want him to know how much I have appreciated the chance to be a member of his committee. I think this is a historic occasion and a chance to work very closely with him on a variety of issues. Coming to the Senate has been a special pleasure.

I also want to commend our good friend, Senator LAUTENBERG of New Jersey, who in my view has done yeomen work in terms of keeping this whole effort together and keeping it bipartisan.

Mr. President, the balanced budget agreement that will be passed this week has been a long time in coming. I think our challenge is to now make sure that actually getting a balanced budget takes a shorter period of time.

I do believe that we are finally on the right track because this budget provides an opportunity for the Federal Government to get its fiscal house in order while still making a handful of extremely needed investments in the people of our country and in U.S. productivity.

Most importantly, I am of the view that this is a historic moment because it has been achieved by working together. If ever there was an issue that required bipartisan cooperation, this is it. It seems to me that this is an example of what can happen when you put down for just a few moments the political cudgel and focus on the needs of our country first.

Let me also say that I would like to make a special effort in the days ahead to address the Medicare provision of this legislation. In my view, in the 21st century, Medicare is not just going to be a part of the Federal budget; it is going to be the Federal budget. There is no program in America growing at the rate of Medicare. I think it is well understood that in the 21st century our country will be faced with a demographic tsunami. We are going to have upwards of 50 million baby boomers retiring, and it is quite clear that efforts must be made now to modernize Medicare and get this program ready for the 21st century.

I sought to begin those efforts by introducing S. 386, the Medicare Modernization and Patient Protection Act, in the spring. And the fundamental principle of that legislation was to make sure that Medicare began to introduce the kind of competition and choice and emphasis on quality for older people that is available in private sector health care.

What we are seeing in our country today is that Medicare has essentially been engaging in purchasing practices and management practices that the private sector threw in the attic years and years ago. In much of the United States, Medicare has been rewarding waste and penalizing efficiency, and we all saw that emphasized again this week when the Inspector General of the United States indicated that more than $20 billion is lost each year in the Medicare Program due to fraud and waste.

The issue of inefficiency and the rewards for waste that you see in the Medicare Program are particularly important to those I represent at home in Oregon. We have gone a long way to reinventing the health care system in our State, particularly in the metropolitan areas. We have competition. We have extensive choice for older people. We do not have the gag clauses in the managed care plans where physicians are restricted from telling older people about their options. We have done a lot to come up with a health plan for seniors that will be good for older people and taxpayers in the 21st century.

The reward to Oregon for doing the heavy lifting to reform Medicare over the last few years has been lower reimbursement collection. In effect, what the Federal Government told the people of Oregon over the last 10 years is you would have gotten higher reimbursement, you would have received higher payments, if you had gone about the process of offering wasteful, inefficient health care. And so what happens in much of my State, an older person, say, in the Klamath Valley will call their cousin or their sister in another part of the United States and ask them about their Medicare. And a senior in another part of the country where health care isn't provided so efficiently will say to the Oregonian, you know, my Medicare is great; I get prescription drugs for free; I get eyeglasses at a discount; I get all these extras that are not covered by Medicare.

Seniors in Oregon and other States where health services have been efficient say, I pay the same into Medicare as seniors in those States. Why don't I get the same benefits?

Medicare is a national program. Why shouldn't the senior in Oregon get the same benefits as the senior in another State, which on top of everything else is offering care that is more costly and inefficient?

The reason for this bizarre situation is a very technical reimbursement system, an eye-glazing concept known as the average adjusted per capita cost. And the long and short of it is that it rewards waste, penalizes efficiency and in parts of the country like mine has meant that many of the health programs have difficulty even providing the basic benefits to older people let alone some of the additional benefits such as prescription drugs.

Under this legislation, because of exceptional bipartisan work—and here I want to particularly commend Senator GRASSLEY of Iowa, the chairman of our Aging Committee, who has worked very closely with me, for his perseverance in correcting this inequity. As a result of the work of our bipartisan coalition, this reimbursement system is going to change. We will see all counties in our country get a minimum payment for these health care plans that are holding costs down while giving good quality, and over a period of time there will be a blending of reimbursement rates to consider both local reimbursement patterns and national patterns.

What this means is that areas like Oregon that have held costs down while giving good quality will get higher reimbursement, and my constituents, older people, are pleased because they will be in a position to get better benefits. But what is especially important is this is the kind of reimbursement change that is essential to save this program in the 21st century.

I would submit that what will happen as a result of the bipartisan work to change the Medicare reimbursement process—Senator GRASSLEY, myself, and others have spent so much time—is we will start seeing competition and choice come to health care programs in parts of the country where there is no competition and there is no choice. So we are talking about a change that, in my view, is going to really pay off for our country and pay off greatly in the years ahead.

Mr. President, I want to turn very briefly to the question of the other changes in Medicare that the Senate has debated and we are going to have to tackle in the days ahead. Particularly now I turn to the question of raising the age of eligibility for the Medicare Program and the question of a means test or some sort of ability-to-pay test being incorporated into Medicare.

I have long felt that Lee Iacocca ought to be paying more for his Medicare than should an older woman who is 75 and has Alzheimer's and has an income of $10,000 a year. So I think it is clear there is going to have to be an ability-to-pay feature added to the Medicare Program. But it is extraordinarily important that this be done right and that this be done carefully. I and other Members of the Senate felt that to try to do this over just a few months with so many questions about how this would be administered was precipitous action. But it must be done. Let us make no mistake about it. That change is going to have to be a part of 21st century Medicare. It has to be done fairly. My constituents were concerned that at a time when already they did not get a fair shake under the Medicare reimbursement formula, they were going to be asked to pay more immediately under Medicare.

So there are some real questions about how to do this and do it fairly. But I want it understood I am of the view that there will have to be an essential change, and I am very hopeful

the Senate will not wait for a bipartisan commission to make recommendations but with the completion of this legislation will start on that issue as well.

With respect to the question of the age of eligibility for the program, here, too, there are very important technical questions of how it is done and how it is done fairly. There have been a number of analyses of late that have shown there is a significant increase in the number of uninsured Americans between the age of 55 to 64. So if that group of uninsured individuals is growing, to then add more, those between the ages of 65 and 67, would cause a hardship. So what I and others hope will be done as this effort to examine the age of eligibility is addressed is that there will be a buy-in opportunity, an opportunity for those individuals without insurance in that age group to be able to buy into the Medicare Program on a sliding scale.

Again, I think this is an opportunity the Senate ought to examine carefully, ought to look at in a bipartisan way, and not wait for a commission to make recommendations as to how it ought to be done.

Finally, Mr. President, let me say that as these significant changes in Medicare are made, beginning with the reimbursement formula changes that are being made now, changes that will bring fairness and competition and choice to the program, at every step of the way we have to keep the focus on protecting the rights of the patient. In this body Senators AKAKA, KENNEDY, and myself have led the push to ban gag clauses from managed care health plans. Health care is a complicated issue, we could all agree. But one issue we all should agree on is that patients have a right to know all the information about the kind of medical services and options that would be made available to them.

Under this legislation, that significant protection for patients is in place and I think it is just the beginning of the kind of new focus that should be placed on patients' rights and the protection of quality health care which older people deserve. At a time when the health care system and Medicare specifically are in transition, protection for the rights of the patients is even more important than ever. At a time when there is a focus on more competition and choice, it ought to be met with an equal emphasis of protecting the rights of the patients, and that has begun in this legislation as well.

Mr. President, I come from a part of the country that is proud to have led the Nation in the cause of health care reform and efficiency. Under the leadership of our Governor, Gov. John Kitzhaber, we have reinvented the Medicaid Program with the Oregon Health Plan.

For more than a decade, as a result of work done by Democrats and Republicans and older people and health care professionals, we have reinvented the Medicare Program in much of our State. So there is a new emphasis on choice and quality. What this legislation does is it removes the penalties against those programs that have been creative, those programs that have led the Nation in reforming Medicare and Medicaid. It is high time that those changes are made.

Mr. President, I think those changes lay the foundation for the other critical changes that are going to be needed to strengthen health care services in the days ahead. I look forward to working with our colleagues on a bipartisan basis to achieve those changes.

Mr. President, I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask unanimous consent I may speak for 10 minutes.

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

Mr. SANTORUM. I thank the Chair.

Mr. President, I wanted to make a couple of comments also on the budget bill that we have before us here this evening and that we will be voting on, I guess, tomorrow morning.

I come here excited in a sense that we are finally doing something that when I first ran for office back in 1990 I pledged to do, which was to come here and try to balance the Federal budget. Not to put schemes out there that say, well, we will target this and we will adjust to this number when we get there, but actually pass a law that will get us there without Congress having to do one more thing.

I think that is what we have accomplished here in this legislation. We will pass the changes, the needed reforms, in the entitlement programs that will get us to a balanced budget, that will save an estimated $270 billion over the next 5 years, will require no further Federal action other than just passing our appropriations bills under the limits we have set, and we do a pretty good job at that. If there is anything I can say Congress has done in the past few years it is that we have kept to the budget caps. I do not anticipate that being a problem. In fact, I think many of us would advocate trying to come in below those caps. So I think this bill will accomplish what we set out to do, balance the budget by 2002. And hopefully, if we do not have any kind of major recession, we will be able to balance it sooner than 2002.

So, I am very excited about that. We have been able to face that problem, and we have been able to deal with it in a responsible fashion.

I must admit, though, that I am somewhat disappointed at some of the things we did not accomplish here that we, in fact, passed in the Senate bill. We took, I think, some courageous political stances here in the U.S. Senate in dealing with the issue of Medicare. The Senator from Oregon was talking about that just a few minutes ago, some of the changes that were not made that he believed in. In fact, some of them, even though I notice he didn't support them, need to be made.

Senator GRAMM, during the debate here on the budget last month, talked about the demographic cliff that we are going to fall off in the year 2011. I share that with you again this evening. In the year 1995, in fact for the years pretty much throughout the 1990's, roughly 200,000 people will turn 65 per year—200,000 people. In the year 2011, 1.6 million people will turn 65. That is just a cliff. That is 1.6 million people going into a system, no longer paying into that system, into a system that today cannot absorb 200,000 a year. It is going bankrupt absorbing 200,000. We are asking that same system, that same program, to now absorb eight times the number, and that is not just a blip. It is not 1.6 million in the year 2011 and then back down to 200,000. No; it's 1.6 million and then it levels off to about 1.5 million a year throughout the years of the baby boom generation and their retirement.

It has been estimated that if we don't change Medicare and Social Security in the next few years, the payroll tax will double within a generation. That is from 15 percent of every dollar that is earned in America up to $60,000 for Social Security tax and 1.45—actually 3 percent if you take the employee and employer share for every other dollar, irrespective of income. We are going to have to double that payroll tax. That's an optimistic projection. Pessimistically, we will have to triple the tax if we keep Medicare and Social Security just the way they are.

So, to the people who run around and say, "We don't need to fix Medicare now, we don't need to fix Social Security now, everything is fine; those people who want to change Medicare and Social Security are just out to get the elderly," I would just suggest this: Anybody who is not talking about long-term structural changes to those two programs is out to get the elderly who are yet to be elderly, who are waiting to be elderly, because those are the folks who are going to pay—and big. I think it is only fair that we spread this out a little bit and we begin to make changes now.

The two major things I wanted to see done that were not done were, No. 1, as the Senator from Oregon talked about, means testing part B benefits. This is a chip shot. I mean, this is a layup. I can't think of any other term. This is an easy one. This affected about 4 percent of the population of seniors in this country who were the highest income-earning seniors. What were we going to

do? For Medicare, part A, part B—there are two parts to Medicare. Part A is hospitalization, major medical; part B covers some of the other things. It is a voluntary program. It covers some outpatient, labs, doctors, things like that. It's a voluntary insurance program. You don't pay one penny into Medicare part B over the course of your earnings before you turn 65. But when you turn 65 you can opt into this, in a sense, public insurance program. It is voluntary. If you choose to get into part B, you pay a premium. It is about $45 a month.

That $45 only covers 25 percent of the cost of the program. Who picks up the other 75 percent? Mr. and Mrs. Taxpayer. That's fine if you are a senior who needs subsidies from the Federal Government to be able to afford insurance, but in my mind it's not fine to give a subsidy to people who don't need a subsidy. I am not someone who comes to the floor on many occasions and talks about class warfare. I don't believe in that. I don't believe in a lot of the arguments that the rich don't pay their fair share. I think a lot of it is just hooey, and in fact class warfare.

What we are talking about here is we are talking about subsidizing people at a higher income. I am not for that. I am not for taxing them more, but I am not for subsidizing them, either. So, to the extent that we subsidize, we said, "Look, if you are earning over $70,000 as a couple, you are going to pay a little bit more for your Medicare part B premium." It's still a good deal. It's a pretty big group, and you get a nice group rate.

We should have done that in this bill. I can tell you, I have been to senior center after senior center after senior center, and I have gotten up and I talked about this. I have never heard an objection. No one has ever objected to this. They thought that's pretty reasonable. We should not be subsidizing Ross Perot in his Medicare part B premium. It's crazy. He doesn't need it. Most of these people don't need it, and they probably wouldn't want it if they realized what it was costing the Federal Government to do it and what it was costing their children and grandchildren. So that's one of the things we missed, in my opinion. It's unfortunate.

The second—I know this is a tougher issue—and that is raising the eligibility age for Social Security. I know this is not a very popular issue, but I can tell you we got 62 votes here in the U.S. Senate, I will say very proudly, in a bipartisan vote. The eligibility age for Social Security, to be able to qualify for full Social Security benefits, is going up. Most people in this country don't know that, but it is. It is going up. In 1983, when they passed the Social Security reform, they did a couple of things. They raised taxes and they raised the eligibility age from 65 to 67. They didn't start doing it, though, for 20 years. The first people who turn 65 who are going to be affected by this raise in the eligibility age are people who retire in the year 2003, 20 years after the bill passed.

You will hear the people who were here in the Congress who said, "We waited 20 years to enact this so people could prepare for this time." It is funny, because I talked to a lot of people who are planning to retire who are about that age, in their fifties right now, who are going to be retiring, late fifties, retiring in 2003. Most of them don't know the retirement age is being moved back. I talked to most younger people, and they have no idea the retirement age is being moved back. These people, as far as I am concerned, who passed this thing in 1983 and put it off 20 years, put it off 20 years because they will be gone in 20 years, most of them, and so they won't have to take the wrath of the American public, if there is going to be some. I hope there will not be, once they understand the problem of having to deal with the issue. I think we should deal with the issue now.

We should tie the Medicare eligibility age to Social Security, which phases up over a 20-year period. It doesn't hit 67 as a retirement age until the year 2025. We should tie the two together, because most people, most lower and middle income people, are not going to be able to retire prior to being eligible for Social Security, so there should not be much of a problem with tying in Medicare because they are going to retire when they hit the retirement age for Social Security. That will also be the retirement age, in a sense eligibility age, for Medicare.

For those who can afford to retire sooner, they probably are more well off, by and large, or they may have a disability. But in that case they qualify for Government benefits through disability. But, for those who are more well off, then we should create an option for them to buy in at age 65, they can buy into Medicare if they can't continue their private insurance.

There was a way to work this out that I think would have been, again, the right thing to do for the long term for Medicare. If you really care about providing a health safety net for the future, those were two things that were really missed opportunities. It is unfortunate we missed them.

I will say, overall, we have taken a positive step here. I think we missed an opportunity to do something really lasting, really significant. We stood up and made a courageous vote, a vote that, frankly—if Members would go out and take the time to talk to people and explain the demographic problems that we have, the fact that people are living substantially longer and they are substantially healthier, that these kinds of changes only make sense to make sure that future generations have these retirement security programs like Medicare and Social Security to rely on for the future.

So, I am disappointed that we blinked, the White House was not supportive, and frankly our colleagues in the House were not supportive. I think that is unfortunate for both of those entities. I stand with particular pride at the U.S. Senate, that it had the courage to look ahead, to not make decisions just based on short-term fixes. Frankly, the Medicare provision here is a short-term fix. We had long-term fixes in the Senate bill and we didn't follow through, and I think that is unfortunate.

We did do a lot of other positive things in this bill, and I will support it as a result of that. But I think this piece of legislation, given what the Senate did in their courageous action by going out on Medicare and setting the course, missed a tremendous opportunity.

One final comment. There is an additional concern I have about a provision in the welfare bill. There is welfare reform—or, in my opinion some of it is a backtracking on reform from the last bill. We have some positive things in this bill with respect to work, but we also have a provision in there that is very worrisome for me, as far as the ability for work programs, workfare, to work in the States. This gives the President and the Department of Labor the opportunity to designate people on workfare in an employment setting as workers covered by the Fair Labor Standards Act, the minimum wage laws, and all the other laws that apply to all other employees. The problem with that is that you get into a whole host of complex things that drive up significantly the cost of providing a work slot for someone on welfare.

If you believe, as I do, that the most important thing for most of the people on welfare today is to get them into the workplace, to teach them the value of work, to give them the sense of pride which so many millions of Americans for the first time are feeling now, to get off the welfare rolls and get them into the workplace where they are doing positive works, where they are getting positive reinforcement for the things that they are accomplishing, where they are learning the ability to get up, get their children off to school or to day care or to a relative and get to work, keep those hours, work hard and come back home and manage their life—those are important life skills. If we put the barrier too high for the States, we are going to limit the number of work spots available for, really, millions of people and, I think, destroy a lot of the tremendous progress that we have made in creating an environment under this welfare reform bill that we passed last year for people to rise out of poverty, to get the kind of

experience necessary to get the sense of accomplishment and self-pride that is necessary to rise out of poverty.

I am very concerned about that. I hope the administration does not pull the trigger. They are getting immense pressure from the unions to do so because the unions want to protect their piece of the pie when it comes, particularly to the public sector spots that will be filled in some cases by welfare recipients.

So, I hope the President does not bow to the unions at the expense of millions of people who want to get out of welfare and who need these work opportunities to be able to do so.

MORNING BUSINESS

Mr. SANTORUM. Mr. President, I ask unanimous consent there be a period for the transaction of morning business.

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

Mr. LEVIN. Mr. President, I want to discuss today a disinformation campaign being conducted by indicted war criminal Radovan Karadzic and his Bosnian Serb henchmen, a campaign which threatens our forces in Bosnia, and a powerful tool available to the United States to counteract that campaign.

Despite his agreement to remove himself from political life, Radovan Karadzic has continued to play a leading role in Bosnian Serb politics, running the Republika Srpska from behind the scenes. Moreover, he has used the Bosnia Serb controlled radio and television to present a distorted picture to the Bosnian Serb people. Most ominously, since the arrest of one secretly indicted war criminal and the killing of another by NATO forces in Prijedor in northwestern Bosnia on July 10, Karadzic and the state controlled media have been orchestrating attacks on NATO troops.

As the New York Times reported on July 26, "television and radio broadcasts have been increasingly inflammatory." This distorted picture has been used to interfere with the implementation of the civilian aspects of the Dayton peace accords. It has also been used to wage a smear campaign against Bosnian Serb President Biljana Plavsic, who sought to expose Karadzic's criminal activities that have brought him wealth at the expense of the Bosnian Serb people.

Karadzic has shown himself to be a master of the "no lie is too great" approach. For example, when the Office of the High Representative, the senior international civilian position created by the Dayton accords, recently announced a significant civil military project that would involve the repair of the Tuzla to Brcko railway line by an Italian Railway Regiment with funding from United States AID, the state controlled Bosnian Serb media claimed that the repair train had been modified to transport Serb civilians to the Hague. A project designed to improve the quality of life for all Bosnians in the region was twisted to frighten the people and to foment ill-feeling towards the Stabilization Force.

Mr. President, the influence of indicted war criminal Karadzic must be checked. I believe that his control of the Bosnian Serb media is a good place to start. The United States military has the capability through the EC-130E Commando Solo aircraft to broadcast television and radio programming directly to the Bosnian people, overriding Karadzic's programming. This capability was put to successful use during Operation Urgent Fury in Grenada to inform the people on Grenada of the United States military action; during Operation Desert Storm to convince Iraqi soldiers to surrender; and during Operation Uphold Democracy in Haiti to broadcast radio and television to the Haitian citizens and leaders. It could be used to get the true word out to the Bosnian Serbs.

I applaud the decision of the recent international donor's conference for Bosnia to channel money only to communities that comply with the Dayton peace accords. Republika Srpska has received only a small percentage of such aid in the past due to Karadzic's behind the scenes refusal to cooperate. He has also mounted a media disinformation campaign, accusing the international community of bias against the Bosnian Serbs when his own policies are to blame. The Bosnian Serb people need to hear the real causes for their isolation and lack of international aid.

Mr. President, paragraph 5 of article VI of the Agreement on the Military Aspects of the Dayton Peace Settlement gives the SFOR Commander the authority to do all that he judges necessary and proper to protect the SFOR and to carry out its responsibilities. I believe that it would be appropriate for the SFOR Commander to determine that the presentation of distorted reports about SFOR, the inflaming of emotions against SFOR, and the encouragement of reprisal action by the Bosnian Serb media controlled by Karadzic and the ruling Serb Democratic Party, are impeding the SFOR Commander's ability to protect SFOR and to carry out SFOR's responsibilities. Once the SFOR commander makes that determination, the Air National Guard EC-130E Commando Solo aircraft could be used to counteract Karadzic's disinformation campaign which so endangers our forces and hampers the implementation of the Dayton accords.

Mr. President, I wrote last week to National Security Adviser Sandy Berger and Secretary of Defense Bill Cohen proposing the use of the Commando Solo aircraft under the circumstances we confront in Bosnia. I ask unanimous consent that these letters be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. LEVIN. I believe that, until the Bosnian people, particularly the Bosnian Serbs, are able to receive television and radio broadcasts that depict the true reasons for their isolation and poor standing in the international community, it is less likely that meaningful progress will be made in the implementation of the civilian aspects of the Dayton accords.

Mr. President, the European Stars and Stripes reported last week that many Bosnian Serbs have refused to accept copies of a free publication called the Herald of Peace that is handed out throughout Bosnia by SFOR. I am sure that they are reluctant to be seen accepting this publication for fear that they will be reported to Karadzic and his henchmen. The beauty of Commando Solo is that its radio and television broadcasts will go into the homes of the Bosnian Serbs where they can receive it away from prying eyes. Karadzic can't stop the broadcasts—they override his transmissions. It is time to put this valuable tool to work for peace in Bosnia and for the security of our forces.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, July 24, 1997.

Mr. SAMUEL R. BERGER,
Assistant to the President for National Security Affairs, National Security Council, Washington, DC.

DEAR. MR. BERGER: I am writing in connection with the lack of progress in implementing the civilian aspects of the Dayton peace accords, particularly the problem of war criminals. I am deeply disturbed about the failure of the Bosnian parties, particularly the Republika Srpska, to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law as required by Article IX of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Recent press reports regarding the influence of former Bosnian Serb president and indicted war criminal Radovan Karadzic, establish that his and his party's control of all Bosnian Serb media, particularly Bosnian television, consistently presents a distorted picture as to the cause of the Republic's isolation and poverty.

Until the Bosnian people, particularly the Bosnian Serbs, are able to receive television broadcasts that depict the true reasons for their isolation and poor standing in the international community, it is doubtful that any meaningful progress will be made in the implementation of the civilian aspects of the Dayton accords.

I am concerned that the local media's distorted reporting is inflaming the situation in Republika Srpska and encouraging the Bosnian Serbs to take reprisal action against personnel of the Stabilization Force (SFOR), the International Police Task Force (IPTF),

and the Organization for Security and Cooperation in Europe (OSCE). It seems to me that those actions and other less dramatic, but improper, actions by the Bosnian Serbs and their political leadership are impeding the ability of the SFOR Commander to protect the SFOR and to carry out its responsibilities under the accords.

Paragraph 5 of Article VI of the Agreement on the Military Aspects of the Peace Settlement gives the SFOR Commander the authority to do all that he judges necessary and proper to protect the SFOR and to carry out its responsibilities. I believe that it would be appropriate for the SFOR Commander to determine that the presentation of distorted reports about SFOR, the inflaming of emotions, and the encouragement of reprisal action by the Bosnian Serb media controlled by Karadzic and the ruling Serb Democratic Party, are impeding his ability to protect SFOR and to carry out SFOR's responsibilities.

The U.S. military has the capability through the EC-130E Commando Solo aircraft to broadcast television and radio messages to the Bosnian people. I strongly recommend that, once the SFOR Commander makes the above determination, he be authorized to utilize Commando Solo to conduct television and radio broadcasts in Republika Srpska to inform the Bosnian Serbs of the true facts.

It may also be necessary to take similar action with respect to the other Bosnian parties. I fear that without such action war criminals will not be brought to justice, reconciliation will not take place, and the human and material investment of the United States and its allies will have been in vain.

I am sending a similar letter to the Secretary of Defense.

Sincerely,

CARL LEVIN,
Ranking Minority Member.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, July 24, 1997.

Hon. WILLIAM S. COHEN,
Secretary of Defense,
The Pentagon, Washington, DC.

DEAR MR. SECRETARY: I am writing in connection with the lack of progress in implementing the civilian aspects of the Dayton peace accords, particularly the problem of war criminals. I am deeply disturbed about the failure of the Bosnian parties, particularly the Republika Srpska, to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law as required buy Article IX of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Recent press reports regarding the influence of former Bosnian Serb president and indicted war criminal Radovan Karadzic, establish that his and his party's control of all Bosnian Serb media, particularly Bosnian television, consistently presents a distorted picture as to the cause of the Republic's isolation and poverty.

Until the Bosnian people, particularly the Bosnian Serbs, are able to receive television broadcasts that depict the true reasons for their isolation and poor standing in the international community, it is doubtful that any meaningful progress will be made in the implementation of the civilian aspects of the Dayton accords.

I am concerned that the local media's distorted reporting is inflaming the situation in Republika Srpska and encouraging the Bosnian Serbs to take reprisal action against personnel of the Stabilization Force (SFOR), the International Police Task Force (IPTF), and the Organization for Security and Cooperation in Europe (OSCE). It seems to me that those actions and other less dramatic, but improper, actions by the Bosnian Serbs and their political leadership are impeding the ability of the SFOR Commander to protect the SFOR and to carry out its responsibilities under the accords.

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The U.S. military has the capability through the EC-130E Commando Solo aircraft to broadcast television and radio messages to the Bosnian people. I strongly recommend that, once the SFOR Commander makes the above determination, he be authorized to utilize Commando solo to conduct television and radio broadcasts in Republika Srpska to inform the Bosnian Serbs of the true facts.

It may also be necessary to take similar action with respect to the other Bosnian parties. I fear that without such action war criminals will not be brought to justice, reconciliation will not take place, and the human and material investment of the United States and its allies will have been in vain.

I am sending a similar letter to the National Security Adviser.

Sincerely,

CARL LEVIN,
Ranking Minority Member.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, July 29, 1997, the Federal debt stood at $5,373,127,138,499.91. (Five trillion, three hundred seventy-three billion, one hundred twenty-seven million, one hundred thirty-eight thousand, four hundred ninety-nine dollars and ninety-one cents)

One year ago, July 29, 1996, the Federal debt stood at $5,182,455,000,000. (Five trillion, one hundred eighty-two billion, four hundred fifty-five million)

Five years ago, July 29, 1992, the Federal debt stood at $3,995,312,000,000. (Three trillion, nine hundred ninety-five billion, three hundred twelve million)

Ten years ago, July 29, 1987, the Federal debt stood at $2,298,353,000,000. (Two trillion, two hundred ninety-eight billion, three hundred fifty-three million)

Fifteen years ago, July 29, 1982, the Federal debt stood at $1,089,771,000,000 (One trillion, eighty-nine billion, seven hundred seventy-one million) which reflects a debt increase of more than $4 trillion—$4,283,356,138,499.91 (Four trillion, two hundred eighty-three billion, three hundred fifty-six million, one hundred thirty-eight thousand, four hundred ninety-nine dollars and ninety-one cents) during the past 15 years.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING JULY 25

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending July 25, the U.S. imported 8,138,000 barrels of oil each day, 585,000 barrels more than the 7,553,000 imported each day during the same week 1 year ago.

Americans relied on foreign oil for 56.3 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf War, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970's, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil? By U.S. producers using American workers?

Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the U.S.—now 8,138,000 barrels a day.

TRIBUTE TO CHRIS YODER

Mr. CRAIG. Mr. President, I would like to take a few moments to recognize Mr. Chris Yoder, a fellow Idahoan, who will be leaving his professional staff position at the Senate Committee on Veterans Affairs to accept a new challenge with the Commission on Service Members and Veterans Transition Assistance.

A veteran, himself, of the Vietnam War in Army Intelligence, he continued his dedication to the colleagues by serving 13 years with the Veterans Administration in Boise, ID. There he worked in various capacities as a benefits councilor, claims examiner and education specialist.

Except for the 102d Congress when he worked for the Veterans Affairs, in Washington DC as a staff assistant to the Deputy Secretary, Mr. Yoder has been with the committee for 12½ years. During that time he served with distinction, helping to fashion policies that serve America's veterans.

He has always accepted challenges, faced them head on and worked diligently in providing the critical answers that have shaped the positive direction the Veterans Committee has taken.

Mr. Yoder's efforts have always represented his personal commitment to constituents, the veterans service organizations and members of the committee. His timely initiatives and extraordinary abilities will have lasting results for years to come.

I have high praise for Chris's leadership, dedication, professionalism and accomplishments. On behalf of myself and the veterans of Idaho, we wish him well in his new endeavor, and wholeheartedly thank him for his outstanding service.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, 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 treaties and 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

ENROLLED BILLS SIGNED

At 1:31 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 430. An act of June 20, 1910, to protect the permanent trust funds of the State of New Mexico from erosion due to inflation and modify the basis on which distributions are made from those funds.

S. 670. An act to amend the Immigration and Nationality Technical Corrections Act of 1994 to eliminate the special transition rule for issuance of a certificate of citizenship for certain children born outside the United States.

At 5 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2015) to provide for reconciliation pursuant to subsections (b)(1) and (c) of section 105 of the concurrent resolution on the budget for fiscal year 1998.

MEASURE PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

S. 1085. A bill to improve the management of the Boundary Waters Canoe Area Wilderness, and for other purposes.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on July 30, 1997, he had presented to the President of the United States, the following enrolled bills:

S. 430. An act to amend the Act of June 20, 1910, to protect the permanent trust funds of the State of New Mexico from erosion due to inflation and modify the basis on which distributions are made from those funds.

S. 670. An act to amend the Immigration and Nationality Technical Corrections Act of 1994 to eliminate the special transition rule for issuance of a certificate of citizenship for certain children born outside the United States.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2639. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, five rules received on July 24, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2640. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, one rule received on July 17, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2641. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, six rules received on July 21, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2642. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, twelve rules received on July 21, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2643. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, one rule received on July 29, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2644. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, twenty-eight rules received on July 29, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2645. A communication from the Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, seven rules received on July 22, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2646. A communication from the Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, one rule received on July 28, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2647. A communication from the Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, one rule received on July 29, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2648. A communication from the Director, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, U.S. Department of Commerce, transmitting, pursuant to law, a rule relative to the threatened Southern Oregon/Northern California coast (RIN0648–AG56), received on July 21, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2649. A communication from the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to fresh cut flowers and greens, received on July 29, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2650. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, a rule relative to releasing information (RIN3052–AB77), received on July 29, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2651. A communication from the Acting Administrator, Agricultural Research Service, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to a schedule of fees to be charged, received on July 29, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2652. A communication from the Administrator, Farm Service Agency, U.S. Department of Agriculture, transmitting, pursuant to law, a report of a rule relative to Disaster Set-Aside Program (RIN0560–AE98), received on July 25, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2653. A communication from the Secretary of Defense, transmitting, a notice regarding the "Balanced Budget Act of 1997"; which was ordered to lie on the table.

EC–2654. A communication from the Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, eight rules; to the Committee on Commerce, Science, and Transportation.

EC–2655. A communication from the Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, three rules; to the Committee on Commerce, Science, and Transportation.

EC–2656. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, three rules; to the Committee on Commerce, Science, and Transportation.

EC–2657. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–97 adopted by the Council on June 3, 1997; to the Commitee on Governmental Affairs.

EC–2658. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–98 adopted by the Council on June 3, 1997; to the Commitee on Governmental Affairs.

EC–2659. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–99 adopted by the Council on June 3, 1997; to the Commitee on Governmental Affairs.

EC–2660. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–100 adopted by the Council on June 3, 1997; to the Commitee on Governmental Affairs.

EC–2661. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–107 adopted by the Council on June 17, 1997; to the Commitee on Governmental Affairs.

EC–2662. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–108 adopted by the Council on June 17, 1997; to the Commitee on Governmental Affairs.

EC–2663. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–109 adopted by the Council on June 17, 1997; to the Commitee on Governmental Affairs.

EC–2664. A communication from the Council of the District of Columbia, transmitting,

pursuant to law, copies of D.C. Act 12-113 adopted by the Council on June 17, 1997; to the Commitee on Governmental Affairs.

EC-2665. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Fiscal Year Annual Report on Advisory Neighborhood Commissions"; to the Committee on Governmental Affairs.

EC-2666. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Certification of the Fiscal Year 1997 Revised General Fund Revenue Estimates in Support of the District of Columbia General Obligation Bonds (Series 1997A)"; to the Committee on Governmental Affairs.

EC-2667. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "District of Columbia General Hospital's Sole Source Contract Award to Medical Services Group, Inc. Violated D.C. Laws and Regulations"; to the Committee on Governmental Affairs.

EC-2668. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Certification of the Water and Sewer Authority's Fiscal Year 1997 Revenue Estimate in Support of a $25,000,000 Revolving Line of Credit"; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCAIN, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 910. A bill to authorize appropriations for carrying out the Earthquake Hazards Reduction Act of 1977 for fiscal years 1998 and 1999, and for other purposes (Rept. No. 105-59).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

H.R. 1198. A bill to direct the Secretary of the Interior to convey certain land to the City of Grants Pass, Oregon.

H.R. 1944. A bill to provide for a land exchange involving the Warner Canyon Ski Area and other land in the State of Oregon.

S. 871. A bill to establish the Oklahoma City National Memorial as a unit of the National Park System; to designate the Oklahoma City Memorial Trust, and for other purposes.

By Mr. HELMS, from the Committee on Foreign Relations, without amendment:

S. 1082. A bill to authorize appropriations to pay for United States contributions to certain international financial institutions.

By Mr. HELMS, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Con. Res. 39. A concurrent resolution expressing the sense of the Congress that the German Government should expand and simplify its reparations system, provide reparations to Holocaust survivors in Eastern and Central Europe, and set up a fund to help cover the medical expenses of Holocaust survivors.

S. Con. Res. 45. A concurrent resolution commending Dr. Hans Blix for his distinguished service as Director General of the International Atomic Energy Agency on the occasion of his retirement.

By Mr. HELMS, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Con. Res. 46. An original concurrent resolution expressing the sense of the Senate regarding the terrorist bombing in the Jerusalem market on July 30, 1997.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

The following-named officer for appointment in the U.S. Marine Corps to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Michael J. Byron, 1295.

The following-named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Robert H. Foglesong, 8617.

The following-named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. John M. Pickler, 5130.

(The above nominations were reported with the recommendation that they be confirmed.)

By Mr. LUGAR, from the Committee on Agriculture, Nutrition, and Forestry:

Shirley Robinson Watkins, of Arkansas, to be a Member of the Board of Directors of the Commodity Credit Corporation.

Shirley Robinson Watkins, of Arkansas, to be Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.

I. Miley Gonzalez, of New Mexico, to be Under Secretary of Agriculture for Research, Education, and Economics.

Catherine E. Woteki, of the District of Columbia, to be Under Secretary of Agriculture for Food Safety. (New Position)

August Schumacher, Jr., of Massachusetts, to be Under Secretary of Agriculture for Farm and Foreign Agricultural Services.

August Schumacher, Jr., of Massachusetts, to be a Member of the Board of Directors of the Commodity Credit Corporation.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. HELMS, from the Committee on Foreign Relations:

Stanley O. Roth, of Virginia, to be an Assistant Secretary of State.

Marc Grossman, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be an Assistant Secretary of State.

James P. Rubin, of New York, to be an Assistant Secretary of State.

Edward William Gnehm, Jr., of Georgia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Director General of the Foreign Service.

Bonnie R. Cohen, of District of Columbia, to be an Under Secretary of State.

David Andrews, of California, to be Legal Adviser of the Department of State.

James W. Pardew, Jr., of Virginia, for the Rank of Ambassador during his tenure of service as U.S. Special Representative for Military Stabilization in the Balkans.

Wendy Ruth Sherman, of Maryland, to be Counselor of the Department of State, and to have the rank of Ambassador during her tenure of service.

Stephen R. Sestanovich, of the District of Columbia, as Ambassador at Large and Special Adviser to the Secretary of State for the New Independent States.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self, None.
2. Spouse, None.
3. Children and spouses: Benjamin Sestanovich, None. Clare Sestanovich, None.
4. Parents: Molly B. and Stephen N. Sestanovich, $100,000, 1994, Ellen Schwartz (Dem. candidate, 10th dist., CA).
5. Grandparents: Deceased.
6. Brothers and spouses: Kathryn L. and R. Benjamin Sestanovich, None.
7. Sisters and spouses: Mary Sestanovich and William Sillavo, None.

Maura Harty, of Florida, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Paraguay.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self, None.
2. Spouse: James Larner, None.
3. Children and spouses: No children.
4. Parents: Louise Harty, None. Edward W. Harty (deceased 11/94), No information available.
5. Grandparents: Ana and Luis Torreblanca (deceased 2/71 and 6/70), None. Frank Harty (deceased 1/73), None. Nora Harty, None.
6. Brothers and spouses: Mark Harty (single), None.
7. Sisters and spouses: Nancy and Fred Sanguiliano, None.

John Christian Kornblum, of Michigan, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Germany.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self: John C. Kornblum, None.
2. Spouse: Helen Kornblum, None.

3. Children and spouses: Alexander Kornblum, None. Stephen Kornblum, None.
4. Parents: Samuel C. Kornblum, deceased. Ethelyn E. Kornblum, deceased.
5. Grandparents: Herbert Tonkin, deceased. May Tonkin, deceased. Christian Kornblum (father), deceased. Luisa Kornblum (mother), deceased.
6. Brothers and spouses: Stephen Kornblum (brother), None. Nancy Kornblum (sister-in-law), None.
7. Sisters and spouses: No sisters.

James Franklin Collins, of Illinois, 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 the Russian Federation.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self, None.
2. Spouse, see attachment No. 1.
3. Children and spouses: Robert S. Collins, None. Deborah Chew (spouse), None.
4. parents: Jonathan C. Collins, None. Caroline C. Collins, None. Harrison F. Collins, $50.00, 02/92, John Crawford (Candidate for Illinois Rep.). (See attachment No. 2.)
5. Grandparents: Deceased.
6. Brothers and spouses: Jefferson C. Collins, None.
7. Sisters and spouses: No sisters.

ATTACHMENT NO. 1: DR. NAOMI F. COLLINS CONTRIBUTIONS

Date, Amount, and Donee

01/93, $25.00, Democratic National Committee.
03/93, $15.00, Dollars for Democrats.
05/93, $15.00, DCCC (Democratic Congressional Campaign Committee).
06/93, $25.00, Bruce Adams for County Council.
10/93, $15.00, Maryland Democrats.
11/93, $25.00, Nancy Kopp (candidate for State Legislature).
01/94, $18.00, Women's Higher Education Fund.
01/94, $25.00, Democratic National Committee.
03/94, $30.00, Emily's List.
03/94, $25.00, Bruce Adams for County Council.
03/94, $20.00, Democratic National Committee.
04/94, $25.00, Elanor Carey for Attorney Gen 1994.
05/94, $30.00, Pat Williams.
09/94, $25.00, Nancy Kopp.
09/94, $25.00, Dollars for Democrats.
12/94, $50.00, Emily's List.
4/95, $125.00, Emily's List.
9/95, $25.00, Maryland Democratic Party.
12/95, $25.00, Democratic National Committee.
12/95, $25.00, Mikulski for Senate.
1/96, $25.00, Clinton-Gore '96.
9/96, $20.00, Marilyn Goldwater.
9/96, $40.00, Emily's List.

ATTACHMENT NO. 2: HARRISON F. COLLINS CONTRIBUTIONS

Date, Amount, and Donee

1994, $10.00, Democratic National Committee (Precise date and amount unknown).
2/95, $25.00, Democratic Congressional Campaign Committee.
10/95, $25.00, Democratic National Committee.
2/95, $30.00, Democratic National Committee.
5/95, $50.00, Democratic National Committee.
7/95, $80.00, Democratic Socialists.
10/95, $100.00, Democratic Socialists.
1/96, $35.00, NRDC.
1/96, $50.00, Democratic National Committee.
1/96, $20.00, Democratic National Committee.
7/95, $35.00, Democrats 2000.
3/96, $20.00, Democratic National Committee.
4/96, $20.00, Democratic National Committee.
5/96, $20.00, Democratic National Committee.
6/96, $20.00, Democratic National Committee.
7/96, $50.00, Democratic National Committee.
8/96, $30.00, Democratic National Committee.
9/96, $50.00, Democratic National Committee.
11/96, $20.00, Democratic National Committee.
12/96, $20.00, Democratic National Committee.
1/97, $20.00, Democratic National Committee.
2/97, $20.00, Democratic National Committee.

Philip Lader, of South Carolina, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the United Kingdom of Great Britain and Northern Ireland.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all member of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self, $1,000, 1994, Theodore-for-SC Governor.
2. Spouse: Linda LeSourd Lader, $1,000, 1996, Clinton/Gore Campaign.
3. Children and spouses: Mary-Catherine Lader, None. Linda Whitaker Lader, None.
4. Parents: Phil Lader (deceased), None. Mary Lader (deceased), None.
5. Grandparents: Cosmo Tripoli (deceased), None. Josephine Tripoli (deceased), None.
6. Brothers and spouses: Isadore Lader (deceased), None. Retta Lader (deceased), None.
7. Sisters and spouses None.

Felix George Rohatyn, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to France.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self: Felix G. Rohatyn—See attached for list of contributions.
2. Spouse: Elizabeth Fly Rohatyn—See attached for list of contributions.
3. Children and spouses—Three sons: Pierre Rohatyn—No contributions. Nicolas Rohatyn—See attached for list of contributions. Michael Rohatyn—No contributions.
4. Parents: Edith Knoll Plessner (mother)—Deceased. Henry Plessner (stepfather)—Deceased. Alexander Rohatyn (father)—Deceased. Patricia Rohatyn (stepmother)—No contributions.
5. Grandparents: Deceased.
6. Brothers and spouses: None.
7. Sisters and spouses: None.

FEDERAL CAMPAIGN CONTRIBUTION REPORT—ELIZABETH ROHATYN

Amount, Date, and Donee

$500, Mary Boyle for U.S. Senator/Emily's List.
$1,000, 3/6/93, Moynihan Committee Inc.
$1,000, 4/13/93, Bob Krueger Campaign.
$1,000, 6/9/93, Emily's List.
$500, 3/24/94, Delahanty for Congress Committee/Emily's List.
$500, 3/24/94, Delahanty for Congress Committee/Emily's List.
$500, 3/24/94, Friends for McGuire/Emily's List.
$500, 3/24/94, Friends for McGuire/Emily's List.
$1,000, 5/16/94, Robb for the Senate.
$1,000, 5/19/94, Emily's List.
$1,000, 7/23/94, Friends of Dave McCurdy.
$250, 9/12/94, Karen Shepherd for Congress.
$1,500, 9/21/94, Women's Campaign Fund Inc.
$750, 9/20/94, Karen Shepherd for Congress.
$500, 10/18/94, Louise Slaughter Re-election Committee.
$1,000, 3/24/95, Emily's List.
$500, 1995, Friends of Dave McCurdy.
$1,000, 6/20/95, Friends of John Warner 1996 Committee.
$1,000, 8/2/95, Friends of Schumer.
$500, 8/14/95, Emily's List.
$1,000, 10/9/95, Clinton/Gore '96 Primary Committee Inc.
$25,000, 10/11/95, DNC—Non-Federal Individual.
$5,000, 12/18/95, DSCC Non-Federal Individuals.
$1,000, 3/12/96, Emily's List.
$250, 3/22/96, Louise Slaughter Re-Election Committee.
$12,500, 4/19/96, Democratic Congressional Campaign Committee.
$12,500, 9/12/96, DSCC Non-Federal Individuals.
$1,000, 10/21/96, Karpan for Wyoming.
$1,000, 1997, Moynihan Committee Inc.

FEDERAL CAMPAIGN CONTRIBUTION REPORT—FELIX ROHATYN

$5,000, 1/21/93, Committee for Effective Government.
$1,000, 3/12/93, Moynihan Committee Inc.
$1,000, 4/13/93, Bob Krueger Campaign.
$5,000, 4/28/93, Committee for Effective Government.
$1,000, 5/5/93, Mitchell for Senate.
$1,000, 5/6/93, Lieberman '94 Committee.
$35,000, 5/17/93, DNC—Non-Federal Individual.
$1,000, 11/9/93, Friends of John Glenn.
$500, 11/9/93, Friends of Jane Harman.
$-2,193, 11/22/93, Committee for Effective Government.
$2,500, 3/28/94, Democratic Congressional Campaign Committee.
$1,000, 3/31/94, Lieberman '94 Committee.
$2,500, 3/31/94, Committee for Effective Government.
$1,000, 4/1/94, Leahy for U.S. Senator.
$500, 5/18/94, Oberly Senate Committee.
$1,000, 6/8/94, Moynihan Committee Inc.
$100,000, 6/9/94, DNC—Non-Federal Individual.

$500, 7/14/94, Voters for Choice/Friends of Family Planning.
$500, 7/23/94, Friends of Dave McCurdy.
$1,000, 8/26/94, Kerrey for U.S. Senate Committee.
$1,000, 9/30/94, Friends of Bob Carr.
$500, 10/9/94, Linda Kushner for U.S. Senate.
$1,000, 10/13/94, Citizens for Sarbanes.
$500, 10/17/94, Citizens for Senator Wofford.
$1,000, 10/19/94, Maloney for Congress.
$1,000, 10/21/94, Launtenberg Committee.
$10,000, 12/13/94, DNC Services Corporation/ Democratic National Committee.
$500, 3/20/95, Friends of Dave McCurdy.
$500, 3/21/95, Voters for Choice/Friends of Family Planning.
$1,000, 5/22/95, Friends of Max Baucus.
$500, 6/9/95, Voters for Choice/Friends of Family Planning.
$1,000, 6/20/95, Friends of John Warner 1996 Committee.
$1,000, 6/30/95, Kennedy for Senate (1994).
$20,000, 7/19/95, DNC—Non-Federal Individual.
$80,000, 7/19/95, DNC—Non-Federal Individual.
$20,000, 7/28/95, Democratic Senatorial Campaign Committee.
$1,000, 8/2/95, Friends of Schumer.
$1,000, 8/7/95, Friends of Senator Rockefeller.
$1,000, 8/16/95, Friends of Senator Carl Levin.
$1,000, 8/24/95, Kerry Committee.
$25,000, 10/11/95, DNC—Non-Federal Individual.
$1,000, 10/23/95, People for Pete Domenici.
$500, 2/15/96, Voters for Choice/Friends of Family Planning.
$12,500, 4/19/96, Democratic Congressional Campaign Committee.
$500, 5/8/96, Friends of Bob Graham Committee.
$500, 6/6/96, Friends of Jane Harman.
$500, 6/10/96, Crawford for Congress Committee.
$2,500, 7/23/96, Democratic Senatorial Campaign Committee.
$12,500, 9/12/96, DSCC Non-Federal Individuals.
$50,000, 9/25/96, DNC—Non-Federal Individual.
$25,000, 10/11/96, DCCC Non-Federal Account #5.
$25,000, 10/11/96, DCCC Non-Federal Account #5.
$125,000, 10/18/96, DNC Non-Federal Unincorporated Association Account.
$1,000, 1997, Moynihan Committee Inc.

FEDERAL CAMPAIGN CONTRIBUTION REPORT—NICOLAS ROHATYN

$5,000, 4/6/93, Morgan Companies Political Action Committee (Morganpac).
$5,000, 4/20/94, Morgan Companies Political Action Committee (Morganpac).
$5,000, 4/19/95, Morgan Companies Political Action Committee (Morganpac).
$500, 5/8/96, Friends of Bob Graham Committee.
$5,000, 5/16/96, Morgan Companies Political Action Committee (Morganpac).

Richard Dale Kauzlarich, of Virginia, 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 the Republic of Bosnia and Herzegovina.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self, None.
2. Spouse, None.
3. Children and spouses: Terri L. Skender, None. Derek Skender, None. Son, Richard Kauzlarich (deceased), None.
4. Parents: Victor Kauzlarich and Eva Kauzlarich, $15, Spring '96 Mike Grchan, Treasurer, Rock Island County Democratic Committee.
5. Grandparents: George Kauzlarich (deceased), None. Emma Kronfeld (deceased), None.
6. Brothers and spouses: Stanley Kauzlarich, None.
7. Sisters and spouses: Victoria Kauzlarich, None. James Thane, None.

Daniel V. Speckhard, of Wisconsin, a Career Member of the Senior Executive Service, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Belarus.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self, None.
2. Spouse, None.
3. Children and spouses: None.
4. Parents: Carol Speckhard, None. Thomas Speckhard, $30.00, 1996, Representative David Obey.
5. Grandparents: Deceased.
6. Brothers and spouses: James Speckhard, None. Thomas J. Speckhard, None.
7. Sisters and spouses: Kathleen White, None.

Keith C. Smith, of California, 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 the Republic of Lithuania.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self: Keith C. Smith, None.
2. Spouse: Nina Smith, None.
3. Children and spouses: Brian Smith, son. Tanya Batdorff, daughter. Craig Smith, son. John McKeever, stepson. Peter McKeever, stepson. Michael McKeever, stepson. None.
4. Parents: Harold L. Smith, deceased. Lydia D. Smith, deceased.
5. Grandparents: Robert Daines, deceased. Chloe Daines, deceased. Alexander Smith, deceased. Angela Smith, deceased.
6. Brothers and spouses: Harold D. Smith, None. Kent D. Smith, None.
7. Sisters and spouses: Bonnie Smith, None. Carolyn Buhman, $25, 1990, Cong. Howard McKeon.

Anne Marie Sigmund, of the District of Columbia, a Career Member of the Senior foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kyrgyz Republic.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self, none.
2. Spouse: no spouse.
3. Children and spouses: no children.
4. Parents: Lawrence and Mary Sigmund, $100, 1996, Concord Coalition.
5. Grandparents: deceased.
6. Brothers and spouses: Michael and Cynthia Sigmund, none.
7. Sisters and spouses: None.

James F. Mack, of Virginia, 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 the Co-operative Republic of Guyana.

FEDERAL CAMPAIGN CONTRIBUTION REPORT

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, Amount, Date, and Donee

1. Self, none.
2. Spouse: $25.00, 8/18/96, $25.00, 6/24/96, Republican National Committee.
3. Children and spouses: Robert, Sally, David & Frances Mack, none.
4. Parents: Frederick & Dorothy Mack, deceased.
5. Grandparents: Frank & Ann Mack, deceased. Nehamiah & Ann Candee, deceased.
6. Brothers and spouses: none.
7. Sisters and spouses: Caroline Mack Westdorp, (sister), None. Wolfgang Westdorp (brother-in-law), None.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' 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. JEFFORDS (for himself, Ms. SNOWE, and Mr. LEAHY):

S. 1087. A bill to provide for the modernization of port and rail access in northern New England, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ROTH:

S. 1088. A bill to suspend temporarily the duty on ACM; to the Committee on Finance.

By Mr. SPECTER (for himself, Mr. FORD, Mr. SANTORUM, Mr. HARKIN, Mr. INOUYE, Mr. INHOFE, Ms. MIKULSKI, Mrs. BOXER, Mr. ROCKEFELLER, Mr. BRYAN, and Mr. DURBIN):

S. 1089. A bill to terminate the effectiveness of certain amendments to the foreign repair station rules of the Federal Aviation Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BURNS (for himself, Mr. JOHNSON, Mr. MCCONNELL, Mr. GRASSLEY, Mr. BROWNBACK, Mr. THURMOND, Mr. HELMS, Mr. DASCHLE, Mr. COCHRAN, Mr. HATCH, Mr. INHOFE, and Mr. CONRAD):

S. 1090. A bill to specify that States may waive requirements relating to commercial drivers' licenses under chapter 313 of title 49, United States Code, with respect to certain farm vehicles, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1091. A bill to amend title 23, United States Code, to provide for maintenance of public roads used by school buses serving certain Indian reservations; to the Committee on Environment and Public Works.

By Mr. MURKOWSKI:

S. 1092. A bill to provide for a transfer of land interests in order to facilitate surface transportation between the cities of Cold Bay, Alaska, and King Cove, Alaska, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. KERRY (for himself and Mr. MCCAIN):

S. 1093. A bill to extend nondiscriminatory treatment (most-favored-nation treatment) to the products of the Lao People's Democratic Republic, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WYDEN (for himself and Mr. WARNER):

S. Res. 110. A bill to permit an individual with a disability with access to the Senate floor to bring necessary supporting aids and services; to the Committee on Rules and Administration.

By Mr. HELMS:

S. Con. Res. 46. An original concurrent resolution expressing the sense of the Senate regarding the terrorist bombing in the Jerusalem market on July 30, 1997; from the Committee on Foreign Relations; placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JEFFORDS (for himself, Ms. SNOWE and Mr. LEAHY):

S. 1087. A bill to provide for the modernization of port and rail access in northern New England, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE OLDER INDUSTRIAL REGION RAIL/PORT ACCESS AND MODERNIZATION ACT

Mr. JEFFORDS. Mr. President, I rise today with Senator SNOWE to introduce legislation to aid the growth of commerce throughout New England. The Older Industrial Region Rail and Port Access and Modernization Act aims to improve northern New England's aging rail infrastructure and ocean ports to speed delivery of goods and people throughout the region.

New England was built by the railroads. But in our modern economy, highways have captured a majority of the commerce, supplanting rail. As we reach the end of this century, our region has begun to recognize the importance of railroads, and their vital role in our expanding economy. Efficient highways run north to south in northern New England, but we have no east to west roads sufficient to handle growing trade and commerce. As Vermont, New Hampshire, and Maine work together to compete in this global economy, our success is dependent on our mutual efforts to improve access to markets. We will succeed only if modern freight railroads can serve the entire region and through our ports bring goods to market across the Nation and around the world.

Rail lines throughout northern New England have been neglected for many years. Crumbling rail beds and constricted passage has limited the movement of freight and passenger trains and restricted rail access to deep water ports. Older bridges, deteriorated tracks, inadequate tunnels all contribute to a rail system that fails to fulfill the needs of the three-State area. As a result, commerce throughout the region suffers.

A recent report by Cambridge Systematics, entitled "New England Transportation Initiative," indicates that northern New England's economy cannot fully expand without a carefully planned and implemented intermodal strategy. The study predicts that Maine's ports will gradually lose business to southern ports, primarily in New Jersey and New York, because of inadequate rail transportation and port access. In addition, the study predicts that business and jobs in New Hampshire and Vermont will not keep pace with other regions without a better strategy to efficiently move goods and people.

An exhaustive analysis by the Eastern Border Transportation Coalition regarding the trade and traffic flows across the eastern United States-Canada border projected a trade increase of close to 200 percent by the year 2015. The report also outlines that this increase could be hampered by a lack of adequate transportation options and overcrowded roads and highway border stations. To avoid this setback, rail options must be available. Without proper infrastructure development, New England's chance to take advantage of such economic growth will diminish.

The legislation we introduce today will authorize Federal spending to rehabilitate rail beds in Vermont, Maine, and New Hampshire, enabling them to improve their freight rail traffic and better handle the movement of goods and people with their borders. States will be able to apply separately to the U.S. Secretary of Transportation for individual grants. Grant funding is provided for a variety of categories: Port development and access; bridge and tunnel obstruction repair and replacement; repair of railroad beds; and development of intermodal facilities, including intermodal truck-train transfer facilities. Revitalization of these resources will allow freight and passenger trains to move freely throughout the region, reconnecting railroad towns long separated by the hazards of unpassable tracks.

The bill also establishes a loan assistant program. Railroad companies in Vermont, Maine, and New Hampshire will be able to access low interest loans to improve their rail lines in the region. The loans can be used for purchase of rolling stock, development of maintenance facilities, and many other capital improvements.

Without this legislation, Vermont, New Hampshire, and Maine may fail to benefit from future growth opportunities. Even though international shipping trade is expected to increase by 20 percent in the next 5 years, New England is less likely to benefit from the influx of business and jobs because of its decaying rail and port infrastructure. Improving rail lines will bring new life to our region, strengthening our industries and thereby our economies.

Mr. President, I would urge action on this legislation, because, as we are learning, ports and railroads are the life lines that will help to ensure the well-being of all of northern New England.

Ms. SNOWE. Mr. President, I rise today with my colleague and good friend, Senator JEFFORDS of Vermont, to introduce the Older Industrial Region Rail/Port Access and Modernization Act.

There is an old Yankee saying "you can't get there from here". If we do not take steps to upgrade our aging transportation infrastructure in order to allow us to be a vigorous competitor for the movement of goods, that saying may become a sad reality. That is why the bill we introduce today is so important to northern New England's future, because its purpose is to revitalize our aging rail infrastructure. As much as rail is a part of our Nation's history, it is also the pathway to a bright economic future.

The bill, which covers Vermont, New Hampshire, and Maine, will provide funding for improving and modernizing our freight rail system—removing obstacles like low bridges that constrict the use of double-stack trains, and intermodal facilities construction and maintenance. It would also provide funding to assist Maine's ports in updating and modernizing their facilities and rail transport access. This upgrading is particularly important as studies

have shown that Maine's ports are losing business to southern ports because of inadequate rail transport and access.

Under the bill, an 80/20 Federal/State share grant program would be created. The States could use this money for first, connecting all railroads to ports; second, removing, repairing or replacing bridges or other obstructions that inhibit the use of double-stack rail cars; third, repairing, upgrading and purchasing railbeds and tracks and fourth, constructing, operating and maintaining intermodal truck-train transfer facilities and train maintenance facilities.

Intermodalism is the future, as we have seen from the success of ISTEA. I have seen it at the intermodal facility in my hometown of Auburn, ME. Secretary of Transportation Rodney Slater visited the facility earlier this year with me and other members of the Maine delegation. After the visit, he told me that Auburn was a model facility that he would use in his travels as an example of how well the concept works when done correctly. Our bill will provide States with the flexibility to encourage new facilities and to upgrade current ones. It will provide our businesses with better, faster, more cost effective access to out of State markets and it will increase the viability of our three ports—Portland, Eastport, and Mack Point—by making them more attractive options for shipping and receiving goods.

More important is the basic fact that a modern transportation system is vital to any economic development. Our bill will allow the northern New England States to upgrade their aging infrastructure to ensure that we do not allow future economic development and growth to slip away because we cannot meet the transportation needs of business and industry in the coming years.

By Mr. ROTH:

S. 1088. A bill to suspend temporarily the duty on ACM; to the Committee on Finance.

LEGISLATION TO SUSPEND TEMPORARILY THE DUTY ON ACM

Mr. ROTH. Mr. President, I rise to introduce a bill to suspend the duty through December 31, 1999, on a product commonly known as ACM or [3-(Acetoxy)-3-cyanopropyl] methyl-phosphinic acid butylester, which falls under subheading 2931.00.90 of the Harmonized Tariff Schedule of the United States. ACM is an essential ingredient in the production of glufosinate ammonium, a patented nonselective, broad-spectrum herbicide, manufactured by AgrEvo USA under the brand name Liberty and used primarily in corn and soybean cultivation.

The cost to import ACM currently comprises roughly 90 percent of the total cost of manufacturing glufosinate ammonium. Suspension of this duty will substantially lower AgrEvo's cost of production and thereby improve the company's competitiveness.

By Mr. SPECTER (for himself, Mr. FORD, Mr. SANTORUM, Mr. HARKIN, Mr. INOUYE, Mr. INHOFE, Ms. MIKULSKI, Mrs. BOXER, Mr. ROCKEFELLER, Mr. BRYAN, and Mr. DURBIN):

S. 1089. A bill to terminate the effectiveness of certain amendments to the foreign repair station rules of the Federal Aviation Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

AIRCRAFT REPAIR STATION SAFETY ACT OF 1997

Mr. SPECTER. Mr. President, I have sought recognition today to introduce legislation designed to address aviation safety concerns which arise out of the proliferation of aircraft repair facilities outside the United States which are used by airplanes that fly within our Nation every day. This legislation would change current regulations so that U.S. aircraft are repaired to the maximum extent possible by professional U.S. mechanics, properly trained and supervised, using certified parts. This bill also addresses the critical issue of substandard or uncertified airplane parts, known as bogus parts.

I am pleased to be joined by 10 of my Republican and Democratic colleagues in introducing the Aircraft Repair Station Safety Act of 1997, which is similar to a bill introduced by my colleague from Pennsylvania, Congressman BORSKI (H.R. 145) which currently has 135 cosponsors.

A key focus for many of us in the 105th Congress is aviation safety. As a member of the Transportation Appropriations Subcommittee, I have worked with my colleagues to ensure that we spend the maximum amount possible on improving our aviation infrastructure for safety purposes, including altogether new runways, runway extension projects, and new generations of radar and landing systems. Air travel is an essential element of our lives, as millions of Americans use airplanes for personal and business trips. Our economy is deeply rooted in the success of our aviation system, which makes it even more critical that we take all necessary steps to enhance aviation safety.

This legislation is intended to address a regulatory loophole created in November, 1988, when the Federal Aviation Administration promulgated new rules which weakened the restrictions on certification for foreign aircraft repair stations. The 1988 changes have resulted in a situation where FAA certification—the highest seal of approval in the world—is much too easy to obtain. Prior to those changes, a foreign repair facility had to demonstrate that there was a need to service aircraft engaged in international travel before they could get certified. But now, a station can receive FAA certification for the simple goal of attracting U.S. business. I am advised that repair stations in Tijuana, Mexico and Costa Rica applied for and received FAA certification even though few expect these locations to become new hubs for international travel. Instead, these facilities are becoming new hubs for stealing U.S. jobs and could potentially jeopardize aviation safety because of inadequacies in U.S. regulatory oversight.

One example of where work performed on an aircraft at a foreign facility had significant repercussions within the United States was the 1994 engine explosion and fire on a Valujet plane on the runway at Atlanta's Hartsfield International Airport, which necessitated the evacuation of the 57 passengers. According to media reports, the work was done at a Turkish repair station that lacked FAA approval, and whose shabby business practices included plating over a cracked and corroded compressor disk. Had the explosion occurred in midflight, the results could have been catastrophic.

When the 1988 regulations were adopted, the FAA expected that the number of foreign repair stations it certified would rise from the level of 200 to possibly 300 or 400. I understand that there are now nearly 500 such foreign aircraft repair stations with FAA certification. This comes at a time, however, when the FAA is having enough trouble inspecting domestic repair stations and enforcing aviation safety rules within facilities in the 50 States. I find it hard to believe that the FAA has sufficient resources to adequately investigate problems at the 480 foreign aircraft repair facilities in addition to its U.S. responsibilities.

I am advised that one recent phenomenon is that foreign repair facilities are being used by some U.S. carriers on a contract basis as a means of holding down costs, and some have become what have been termed virtual airlines because so little maintenance and repair work is done in-house. Instead of aircraft repair work being done at relatively few sites, countless contractors and subcontractors domestically and abroad are now filling that function.

I would note that the Gore Commission on Aviation Safety and Security stated in its Final Report of February 12, 1997 that:

> Considerable attention has been given to the issue of outsourcing of maintenance and other work, particularly in the wake of the Valujet crash. The Commission does not believe that outsourcing, in and of itself, presents a problem—if it is performed by qualified companies and individuals. *The proper focus of concern should be on the FAA's certification and oversight of any and all companies performing aviation safety functions, including repair stations certificated by the FAA but located outside of the United States.* (Emphasis added.)

A problem is that under the current regulatory framework, foreign aircraft repair stations have not had to demonstrate legitimate need or to meet all the standards and procedures imposed on U.S. stations. For example, I am advised that domestic facilities and their employees must meet rigorous worker surveillance standards including broad drug and alcohol testing requirements. Many other nations seeking to compete do not have these same requirements in place or the same level of enforcement. There is also a discrepancy between the requirement that certain mechanics at a U.S. facility are certified airmen and the absence of such a mandate on certified foreign repair stations. One would think that this requirement is important enough to be imposed wherever a plane which flies within our borders is repaired and maintained. Accordingly, this legislation provides that all standards imposed on domestic repair stations and their employees must be imposed on foreign facilities and their employees.

In sponsoring this legislation, I am not attempting to deprive U.S. carriers of access to foreign repair facilities when necessary. Strategically based foreign repair stations have been part of our aviation network since 1949, when it was recognized that such stations were needed for the repair of U.S. aircraft operating outside our airspace. In addition, foreign manufacturers producing FAA-approved air frames or components have traditionally been allowed to support their products. Further, it is my intention that this legislation would not hinder the repair of U.S. aircraft abroad which do not operate within the United States.

This legislation would not change these accepted practices, but would give the FAA the opportunity to revisit this issue by returning the regulations governing the certification of repair stations to what they were before November, 1988. This legislation is aimed at the proliferation of foreign FAA-certified repair facilities which exist to service aircraft that, except for the cheap labor and lower regulatory oversight, would never leave the United States.

This legislation would also clamp down on the possibility that aircraft repair stations would knowingly use bogus parts instead of properly certified parts. The bogus airplane parts trade has become lucrative and gives real cause for concern. The FAA and law enforcement agencies have cracked down in recent years, resulting in 130 indictments across the country as of May, 1997 of people suspected of being dealers of bogus airplane parts. In one troubling media account, when an American Airlines plane crashed in Colombia in 1995, salvagers extracted valuable components from the plane before even all the bodies were collected and the parts were offered for sale in Miami shortly thereafter. Under this bill, if a facility is found to have knowingly used bogus parts, the FAA will revoke its certification.

In closing, I want to reiterate that the Aircraft Repair Station Safety Act of 1997 is a sensible approach to increased aviation safety. This is more than just a jobs issue; peoples lives and our economy are at stake. At a time when the FAA's resources are stretched thin, I do not believe it is in the public interest to continue to certify foreign aircraft repair facilities which we cannot observe or regulate adequately.

I look forward to working with the members of the Senate Commerce, Science, and Transportation Committee on this issue, as well as the carriers, both passenger and cargo, which operate under current regulations and whom I hope will support this legislation.

By Mr. BURNS (for himself, Mr. JOHNSON, Mr. MCCONNELL, Mr. GRASSLEY, Mr. BROWNBACK, Mr. THURMOND, Mr. HELMS, Mr. DASCHLE, Mr. COCHRAN, Mr. HATCH, Mr. INHOFE, and Mr. CONRAD):

S. 1090. A bill to specify that States may waive requirements relating to commercial drivers' licenses under chapter 313 of title 49, United States Code, with respect to certain farm vehicles, and for other purposes; to the Committee on Commerce, Science, and Transportation.

WAIVER LEGISLATION

Mr. BURNS. Mr. President, today I rise to correct an unintentional Federal burden that has been placed on a sector of our Nation's agricultural community.

The Commercial Motor Vehicle Safety Act of 1986 subjected operators of large trucks and buses to new regulations including the requirement that States devise a commercial driver's license [CDL] program by April 1, 1992.

The intent of this act was to improve highway safety by requiring a higher level of qualification and knowledge for those engaged in commercial trucking activities and was primarily aimed at addressing the safety issue of over-the-road, long-haul truckers.

In 1988, the Federal Highway Administration [FHwA] granted States the authority to waive the CDL requirements for farmers and others who operate large vehicles incidental to their occupations. States retained the right to impose restrictions and conditions on those for whom the waiver was applied.

Unfortunately, the CDL requirement continues to apply to many vehicle operators who are neither a highway safety hazard or engaged in commercial trucking enterprises. Such is the case of those engaged in the unique, seasonal business of harvesting the Nation's crops.

Custom harvesting is a service industry which, for a fee, provides farmers the personnel and equipment necessary to harvest their crops; relieving them of the need to invest, operate and maintain the costly, specialized equipment which can only be utilized on a limited seasonal basis.

Incidental to this service is providing the transportation equipment and drivers necessary to deliver those crops to on-farm or local storage or processing facilities.

This service harvests nearly 60 percent of the Nation's entire wheat crop from my State of Montana to Texas and many wheat growing States in between.

The vast majority of miles driven in providing this service are off-road or on low traffic density rural roads and highways. Because of the unique nature of this business and the substantial investment in equipment, the owner-operator of these predominantly small, family-owned businesses devote a significant amount of time and resources to employee training and safety education which is relevant to the service they provide, rather than simply accepting the generally inappropriate standards based on the urban-suburban driving needs requires for a CDL.

In addition, close supervision of the harvesting and transport activities is provided both during the actual harvesting operations and the movement of equipment from site to site.

Given the failure of the FHwA to acknowledge the unique characteristics of the custom harvesting business and to provide a reasonable waiver to States to determine an appropriate level of regulation for this industry, we are introducing legislation to provide States the authority to grant an exemption from the CDL requirements.

This legislation does not mandate that those engaged in activities such as custom harvesting will be unregulated. It does provide those States, who wish to do so, the opportunity to provide regulatory relief to an industry which is critical to the production of food and fiber in this country.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

JUNE 26, 1997.

Hon. CONRAD BURNS,
U.S. Senate, Washington, DC.

DEAR SENATOR BURNS: Recently you received a letter from Senator Conrad Burns and Tim Johnson requesting your co-sponsorship of legislation to modify the Commercial Driver's License (CDL) requirements for those engaged in custom harvesting and processing of our nation's crops. The membership of the undersigned organizations urge you to join in supporting the legislative relief provided in their bill.

The Commercial Motor Vehicle Safety Act of 1996, required that states develop and implement a CDL program by April 1, 1992 and

a drug and alcohol testing program in 1996. It was intended to improve the safety performance of commercial, over-the-road trucking enterprises. In recognition of the unique nature of some trucking activities, the Federal Highway Administration provided States the authority to waive the CDL requirements for farmers, firefighters and others who operate large vehicles as part of their day-to-day business, but who were not engaged in commercial trucking. Individual states retained the ability to develop conditions and restrictions as part of the waiver process. Unfortunately, the CDL requirements still apply to that sector of agriculture which provides an important seasonal service by harvesting this nation's food and fiber crops and delivering the harvest to storage or processing for individual farmers. These businesses pose little safety hazard, and are not engaged in hauling crops on a commercial basis. Their operations predominantly require skills associated with driving off-road or in low traffic density areas. Unlike commercial trucking operations, the drivers involved in the harvest are closely supervised both during the harvest activities and those limited times when they must utilize the nation's highway system to move from farm to farm.

Harvesters and agriculture processors currently provide education, training and experience for drivers that is directly applicable to the conditions those drivers will face throughout their employment. The CDL requirements force the employer to also train their drivers so they can obtain a license which is of little practical use in their workplace. This dual burden is costly, time consuming and has reduced the ability of the industry to find competent employees.

The legislation proposed by Senator Burns and Johnson does not eliminate the CDL requirement for all drivers in all states. It does, however, provide States the opportunity to determine the appropriate level of regulation which should be applied to this important segment of the agriculture industry.

We urge you contact Senator Conrad Burns (Randall Popelka 224-2644) or Senator Tim Johnson (Sarah Dahlin 224-5842) and join them in ensuring that custom harvesters and agriculture processors are able to continue providing this safe, professional, efficient and competitive service which benefits all Americans.

Sincerely,

American Farm Bureau Federation; National Barley Growers Association; National Cotton Ginners Association; U.S. Custom Harvesters, Inc.; National Association of Wheat Growers; National Cotton Council, and the National Grain Sorghum Producers Association.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1091. A bill to amend title 23, United States Code, to provide for maintenance of public roads used by schoolbuses serving certain Indian reservations; to the Committee on Environment and Public Works.

THE INDIAN RESERVATION SCHOOL ROADS MAINTENANCE ACT OF 1997

Mr. BINGAMAN. Mr. President, I rise today to introduce the Indian Reservation School Roads Maintenance Act of 1997. This bill, which is being cosponsored by my colleague from New Mexico, Senator DOMENICI, addresses a unique situation with respect to roads in and around Indian reservations and nearby counties that is actually preventing children from getting to and from school safely. Because of the unique nature of this situation, it can only be addressed at the Federal level.

I would like to start with an example of this unique problem and why I believe a Federal solution is necessary. As you can see, Mr. President, this first chart is a map of the Navajo Reservation in New Mexico, Arizona, and Utah. The Navajo Nation is by far the Nation's largest Indian reservation, covering 25,000 square miles. To give you an idea of its size, there are 10 States that are smaller than this reservation. For instance, it is the same size as the State of West Virginia.

According to the Bureau of Indian Affairs, there are 9,000 miles of roads that serve the Navajo Nation. Only one-fifth of these roads are paved—the rest, over 7,000 miles, are dirt roads. The schoolbuses have to use nearly all of the 9,000 miles of roads each and every day to get the kids to and from school.

About 6,400 miles of these roads on the reservation are BIA roads and over 2,500 miles are State and county roads. All public roads within, adjacent to, or leading to the reservation, including BIA, State, and county roads, are considered part of the Indian reservation road system. However, only BIA roads are eligible for Federal maintenance funding from BIA, and generally, construction and improvement funding from the Federal Lands Highways Program in ISTEA is applied to BIA roads. On the other hand, States and counties are responsible for maintenance and improvement of their roads.

Mr. President, the Federal Government is asking the States and counties to bear too large a burden for road maintenance in this unique situation, given the resources most of these counties have. For example, counties around the Navajo Reservation are predominantly comprised of Federal or tribal lands. Three-quarters of McKinley County in my State of New Mexico is either tribal or Federal land, including BLM, Forest Service, and military. This next map is of McKinley County, and as you can see, Mr. President, everything shown on this map that is either orange, yellow, green, or red, is tribal or Federal land. The Indian land area alone comprises 61 percent of the county. As you can see, everything else is county land, which is a very small fraction of total land area. Therefore, there is a very small tax base on which the county can rely as a source of revenue for maintenance purposes. The picture for San Juan County in the northwest corner of New Mexico is very much the same.

Mr. President, families living in and around the reservation are no different from families anywhere else; their children are entitled to the same opportunity to get to school safely and get a good education. However, the miles and miles of unpaved, deficient roads in this vast area are frequently impassable. If the schoolbuses don't get through, the kids simply cannot get to school.

Of the 600 miles of county-maintained roads in McKinley County, 550 miles serve Indian land. Because of the vastness of the reservation, this is a cost that the counties in New Mexico, Arizona, and Utah simply cannot and should not have to bear without Federal assistance. Indeed, because of the large tribal and Federal presence in these counties, it is encumbent upon the Federal Government to provide this assistance.

What my bill does is set aside $10 million from the highway trust fund that counties such as these can apply for to help maintain the roads used by schoolbuses to carry children to school or to a Headstart program. Let me be very clear: these Federal funds can be used only on roads that are located within, or that lead to the reservation, that are on the State or county maintenance system, and that are used by schoolbuses.

Let me just state again, Mr. President, that maintaining schoolbus routes in this vast area is a unique problem that only the Federal Government can effectively deal with.

I don't believe any child wanting to get to and from school safely should have to risk or tolerate unsafe roads. Kids today, particularly in rural areas, already face enough barriers to getting a good education. I ask all Senators to join with me in assuring that all schoolchildren at least have a chance to get to school safely and have an opportunity for an education. I urge all of my colleagues to support this bill.

Mr. President, I ask unanimous consent that the full text of the bill, a summary, a McKinley County Commission resolution, a letter from the McKinley County road superintendent, David Acosta, and a letter from the Northwest New Mexico Council of Governments be included in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 1091

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

SECTION 1. INDIAN RESERVATION SCHOOL ROADS.

(a) FUNDING.—Section 1003(a)(6) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 1919) is amended by adding at the end the following:

"(D) INDIAN RESERVATION SCHOOL ROADS.—For maintenance of Indian reservation school roads $10,000,000 for each of fiscal years 1998 through 2003.".

(b) DEFINITION OF INDIAN RESERVATION SCHOOL ROAD.—Section 101 of title 23, United States Code, is amended by inserting after the undesignated paragraph defining "Indian reservation roads" the following:

"The term 'Indian reservation school road' means a public road that—

"(A) is within, is adjacent to, or provides access to an Indian reservation (including associated trust land and restricted Indian land) having a land area of 10,000,000 acres or more; and

"(B) is used by a school bus to transport children to or from a school or Headstart program.".

(c) MAINTENANCE UNDER THE FEDERAL LANDS HIGHWAYS PROGRAM.—Section 204 of title 23, United States Code, is amended—

(1) in the first sentence of subsection (a) by striking "and Indian reservation roads" and inserting "Indian reservation roads, and Indian reservation school roads";

(2) in subsection (b), by inserting after the second sentence the following: "Funds available for Indian reservation school roads shall be used by the Secretary to pay for the cost of maintenance of Indian reservation school roads in accordance with subsection (k).";

(3) in the last sentence of subsection (c), by striking "The Bureau" and inserting "Subject to subsection (k), the Bureau"; and

(4) by adding at the end the following:

"(k) INDIAN RESERVATION SCHOOL ROADS.—

"(1) FUNDING.—A State or county with an Indian reservation school road on its maintenance system may apply for funding from the Secretary for maintenance of the Indian reservation school road, which the Secretary may grant if the Secretary determines that funding for maintenance of the road from other sources is not sufficient to provide maintenance that ensures the safety and welfare of children being transported in a school bus to and from a school or Headstart program.

"(2) METHOD OF CONTRACTING.—All maintenance work funded under this subsection shall be performed—

"(A) by contract awarded by competitive bidding; or

"(B) by a State or county that the Secretary has determined has the ability to administer efficiently funds granted for the maintenance of Indian reservation school roads.

"(3) SUPPLEMENTARY FUNDING.—The Secretary shall ensure that funding made available under this subsection for maintenance of Indian reservation school roads for each fiscal year is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.".

BILL SUMMARY—INDIAN RESERVATION SCHOOL ROADS MAINTENANCE ACT OF 1997

The bill creates a new category of funding called "Indian reservation school roads" in the existing Federal Lands Highways Program (ISTEA, section 204 of title 23). This new category is in addition to the existing Indian reservation roads category. The authorized level of funding is $10 million per year for six years from the Highway Trust Fund, other than the mass transit account.

Indian reservation school roads are defined to be public roads that are within, adjacent to, or provide access to an Indian reservation (including associated Indian trust lands and restricted Indian lands) with a land area of at least 10 million acres and are used by school buses to transport children to or from school or Headstart programs.

A state or county with an Indian reservation school road on its maintenance system may apply to the Secretary of Transportation for funding for maintenance of a school bus road. The Secretary may grant funding if the Secretary determines the roads are not being maintained adequately to ensure the safety and welfare of children being transported to and from school or headstart program.

Maintenance work shall be performed by contract awarded by competitive bidding or by a state or county that the Secretary has determined has the ability to administer funds granted for the maintenance of Indian reservation school roads.

Funds provided for maintenance of Indian reservation school roads is supplemental to any funding for maintenance of Indian reservation roads provided by the Bureau of Indian Affairs.

STATE OF NEW MEXICO, COUNTY OF MCKINLEY, RESOLUTION NO. SEP-96-078

Whereas, the McKinley County Board of Commissioners has entered into a intergovernmental agreement with the Navajo Nation and the Bureau of Indian Affairs (BIA) to provide road maintenance on school bus routes within the McKinley County portion of the Navajo Nation; and

Whereas, McKinley County, the Navajo Nation and the BIA are aware of the many additional miles of roads on the reservation that are used for school bus routes but are not maintained due to a shortfall in maintenance funds; and

Whereas, the maintenance of school bus routes is necessary and a benefit to Navajo students and will provide continued access to the public education system in McKinley County; Now, therefore be it

Resolved, That McKinley County requests that in the reauthorization of the ISTEA program in 1997 that the United States Congress allow twenty-five percent (25%) of those funds allocated to the Navajo Nation for new road construction, be set aside for maintenance of existing school bus routes.

Passed, approved and adopted by the governing body at its meeting of September 30, 1996.

COUNTY OF MCKINLEY,
Gallup, NM, August 29, 1996.

Hon. JEFF BINGAMAN,
Senator, New Mexico,
Senate Office Building, Washington, DC.
Attention: Mr. Steve Clemens

DEAR STEVE: McKinley County is responsible for the maintenance of approximately 591.343 miles of roadway. Approximately 450 miles consist of unimproved dirt roads. The majority of roads serve as school bus routes for the Gallup-McKinley County Schools, BIA Schools, and several private and parochial schools. McKinley County is comprised of approximately 5,454 total square miles, with approximately 61% of the land base classified as Native American and BIA lands. McKinley County has approximately 540 miles of maintained roads which provide access to and within the Indian Reservation, Indian Trusts Lands, and Restricted Indian Lands.

Our request is that the upcoming Intermodal Service Transportation Efficiency Act (ISTEA) legislation be modified to provide greater flexibility in the use of ISTEA funds on local roadways, or modify the upcoming reauthorized version of ISTEA to establish a "Rural Area Set Aside for Local Roads". McKinley County would benefit greatly if County Government could become eligible under the Indian Reservation Roads (IRR) set aside funding. Currently the funding consists of $191 million dollars per fiscal year which is allocated directly to Indian Tribes and BIA.

The current legislation prohibits the use of ISTEA Surface Transportation Funds for any roads that are functionally classified as local or rural minor collectors. Since virtually all County roads fall under this category, counties throughout the nation do not currently qualify for ISTEA funding.

On behalf of all counties within New Mexico, we are requesting that the reauthorization of ISTEA funding have the specific language which will provide funding for County Government.

If you have any questions or need further clarification, please do not hesitate to notify me at (505) 722-7171. Thank you for your assistance and support to McKinley County.

Sincerely,

DAVID J. ACOSTA,
Road Superintendent.

NORTHWEST NEW MEXICO
COUNCIL OF GOVERNMENTS,
Gallup, NM, July 25, 1997.

Hon. JEFF BINGAMAN,
U.S. Senate, Hart Building,
Washington, DC.

DEAR SENATOR BINGAMAN: I am writing to express my support and endorsement of your proposed bill pertaining to school bus route roads on the Navajo Nation Reservation. (An amendment to Section 1000 (a)(6) of the Intermodal Surface Transportation Efficiency Act of 1991) The school bus routes in northwest New Mexico, like much of the road network in the region, are not well maintained. McKinley and San Juan Counties public school systems, the BIA, and private schools all provide educational opportunities to children on the Navajo Reservation. The counties' school system, and school bus route system is extensive, yet there are not adequate funds to maintain school bus routes at the county level. Other routes and counties in and around the Navajo Reservation have these same problems.

This additional funding would allow the county school systems to provide safe, adequate transportation of children on the reservation to and from school.

Please contact me if you have any questions.

Sincerely,

PATRICIA LUNDSTROM,
Executive Director.

By Mr. MURKOWSKI:

S. 1092. A bill to provide for a transfer of land interests in order to facilitate surface transportation between the cities of Cold Bay, AK, and King Cove, AK, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MURKOWSKI. Mr. President, today I rise to introduce legislation to benefit one of Alaska's most isolated regions, the Alaska Peninsula. This bill, The Izembek Refuge Land Exchange Act, provides a balanced approach to a difficult problem. In this remote area, there is a small Aleut Native village, King Cove, which is completely isolated from other Alaska cities and towns, and the rest of the world. The only way you can get to King Cove is by air or sea. And in this part of Alaska, the weather is so bad that neither sea or air is very reliable.

My bill will permit King Cove to be connected to the rest of the world through a road link to Cold Bay, a regional center, and the location of a good, all weather airport which can

provide year round and emergency medical evacuation for the residents of King Cove. Currently, when somebody is injured or gravely ill, treatment is at the mercy of weather and sea conditions.

Mr. President, King Cove is a tough place to live and the residents are tough and independent people. Their ancestors migrated to this part of the State thousands of years ago and have made a life out of this area with its rich bounty of fish. But people get sick there just like any place in the country, emergencies happen there more than most other places in America because the lifestyle is so close to the edge.

We have had long debates in this body this year about access to health care. Nowhere does this take on a more dramatic meaning than in King Cove. When I say access, I mean access. That means the actual physical ability to get to a hospital in Anchorage or Seattle to get the specialized health care needed in the event of a serious emergency or sickness. Right now, the residents of King Cove do not have this access. Since 1981, 11 air crash fatalities have occurred flying residentS from King Cove to Cold Bay. Numerous other crashes have also occurred, luckily without fatalities.

Many of these crashes involved flying injured or sick people out of King Cove in an attempt to get emergency care. Often the trip to care is as dangerous as the infliction itself. For example, in 1981, a medivac plane was forced to leave King Cove for an emergency/life and death rescue mission. There was no alternative to this flight and the plane crashed. Four people died including the pilot and the medivac victim. Six years ago another fatal crash occurred with six people killed. The list goes on.

This is a terrible place to have to fly out of if you cannot afford to wait. On medical emergencies, nobody can afford to wait. These residents are predominantly Alaska Natives, Aleuts for the most part. They have a good Alaska Native hospital available to them in Anchorage. In fact, thanks to this body, it is a new hospital with great facilities. But it might as well be on the dark side of the Moon for the residents of King Cove. When they need it, they can't be sure they will be able to get to it.

This legislation provides the solution by allowing ground access to an all-weather runway only 30 miles from King Cove in Cold Bay. In fact, thanks to World War II, Cold Bay has the third longest runway in the State. The runway has modern all weather equipment such as instrument landing systems and many other modern landing system improvements. In the past 4 years, the Cold Bay airport has seen only one instance in which air traffic from Anchorage could not land. It is safe to say that air operations can occur here in virtually all weather and can accommodate the King Cove emergency needs at all times. With no road between King Cove and Cold Bay there will be no hope for those seeking help. My bill would provide a land exchange that will permit the road to be built between King Cove and Cold Bay. This is the reasonable solution.

Mr. President, there is a need for this road, but there will be concerns raised because most of that road will be sited through the Izembek National Wildlife Refuge. This is unavoidable. The refuge is located completely astride the route between King Cove and Cold Bay. This is nobody's fault, and I know that the Fish and Wildlife Service has concerns. I also have concerns and my constituents and I are prepared to do what it takes to minimize the impact of this road on the surrounding area and resources.

The King Cove Corp. has proposed an exchange for valuable wetlands it owns near the refuge for the road right of way. The bulk of the right of way is already owned by King Cove as an inholding in the refuge. Only 7 miles is not owned by King Cove and this is the Federal land which would be exchanged under my bill. That portion is in the wilderness portion of the refuge, but there is no alternative to this except further danger to my constituents and the inevitable death and destruction to future victims of the next air crash.

Mr. President, I stand ready to work with the Fish and Wildlife Service to make this as constructive process as possible, but make no mistake, it is absolutely critical that this road be built. My constituents deserve a way to save their lives in times of emergency. They cannot be hostage to fear for life and limb.

By Mr. KERRY (for himself and Mr. MCCAIN):

S. 1093. A bill to extend nondiscriminatory treatment (most-favored-nation treatment) to the products of the Lao People's Democratic Republic, and for other purposes; to the Committee on finance.

LAO PEOPLE'S DEMOCRATIC REPUBLIC MOST-FAVORED-NATION LEGISLATION

Mr. KERRY. Mr. President, today I am introducing legislation, along with Senator MCCAIN, to extend nondiscriminatory treatment most-favored-nation treatment to the products of the Lao People's Democratic Republic. To avoid confusion, let me say at the outset that this bill, if enacted into law, would not give Laos special tariff treatment but rather put it on a par with the vast majority of our trading partners. This bill is identical to H.R. 2132, introduced in the House of Representatives by Congressman CRANE. The administration strongly supports this bill.

Recognizing the importance of a free market economy to economic growth and development, Laotian political leaders, in the late 1980's, made a fundamental decision to abandon Laos' centrally planned economic system and adopt free market reforms. Since taking this decision, the Laotian Government has embarked upon a constant process of reform. Over 90 percent of the 600 state-owned enterprises have been privatized. The foreign investment code, first adopted in 1989, was further liberalized in 1994 to make it consistent with World Trade Organization [WTO] standards. Laotian tariffs have been consistently reduced. An import-export regime consistent with WTO standards has been legislated. In 1995 an intellectual property, patent and trademark protection law was enacted. Laos has complied with International Monetary Fund guidelines on fiscal policy, instituted making reforms, and is following stringent fiscal management to reduce inflation.

In recognition of these developments, the Association of Southeast Asian Nations [ASEAN] admitted Laos as a member this month. The Laotian Government is now revising its laws and regulations, as necessary, to be consistent with ASEAN and ASEAN free trade agreement requirements.

The United States and Laos have also taken steps to improve bilateral economic relations. Last year, an OPIC agreement was successfully negotiated. The U.S. Trade Representative's Office and Laotian officials are currently negotiating a bilateral trade agreement, which will also meet WTO standards.

Reform in the economic area has been accompanied by major political changes as well in Laos. All but three political prisoners from the Southeast Asian war era have been released. In 1990 the Laotian Government adopted a constitution and bill of rights based on principles enshrined in the U.S. Constitution. In fact, American lawyers, serving as consultants, played a major role in writing these documents. Nationwide elections by secret ballot in 1992 led to the creation of a new National Assembly. Although still a one-party state, it is worth noting that individual candidates did not have to be Communist Party members to run in the elections, and in fact, several members of the assembly are not Communist Party members. The Laotian Government is also making a concerted effort to enhance the independence of the judiciary.

The United States and Laos have established good working relations, particularly on two issues of great importance to us—POW/MIA and counter narcotics. Extending MFN to Laos makes sense economically, in terms of the Laotian commitment to economic reform, and in terms of our overall bilateral relationship.

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

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

S. 1093

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

SECTION I. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the Lao People's Democratic Republic is striving to shed centralized government control of its economy in favor of market-oriented reforms;

(2) extension of unconditional most-favored-nation treatment would assist the Lao People's Democratic Republic in developing its economy based on free market principles and becoming competitive in the global marketplace;

(3) establishing normal commercial relations on a reciprocal basis with the Lao People's Democratic Republic will promote United States exports to the rapidly growing Southeast Asian region and expand opportunities for United States business and investment in the Lao People's Democratic Republic economy;

(4) United States and Laotian commercial interests would benefit from a commercial agreement between the United States and the Lao People's Democratic Republic providing for market access and the protection of intellectual property rights;

(5) economic reform in the Lao People's Democratic Republic is increasingly important as that country integrates into the ASEAN free-trade area and accedes to the World Trade Organization; and

(6) expanding bilateral trade relations that include a commercial agreement may promote further progress by the Lao People's Democratic Republic on human rights and democratic rule and assist that country in adopting regional and world trading rules and principles.

SEC. 2. EXTENSION OF NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF THE LAO PEOPLES DEMOCRATIC REPUBLIC.

(a) HARMONIZED TARIFF SCHEDULE AMENDMENT.—General note 3(b) of the Harmonized Tariff Schedule of the United States is amended by striking "Laos".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective date of a notice published in the Federal Register by the United States Trade Representative that a trade agreement obligating reciprocal most-favored-nation treatment between the Lao People's Democratic Republic and the United States has entered into force.

SEC. 3. REPORT TO CONGRESS.

The President shall submit to the Congress, not later than 18 months after the date of the enactment of this Act, a report on the trade relations between the United States and the Lao People's Democratic Republic pursuant to the trade agreement described in section 2(b).

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. MCCAIN, his name was added as a cosponsor of S. 39, a bill to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

S. 322

At the request of Mr. GRAMS, the names of the Senator from Ohio [Mr. DEWINE], the Senator from Indiana [Mr. COATS], the Senator from Oregon [Mr. WYDEN], and the Senator from Colorado [Mr. ALLARD] were added as cosponsors of S. 322, a bill to amend the Agricultural Market Transition Act to repeal the Northeast Interstate Dairy Compact provision.

S. 539

At the request of Mr. BYRD, his name was added as a cosponsor of S. 539, a bill to exempt agreements relating to voluntary guidelines governing telecast material from the applicability of the antitrust laws.

S. 727

At the request of Mrs. FEINSTEIN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 727, A bil to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for annual screening mammography for women 40 years of age or older if the coverage or plans include coverage for diagnostic mammography.

S. 766

At the request of Ms. SNOWE, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 766, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 859

At the request of Mr. KYL, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 859, a bill to repeal the increase in tax on social security benefits.

S. 1009

At the request of Mr. KENNEDY, the names of the Senator from Minnesota [Mr. WELLSTONE] and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of S. 1009, a bill to amend the Fair Labor Standards Act of 1938 to increase the Federal minimum wage.

S. 1054

At the request of Mr. COCHRAN, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 1054, a bill to amend title II of the Social Security Act to establish, for purposes of disability determinations under such titles, a uniform minimum level of earnings, for demonstrating ability to engage in substantial gainful activity, at the level currently applicable solely to blind individuals.

S. 1083

At the request of Mr. MACK, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 1083, a bill to provide structure for and introduce balance into a policy of meaningful engagement with the People's Republic of China.

SENATE CONCURRENT RESOLUTION 30

At the request of Mr. HELMS, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of Senate Concurrent Resolution 30, a concurrent resolution expressing the sense of the Congress that the Republic of China should be admitted to multilateral economic institutions, including the International Monetary Fund and the International Bank for Reconstruction and Development.

SENATE CONCURRENT RESOLUTION 32

At the request of Mr. HUTCHINSON, the name of the Senator from Kansas [Mr. BROWNBACK] was added as a cosponsor of Senate Concurrent Resolution 32, a concurrent resolution recognizing and commending American airmen held as political prisoners at the Buchenwald concentration camp during World War II for their service, bravery, and, fortitude.

SENATE CONCURRENT RESOLUTION 45

At the request of Mr. GLENN, the names of the Senator from Delaware [Mr. BIDEN], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Concurrent Resolution 45, a concurrent resolution commending Dr. Hans Blix for his distinguished service as Director General of the International Atomic Energy Agency on the occasion of his retirement.

SENATE RESOLUTION 102

At the request of Mr. SPECTER, the names of the Senator from California [Mrs. FEINSTEIN], the Senator from South Dakota [Mr. JOHNSON], the Senator from Utah [Mr. HATCH], the Senator from Florida [Mr. MACK], the Senator from Massachusetts [Mr. KERRY], and the Senator from Michigan [Mr. ABRAHAM] were added as cosponsors of Senate Resolution 102, a resolution designating August 15, 1997, as "Indian Independence Day: A National Day of Celebration of Indian and American Democracy."

AMENDMENT NO. 1027

At the request of Mr. KENNEDY his name was added as a cosponsor of amendment No. 1027 proposed to S. 1022, an original bill making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

SENATE CONCURRENT RESOLUTION 46—ORIGINAL RESOLUTION REPORTED BY THE COMMITTEE ON FOREIGN RELATIONS

Mr. HELMS, from the Committee on Foreign Relations, reported the following original resolution; which was placed on the calendar:

S. CON. RES. 46

Whereas on July 30, 1997, two terrorist bombs exploded almost simultaneously in an

open air Jerusalem market, killing at least 18 people, and wounding more than 100, and

Whereas this attack is a violent and vicious attack against the peace process and against the people of Israel: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) Expresses the deep condolences of the Congress and the American people to the people of Israel for the loss of life and the serious injuries that have been suffered in the terrorist bombing in the Jerusalem market and expresses the solidarity of the American people with the people of Israel in the wake of this tragic and senseless act;

(2) Expresses the determination of the Congress to join with the government of Israel in fighting against terrorism;

(3) Urges Yasser Arafat and officials of the Palestinian Authority to do more to combat terrorism and to eliminate terrorist networks in areas under their control;

(4) Calls on Yasser Arafat and officials of the Palestinian Authority to cooperate more intensively with the Israeli government in fighting terrorism; and

(5) Reaffirms the commitment of the United States Congress to peace in the Middle East and urges all parties to work together to bring an end to terrorism and to promote lasting peace and security in the region.

THE REPREHENSIBLE BOMBING IN JERUSALEM

Mr. HELMS. Mr. President, this morning, the Foreign Relations Committee approved and sent to the Senate an original resolution—Senate Concurrent Resolution 46—condemning the terrorist attack in Israel at 1:15 p.m. Wednesday afternoon, Israel time, when two terrorists entered a market in the center of Jerusalem and blew themselves up, killing at least 12 Israelis, and leaving 120 wounded, at least 20 of whom are described in critical condition.

Mr. President, the reason for this attack was probably yesterday's announcement that the peace talks between Israel and the Palestinians were about to resume. Clearly, the terrorists decided to try to derail the peace process by murdering innocent people. They perhaps have succeeded, because the peace process, Mr. President, is meaningless if there is no security for the people of Israel.

It is reported that Yasser Arafat telephoned Prime Minister Netanyahu to apologize for the bombing. He has had ample practice in issuing apologies and regrets for Palestinian attacks on Jews. But rhetoric is cheap. The question all of us must ask is: "Has Yasser Arafat done what it takes to rid the territories under his control of terrorists?" The answer to that is obvious: no.

The United States has done a great deal, too much, some contend, to support the Palestinian Authority. What has the Authority done to crack down on terror? Not nearly enough. Palestinian police officials are implicated in murders; terrorists are operating freely in areas under the Palestinian Authority's control.

Now dozens of innocent people lie dead and wounded. Not soldiers. Not military or police personnel. Just innocent people—mothers, fathers, children. There is no peace in this process.

SENATE RESOLUTION 110—RELATIVE TO THE SENATE FLOOR

Mr. WYDEN (for himself and Mr. WARNER) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 110

Resolved, That an individual with a disability who has or is granted the privilege of the Senate floor under rule XXIII of the Standing Rules of the Senate may bring necessary supporting aids and services (including service dogs, wheelchairs, and interpreters) on the Senate floor, unless the Senate Sergeant at Arms determines that the use of such supporting aids and services would place a significant difficulty or expense on the operations of the Senate in accordance with paragraph 2 of rule 4 of the Rules for Regulation of the Senate Wing of the United States Capitol.

AMENDMENTS SUBMITTED

THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

SNOWE (AND OTHERS) AMENDMENT NO. 1045

Ms. SNOWE (for herself, Mr. BREAUX, Mr. STEVENS, and Mr. MCCAIN) proposed an amendment to the bill (S. 39) to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the committee amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "International Dolphin Conservation Program Act".

(b) REFERENCES TO MARINE MAMMAL PROTECTION ACT.—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 Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

SEC. 2. PURPOSES AND FINDINGS.

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

(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

(b) FINDINGS.—The Congress finds that—

(1) the nations that fish for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with the purse seine fishery from hundreds of thousands annually to fewer than 5,000 annually;

(2) the provisions of the Marine Mammal Protection Act of 1972 that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities;

(3) tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market; and

(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000 animals, with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and with the goal of eliminating dolphin mortality.

SEC. 3. DEFINITIONS.

Section 3 (16 U.S.C. 1362) is amended by adding at the end the following new paragraphs:

"(28) The term 'International Dolphin Conservation Program' means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama.

"(29) The term 'Declaration of Panama' means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.".

SEC. 4. AMENDMENTS TO TITLE I.

(a) EXCEPTIONS TO MORATORIUM.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended—

(1) by inserting after the first sentence "Such authorizations may be granted under title III with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103."; and

(2) by striking the semicolon in the second sentence and all that follows through "practicable".

(b) DOCUMENTATION REQUIRED.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is further amended—

(1) by striking subparagraph (B) and inserting the following:

"(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

"(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

"(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin

Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

"(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

"(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation program;";

(2) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively;

(3) by inserting after subparagraph (B) the following:

"(C) shall not accept such documentary evidence if—

"(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna commission to release complete and accurate information to the Secretary in a timely manner—

"(I) to allow determination of compliance with the International Dolphin Conservation Program; and

"(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

"(ii) after taking into consideration such information, funding of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program."; and

(4) by striking "subparagraph (E)" in the matter after subparagraph (F), as redesignated by paragraph (2) of this subsection, and inserting "subparagraph (F)".

(c) CERTAIN INCIDENTAL TAKINGS.—Section 101 (16 U.S.C. 1371) is further amended by adding at the end the following new subsection:

"(e) ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.—The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.".

(d) PERMITS.—Section 104(h) (16 U.S.C. 1374(h)) is amended to read as follows:

"(h) GENERAL PERMITS.—

"(1) Consistent with the regulations prescribed pursuant to section 103 of this title and the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

"(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act."

(e) INTERNATIONAL NEGOTIATIONS.—Section 108(a)(2) (16 U.S.C. 1378(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by inserting after subparagraph (B) the following:

"(C) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate—

"(i) the conservation and management provisions agreed to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature on December 4, 1995; and

"(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

"(D) discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;".

(f) RESEARCH GRANTS.—Section 110(a) (16 U.S.C. 1380(a)) is amended—

(1) by striking "(1)" in paragraph (1); and

(2) by striking paragraph (2).

SEC. 5. AMENDMENTS TO DOLPHIN PROTECTION CONSUMER INFORMATION ACT.

(a) LABELING STANDARD.—Subsection (d) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)) is amended to read as follows:

"(d) LABELING STANDARD.—

"(1) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term 'dolphin safe' or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product contains tuna harvested—

"(A) on the high seas by a vessel engaged in driftnet fishing;

"(B) outside the eastern tropical Pacific Ocean by a vessel using purse seine nets—

"(i) in a fishery in which the Secretary has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean), unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

"(ii) in any other fishery (other than a fishery described in subparagraph (D)) unless the product is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

"(C) in the eastern tropical Pacific Ocean by a vessel using a purse seine net unless the tuna meet the requirements for being considered dolphin safe under paragraph (2); or

"(D) by a vessel in a fishery other than one described in subparagraph (A), (B), or (C) that is identified by the Secretary as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Secretary determines that such an observer statement is necessary.

"(2) For purposes of paragraph (1)(C), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—

"(A) the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or

"(B)(i) the product is accompanied by a written statement executed by the captain providing the certification required under subsection (h);

"(ii) the product is accompanied by a written statement executed by—

"(I) the Secretary or the Secretary's designee;

"(II) a representative of the Inter-American Tropical Tuna Commission; or

"(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer provided the certification required under subsection (h); and

"(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

"(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which provide for the verification of tuna products as dolphin safe.

"(3)(A) The Secretary of Commerce shall develop an official mark that may be used to label tuna products as dolphin safe in accordance with this Act.

"(B) A tuna product that bears the dolphin safe mark developed under subparagraph (A) shall not bear any other label or mark that refers to dolphins, porpoises, or marine mammals.

"(C) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to label a tuna product with any label or mark that refers to dolphins, porpoises, or marine mammals other than the mark developed under subparagraph (A) unless—

"(i) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught;

"(ii) the label is supported by a tracking and verification program which is comparable in effectiveness to the program established under subsection (f); and

"(iii) the label complies with all applicable labeling, marketing, and advertising laws and regulations of the Federal Trade Commission, including any guidelines for environmental labeling.

"(D) If the Secretary determines that the use of a label referred to in subparagraph (C) is substantially undermining the conservation goals of the International Dolphin Conservation Program, the Secretary shall report that determination to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, along with recommendations to correct such problems.

"(E) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) willingly and knowingly to use a label referred to in subparagraph (C) in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the International Dolphin Conservation Program.".

(b) TRACKING REGULATIONS.—Subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)) is amended to read as follows:

"(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this Act, including regulations to establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d). In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall address each of the following items:

"(1) The use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

"(2) Additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures.

"(3) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d).

"(4) The reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set.

"(5) The shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.

"(6) The use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).

"(7) The provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this paragraph.

The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.".

(c) FINDINGS CONCERNING IMPACT ON DEPLETED STOCKS.—The Dolphin Protection Consumer Information Act (16 U.S.C. 1385) is amended by striking subsections (g), (h), and (i) and inserting the following:

"(g) SECRETARIAL FINDINGS.—(1) Between March 1, 1999, and March 31, 1999, the Secretary shall, on the basis of the research conducted before March 1, 1999, under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make an initial finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The initial finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

"(2) Between July 1, 2001, and December 31, 2002, the Secretary shall, on the basis of the completed study conducted under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make a finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

"(h) CERTIFICATION BY CAPTAIN BY OBSERVER.—

"(1) Unless otherwise required by paragraph (2), the certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified in subsection (d)(2)(B)(ii) shall be that no dolphins were killed or seriously injured during the sets in which the tuna were caught.

"(2) The certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified under subsection (d)(2)(B)(ii) shall be that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and that no dolphins were killed or seriously injured during the sets in which the tuna were caught, if the tuna were caught on a trip commencing—

"(A) before the effective date of the initial finding by the Secretary under subsection (g)(1);

"(B) after the effective date of such initial finding and before the effective date of the finding of the Secretary under subsection (g)(2), where the initial finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any depleted dolphin stock; or

"(C) after the effective date of the finding under subsection (g)(2), where such finding is that the intentional deployment of or encirclement of dolphins is having a significant adverse impact on any such depleted stock.".

SEC. 6. AMENDMENTS TO TITLE III.

(a) CHANGE OF TITLE HEADING.—The heading of title III is amended to read as follows:

"TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM".

(b) ADDITIONAL FINDINGS.—Section 301 (16 U.S.C. 1411) is amended—

(1) by striking paragraph (4) of subsection (a) and inserting the following:

"(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues, that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority."; and

(2) by striking paragraphs (2) and (3) of subsection (b) and inserting the following:

"(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

"(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;".

(c) Title III (16 U.S.C. 1411 et seq.) is amended by striking sections 302 through 306 (16 U.S.C. 1412 through 1416) and inserting the following:

"SEC. 302. INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.

"The Secretary of State, in consultation with the Secretary, shall seek to secure a binding international people to establish an International Dolphin Conservation Program that requires—

"(1) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

"(2) the establishment of a per-stock per-year dolphin mortality limit, to be in effect through calendar year 2000, at a level between 0.2 percent and 0.1 percent of the minimum population estimate, as calculated, revised, or approved by the Secretary;

"(3) the establishment of a per-stock per-year dolphin mortality limit, beginning with the calendar year 2001, at a level less than or equal to 0.1 percent of the minimum population estimate as calculated, revised, or approved by the Secretary;

"(4) that if a dolphin mortality limit is exceeded under—

"(A) paragraph (1), all sets on dolphins shall cease for the applicable fishing year; and

"(B) paragraph (2) or (3), all sets on the stocks covered under paragraph (2) or (3) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

"(5) a scientific review and assessment to be conducted in calendar year 1998 to—

"(A) assess progress in meeting the objectives set for calendar year 2000 under paragraph (2); and

"(B) as appropriate, consider recommendations for meeting these objectives;

"(6) a scientific review and assessment to be conducted in calendar year 2000—

"(A) to review the stocks covered under paragraph (3); and

"(B) as appropriate to consider recommendations to further the objectives set under that paragraph;

"(7) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the established per-year mortality limits, as determined under paragraphs (1) through (3); and

"(8) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

"SEC. 303. REGULATORY AUTHORITY OF THE SECRETARY.

"(a) REGULATIONS.—

"(1) The Secretary shall issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program.

"(2)(A) The Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

"(B) Regulations issued under this section shall include provisions—

"(i) requiring observers on each vessel;

"(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of, or serious injury to, marine mammals in fishing operations;

"(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;

"(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

"(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;

"(vi) banning the use of explosive devices in all purse seine operations;

"(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin morality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;

"(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

"(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;

"(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

"(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not internationally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

"(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

"(C) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

"(b) CONSULTATION.—In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

"(c) EMERGENCY REGULATIONS.—

"(1) If the Secretary determine, on the basis of the best scientific information available (including research conducted under section 304 and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall—

"(A) notify the Inter-American Tropical Tuna Commission of his or her determination, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

"(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

"(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.

"(3) Emergency regulations prescribed under this subsection—

"(A) shall be published in the Federal Register, together with an explanation thereof;

"(B) shall remain in effect for the duration of the applicable fishing year; and

"(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency no longer exist.

"(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

"(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's determination under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the actions necessary to reduce incidental mortality and serious injury and mitigate the adverse impact which resulted in the determination. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall—

"(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

"(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

"(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

"SEC. 304. RESEARCH.

"(a) REQUIRED RESEARCH.—

"(1) IN GENERAL.—The Secretary shall, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission, conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The study, which shall commence on October 1, 1997, shall consist of abundance surveys as described in paragraph (2) and stress studies as described in paragraph (3), and shall address the question of whether such encirclement is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean.

"(2) POPULATION ABUNDANCE SURVEYS.—The abundance surveys under this subsection shall survey the abundance of such depleted stocks and shall be conducted during each of the calendar years 1998, 1999, and 2000.

"(3) STRESS STUDIES.—The stress studies under this subsection shall include—

"(A) a review of relevant stress-related research and a 3-year series of necropsy samples from dolphins obtained by commercial vessels;

"(B) a 1-year review of relevant historical demographic and biological data related to dolphins and dolphin stocks referred to in paragraph (1); and

"(C) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement.

"(4) REPORT.—No later than 90 days after publishing the finding under subsection (g)(2) of the Dolphin Protection Consumer Information Act, the Secretary shall complete and submit a report containing the results of the research described in this subsection to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representative Committees on Resources and on Commerce, and to the Inter-American Tropical Tuna Commission.

"(b) OTHER RESEARCH.—

"(1) IN GENERAL.—In addition to conducting the research described in subsection (a), the Secretary shall, in consultation with the Marine Mammal Commission and in cooperation with the nations participating in the International Dolphin Conservation Program and the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

"(2) SPECIFIC AREAS OF RESEARCH.—Research carried out under paragraph (1) may include—

"(A) projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

"(B) projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

"(C) projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States; and

"(D) projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks and nontarget species.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) There are authorized to be appropriated to the Secretary the following amounts, to be used by the Secretary to carry out the research described in subsection (a):

"(A) $4,000,000 for fiscal year 1998.

"(B) $3,000,000 for fiscal year 1999.

"(C) $4,000,000 for fiscal year 2000.

"(D) $1,000,000 for fiscal year 2001.

"(2) In addition to the amount authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Secretary for carrying out this section $3,000,000 for each of the fiscal years 1998, 1999, 2000, and 2001.

"SEC. 305. REPORTS BY THE SECRETARY.

"Notwithstanding section 103(f), the Secretary shall submit annual reports to the Congress which include—

"(1) results of research conducted pursuant to section 304;

"(2) a description of the status and trends of stocks of tuna;

"(3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

"(4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the program's goals and objectives, including the protection of dolphin stocks in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the program;

"(5) actions taken by the Secretary under section 101(a)(2)(B) and section 101(d);

"(6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title; and

"(7) any other information deemed relevant by the Secretary.

SEC. 306. PERMITS.

"(a) IN GENERAL.—

"(1) Consistent with the regulations issued pursuant to section 303, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—

"(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

"(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 303, with respect to each vessel.

"(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorization and issuing permits under this section.

"(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

"(b) PERMIT SANCTIONS.—

"(1) In any case in which—

"(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 307;

"(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 307; or

"(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,

the Secretary may—

"(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

"(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(iii) deny such permit; or

"(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

"(2) In imposing a sanction under this subsection, the Secretary shall take into account—

"(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

"(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

"(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

"(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

"(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.".

(d) Section 307 (16 U.S.C. 1417) is amended—

(1) by striking paragraphs (1), (2), and (3) of subsection (a) and inserting the following:

"(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated and within 6 months thereafter completed all steps required of applicant nations in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

"(2) except as provided for in subsection 101(d), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this title and regulations issued under pursuant to this title; and

"(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);";

(2) by inserting "(a)(5) or" before "(a)(6)" in subsection (b)(2); and

(3) by striking subsection (d).

(e) Section 308 (16 U.S.C. 1418) is repealed.

(f) CLERICAL AMENDMENTS.—The table of contents in the first section of the Marine Mammal Protection Act of 1972 is amended by striking the items relating to title III and inserting in lieu thereof the following:

"TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

"Sec. 301. Findings and policy.
"Sec. 302. International Dolphin Conservation Program.
"Sec. 303. Regulatory authority of the Secretary.
"Sec. 304. Research.
"Sec. 305. Reports by the Secretary.
"Sec. 306. Permits.
"Sec. 307. Prohibitions.".

SEC. 7. AMENDMENTS TO THE TUNA CONVENTIONS ACT.

(a) Section 3(c) of the Tuna Conventions Act (16 U.S.C. 952(c)) is amended to read as follows:

"(c) at least one shall be either the Administrator, or an appropriate officer, of the National Marine Fisheries Service; and".

(b) Section 4 of the Tuna Conventions Act (16 U.S.C. 953) is amended to read as follows:

SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

"(a) APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.—The Secretary, in consultation with the United States Commissioners, shall—

"(1) appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations;

"(2) appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations;

"(3) establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data; and

"(4) fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

"(b) FUNCTIONS.—

"(1) GENERAL ADVISORY COMMITTEE.—The General Advisory Committee shall be invited

to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

"(2) SCIENTIFIC ADVISORY SUBCOMMITTEE.—

"(A) ADVICE.—The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including—

"(i) the conservation of ecosystems;

"(ii) the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and

"(iii) the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

"(B) OTHER FUNCTIONS AND ASSISTANCE.—The Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners, or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include—

"(i) the review of data from the Program, including data received from the Inter-American Tropical Tuna Commission;

"(ii) recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research;

"(iii) recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments;

"(iv) consulting with other experts as needed; and

"(v) recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or its equivalent).

"(3) ATTENDANCE AT MEETINGS.—The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.".

(c) BYCATCH REDUCTION.—The Tuna Conventions Act (16 U.S.C. 951 et seq.) is amended by adding at the end thereof the following:

"SEC. 15. REDUCTION OF BYCATCH IN THE EASTERN TROPICAL PACIFIC OCEAN.

"The Secretary of State, in consultation with the Secretary of Commerce and acting through the United States Commissioners, shall seek, in cooperation with other nations whose vessel fish for tuna in the eastern tropical Pacific Ocean, to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The bycatch reduction program shall include measures—

"(1) to require, to the maximum extent practicable, that sea turtles and other threatened species and endangered species are released alive;

"(2) to reduce, to the maximum extent practicable, the harvest of nontarget species;

"(3) to reduce, to the maximum extent practicable, the mortality of nontarget species; and

"(4) to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.".

SEC. 8. EFFECTIVE DATES.

(a) AMENDMENTS TO TAKE EFFECT WHEN IDCP IN FORCE.—Sections 3 through 7 of this Act (except for section 304 of the Marine Mammal Protection Act of 1972 as added by section 6 of this Act) shall become effective upon—

(1) certification by the Secretary of Commerce that—

(A) sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972, as so added; and

(B) the study has commenced; and

(2) certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding subsection (a), the Secretary of Commerce may issue regulations under—

(1) subsection (f)(2) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)(2)), as added by section 5(b) of this Act'

(2) section 303(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1413(a)), as added by section 6(c) of this Act,

at any time after the date of enactment of this Act.

THE NEED-BASED EDUCATIONAL AID ANTITRUST PROTECTION ACT OF 1997

DEWINE (AND KOHL) AMENDMENT NO. 1046

Mr. SANTORUM (for Mr. DEWINE, for himself and Mr. KOHL) proposed an amendment to the bill (H.R. 1866) to continue favorable treatment for need-based educational aid under the antitrust laws; as follows:

Strike section 2 and insert the following:

SEC. 2. CONTINUATION OF FAVORABLE TREATMENT FOR NEED-BASED EDUCATIONAL AND UNDER THE ANTITRUST LAWS.

(a) AMENDMENTS.—Section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) is amended—

(1) in subsection (a)—

(A) in the heading, by striking "TEMPORARY"; and

(B) by striking paragraph (4) and inserting the following:

"(4) to exchange through an independent third party, before awarding need-based financial aid to any of such students who is commonly admitted to the institutions of higher education involved, data submitted by the student so admitted, the student's family, or a financial institution on behalf of the student or the student's family relating to assets, liabilities, income, expenses, the number of family members, and the number of the student's siblings in college, if each of such institutions of higher education is permitted to retrieve such data only once with respect to the student."; and

(2) in subsection (d), by striking "September 30, 1997" and inserting "September 30, 2001".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect immediately before September 30, 1997.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Ms. SNOWE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, July 30, for purposes of conducting a full committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this business meeting is to consider pending calendar business.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Ms. SNOWE. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be granted permission to conduct a hearing on Wednesday, July 30, 9:30 a.m., Hearing Room (SD–406) on S. 1059, the National Wildlife Refuge System Improvement Act of 1997.

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

COMMITTEE ON FOREIGN RELATIONS

Ms. SNOWE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 30, 1997, at 10:00 a.m. to hold a business meeting.

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

COMMITTEE ON FOREIGN RELATIONS

Ms. SNOWE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 30, 1997, at 11:00 a.m. to hold a House/Senate conference.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Ms. SNOWE. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee Special Investigation to meet on Wednesday, July 30, at 10:00 a.m. for a hearing on campaign financing issues.

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

COMMITTEE ON INDIAN AFFAIRS

Ms. SNOWE. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the

Senate on Wednesday, July 30, 1997 at 9:30 a.m. in room 106 of the Dirksen Senate Building to mark up S. 569, a bill to amend the Indian Child Welfare Act of 1978; to be followed immediately by an Oversight Hearing on the Special Trustee's "Strategic Plan" to reform the management of Indian trust funds.

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

COMMITTEE ON THE JUDICIARY

Ms. SNOWE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, July 30, 1997 at 10:00 a.m. in room 226 of the Senate Dirksen Office Building to hold a hearing on: "Review of the Global Tobacco Settlement."

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

COMMITTEE ON RULES AND ADMINISTRATION

Ms. SNOWE. Mr. President, I ask unanimous consent that the Committee on Rules and Administration hold a business meeting at 2:30 p.m. on Wednesday, July 30, 1997 on the status of the investigation into the contested Senate election in Louisiana at which the committee could consider and vote upon a resolution, or resolutions, prescribing the future course of action to be taken by the committee.

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

SELECT COMMITTEE ON INTELLIGENCE

Ms. SNOWE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, July 30, 1997 at 2:00 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON COMMUNICATIONS

Ms. SNOWE. Mr. President, I ask unanimous consent that the Communications Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 30, 1997, at 9:30 a.m. on international satellite reform.

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

SUBCOMMITTEE ON FINANCIAL SERVICES AND TECHNOLOGY

Ms. SNOWE. Mr. President, I ask unanimous consent that the Subcommittee on Financial Services and Technology of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, July 30, 1997, to conduct a hearing on the financial institution regulators' management of the year 2000 problem.

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

SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION, AND RECREATION

Ms. SNOWE. Mr. President, I ask unanimous consent that the Subcommittee on National Parks, Historic Preservation, and Recreation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, July 30, for purposes of conducting a subcommittee hearing which is scheduled to begin at 2:00 p.m. The purpose of this hearing is to review the management and operations of concession programs within the National Park System.

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

ADDITIONAL STATEMENTS

THE MICHIGAN LEGISLATURE'S POSITION ON EPA REGULATIONS

• Mr. ABRAHAM. Mr. President, I rise today to submit for the RECORD a concurrent resolution passed by the Michigan Legislature earlier this year. Recognizing the impact of ozone transport on the west side of the State, and understanding the potentially devastating effects of ill-considered regulations, the Michigan House of Representatives and the Michigan Senate adopted a resolution which urges the EPA to reaffirm the previous standards of ozone and particulate levels.

Specifically, this resolution strongly urges the EPA to maintain the .12 parts per million standard for ozone and conduct all necessary research to reach conclusive findings on questions concerning particulate matter measuring 2.5 microns in diameter and larger. In addition, this resolution asks the EPA to identify any unfunded mandates or other administrative and economic burdens for State and local governments or agencies that would result from the proposed changes to the National Ambient Air Quality Standards.

Unfortunately, this bipartisan request has been ignored. The EPA has gone forward with new regulations. After making only minor modifications to the EPA proposal, the administration announced the final standard 2 weeks ago. I am disappointed, because I was hopeful the President would recommend a policy that recognized the importance of clean air, and the importance of jobs and economic growth. However, since he did not, I will continue to work hard to highlight the importance of these very real, very serious issues.

This resolution makes clear that the people of Michigan understand what is at stake in this debate. I wish the same could be said of the administration.

The resolution follows:

HOUSE CONCURRENT RESOLUTION NO. 11

Whereas, the United States Environmental Protection Agency (EPA) has a responsibility to review periodically the National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter (PM); and

Whereas, The EPA is considering establishing a more stringent ozone standard and a new, more stringent standard for particulate matter at or below 2.5 microns (PM2.5); and

Whereas, Michigan, through its local jurisdictions, businesses, and citizens, has supported health-based National Ambient Air Quality Standards (NAAQS) that are premised on sound science; and

Whereas, Michigan has made significant progress in meeting current NAAQS for both ozone and particulate matter (PM) under the Clean Air Act Amendments of 1990, although there are some areas that have not yet come into compliance with the current standard(s); and

Whereas, Michigan, through its local jusidictions, businesses, consumers, and taxpayers, has become considerable cost to come into compliance with the current NAAQS for ozone and participate matter; and

Whereas, The proposed new standards will significantly expand the number of nonattainment areas for both ozone particulate matter. This may result in additional emission controls in all areas, thus imposing significant economic administrative, and regulatory burdens on Michigan, its citizens, businesses, and local governments; and

Whereas, EPA's own Clean Air Science Advisory Committee (CASAC) was unable to find any "brighline" that would distinguish any public health benefit among any of the proposed new standards for ozone, including the current standard; and

Whereas, There is very little existing PM2.5 monitoring data; and

Whereas, There are many unanswered questions and scientific uncertainties regarding the health effects of particulate matter, in particular PM2.5, including:

Divergent opinions among scientists who have investigated the issue;

Exposure misclassification;

Measurement errors;

Lack of supporting toxicological data;

Lack of a plausible toxicological mechanism;

Lack of correlation between recorded PM levels and public health effects;

Influence of other variables; and

The existence of possible alternative explanations; and

Whereas, No scientific proof exists that establishing a more stringent ozone standard or a new, more stringent PM2.5 standard would avoid alleged adverse health, but it would assuredly impose significantly higher costs; and

Whereas, The issue of transported volatile organic compounds is not adequately addressed; now therefore, be it

Resolved by the House of Representatives (the Senate concurring). That we advise and strongly urge the EPA to reaffirm the existing NAAQS for ozone; and be it further

Resolved, That we advise and strongly urge the EPA to reaffirm the existing NAAQS for PM10; and be it further

Resolved, That we advise and strongly urge the EPA to refrain from establishing a new NAAQS for PM2.5 at this time and to gather the necessary PM2.5 monitoring data and conduct all necessary research needed to address the issue of causality and other critical and important unanswered scientific questions concerning PM2.5; and be it further

Resolved, That we advise and strongly urge the EPA to identify any unfunded mandates or other administrative and economic burdens for state or local governments or agencies that would result from the proposed changes to the NAAQS for ozone and particulate matter, and be it further

Resolved, That copies of this resolution be transmitted to the President of the Untied States, the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, the administrator of the United States Environmental Protection Agency, and other appropriate administration officials.

Adopted by the House of Representatives, March 11, 1997.

Adopted by the Senate, March 12, 1997.•

VFW INITIATIVE TO PROVIDE LONG-DISTANCE PHONE SERVICE TO HOSPITALIZED VETERANS

• Mr. ROCKEFELLER. Mr. President, I rise today to congratulate the members of the Veterans of Foreign Wars of the United States for their program called Operation Uplink. Through private donations, the VFW has been able to distribute more than 11,000 hours worth of free long-distance calling time to hospitalized veterans and active duty troops overseas who might not otherwise be able to talk with their loved ones back home. Since I represent a State which especially honors national service and has the most combat veterans per capita, you can be sure that this is an issue I care about deeply.

Shortly after I joined the Senate Committee on Veterans' Affairs, I learned that none of our country's veterans' hospitals had bedside phones. Patients had to collect change to use at a pay phone, or wait for a nurse to wheel a portable phone into their room. Not only did this inconvenience patients greatly, it added to the burdens of an already overworked nursing staff.

We all realize that a phone is more than a modern convenience; it is a lifeline to the outside world for a sick veteran. That is why I fought for, and won, $1.5 million in 1993 to support the work of the bedside phone project, P.T. Phone Home, in West Virginia and elsewhere.

A couple of years ago when I was in West Virginia visiting the Clarksburg VA Medical Center, I spoke with a World War II combat veteran, Kenneth Getz. Mr. Getz had been experiencing serious medical problems, but he was much more concerned about his blind wife than his own health. He told me, "We start the day with a phone call and end it with a phone call. Phones should have been in here years ago." And he is exactly right—we have an obligation to make certain that every veteran receives the same quality care you or I would want for ourselves.

Unfortunately, too many poor veterans are not able to take advantage of the bedside phone service, since for many, home is not a local call from the hospital. The thought of a sick or wounded veteran, lying in a distant veterans' hospital, cut off from family, children and friends, is very troubling to me. It is plain wrong.

I highly commend the VFW for recognizing this problem and taking action. We know that in the long run, veterans who can talk to their spouse or children are not only happier, but also have higher morale, and that can go far in improving their health. I can just envision the comforting effect on a patient like Mr. Getz in having the opportunity to talk to his son in Houston or wife in Charleston—all of this made possible by the VFW initiative.

Mr. President, I ask my colleagues to join me in extending a warm thank-you to the VFW and its members all across America. I am especially pleased to note that this service is being provided by private donations, thus protecting the already beleaguered Federal budget. This project is a tribute to the many veterans who believed in the principles of freedom and democracy strongly enough to risk their lives in the name of freedom. By providing prepaid phone cards to sick vets and overseas troops, the VFW truly "Honors the dead by helping the living."•

CONGRATULATIONS TO YOUSIF GHAFARI

Mr. ABRAHAM. Mr. President, I rise today to offer my warm congratulations to Mr. Yousif B. Ghafari who is celebrating the 15th anniversary of Ghafari Associates.

The economic success in Michigan is due in no small part to the invigoration of small businesses like Ghafari Associates. Over the past 15 years Ghafari Associates has risen to be the third largest architectural and engineering firm in the State. This incredible achievement is largely due to the outstanding leadership capability and business savvy of its founder, Yousif Ghafari.

I have the pleasure of personally knowing Yousif and appreciate his dedication, not only to the business world but to his family and community as well. Yousif's exemplary duty and service to the community at large has earned him the great respect of his colleagues, friends, and family. I would like to join them in commending him for his dedication to seeing Ghafari Associates grow into one of Michigan's most distinguished and respected engineering firms.

The State of Michigan is very fortunate to have Mr. Yousif Ghafari amongst its citizens, and should be very proud of his accomplishments. I would like to conclude by extending to him my best wishes for much success in all of his future endeavors.

NATIONAL WOMEN'S BUSINESS COUNCIL AND WOMEN-OWNED BUSINESSES

• Mr. CLELAND. Mr. President, I want to speak today about the work the National Women's Business Council [NWBC] is doing in my State and the work they do for the country in the interest of women-owned businesses. I want to make special note of the efforts of one of Georgia's shining examples of entrepreneurship. Mr. President, Carolyn Stradley started out filling in potholes with asphalt and from that has grown a small business that is now responsible for work done in both the Olympic Stadium and the Georgia Dome. In addition to successfully competing in a male dominated business world, she is literally paving the way for other women to find opportunities into the work force through the creation of small businesses.

Yesterday morning Carolyn moderated a workshop that provided a forum to discuss, develop, and find consensus on policy recommendations which enhance women business owners access to capital and credit at every stage of business growth. This forum was part of 10 workshops being held at Federal Reserve Banks and branches across the nation. The top 10 recommendations from each of the 10 workshops will be compiled into a report and presented to Congress and the President by the NWBC. The participants of these workshops include women business owners, bankers and other lenders, government representatives and other experts who work daily to develop financial strategies that are so essential in getting small businesses off the ground.

Mr. President, I want to commend the NWBC for their work and their continued efforts as an independent source of advice and counsel to the Congress, the President and the Small Business Administration. Their mission is to promote bold initiatives, policies and programs designed to foster women's business enterprise as well as an economic environment conducive to business growth and development for women-owned businesses. The council has focused on four key areas: (1) expanding public and private market opportunities for women-owned businesses; (2) promoting the development of a research agenda and data collection on the women's business sector and public awareness of its contributions; (3) strengthening the networking capabilities of women entrepreneurs and the technical assistance and training infrastructure; and (4) expanding the financial resources available to women business owners and ensuring their access to them.

I believe that it is particularly fitting that the NWBC does have this focus and I would point to a few important figures, just in Georgia alone, that would support this. Mr. President, as of 1996 there are nearly 204,000 women-owned businesses in Georgia employing over 622,000 people and generating over $87 billion in sales. During the period of time from 1987 and 1992, the National Foundation for Women Business Owners estimates that the number of

women-owned firms in Georgia has increased by 112 percent, employment has grown by 334 percent and sales have risen 508 percent. In 1996, women-owned firms accounted for 36 percent of all Georgia firms, and provided employment for 34 percent of Georgia workers, and generated 24 percent of the State's business sales. Finally, I am proud to point out that Georgia ranks fifth in growth in the number of minority women-owned firms as of 1996—a 227 percent increase between 1987 and 1996.

Mr. President, I encourage my colleagues to support and fund organizations like the National Women's Business Council. Small Businesses are the foundation of our Nation's economic engine and small businesses are the future continued economic growth and success.•

OECD SHIPBUILDING AGREEMENT

• Mr. ROTH. Mr. President, as the Senate moves toward concluding its business before the August recess, I would like to take this opportunity to clarify the circumstances surrounding the Finance Committee's consideration of legislation to implement the OECD Shipbuilding Agreement.

This vital agreement has already been the subject of a hearing in the Finance Committee in December 1995, and, in May 1996, the Committee voted unanimously in favor of the legislation to implement the Agreement.

I understand my Finance Committee colleagues, Senators LOTT and BREAUX, have made substantial progress in resolving the controversial issues surrounding some parts of the legislation originally reported by the Finance Committee. I expect that their work on the implementing legislation and the resolution of certain procedural issues will be concluded shortly so that we can complete committee consideration and congressional passage of this bill as soon as possible after we return in September.

I trust the other signatory countries to the Shipbuilding Agreement will understand that the recent delay in the Finance Committee's consideration of the implementing legislation was unavoidable—that it was simply a result of the committee's need to complete its work on the hallmark legislation to balance the U.S. budget and need to resolve certain parliamentary questions. This delay should in no way be interpreted as a lack of resolve to bring the OECD Shipbuilding Agreement implementing legislation to closure.

I strongly urge other signatory countries not to take any action that might forever compromise our long-held goal of achieving free and fair trade in the global shipbuilding sector. It is my view that the United States is very close—closer than it has ever been—to enacting the legislation necessary for completion of U.S. ratification of the agreement. It would be terribly counterproductive and inappropriate for other signatory countries to abandon this important agreement at this juncture in reaction to this relatively minor and unavoidable delay.

With that clarification, I look forward to working with my colleagues on the Finance Committee and in the Senate as a whole in moving this critical legislation forward to ultimate passage by Congress as quickly as possible.•

CHINA TRIP REPORT

• Mr. BAUCUS. Mr. President, over the last Memorial Day recess, I visited South Korea, Japan, North Korea, China, and Hong Kong, on an official Finance Committee trip.

Today I am entering into the RECORD the first half of a trip report I recently filed with the committee, and tomorrow I will include the second half, dealing with China and Hong Kong. I hope the Senate will find it of use.

The material follows:

ASIA TRIP REPORT—COVERING VISITS TO SOUTH KOREA, JAPAN, NORTH KOREA, BEIJING, AND HONG KONG, MAY 24–31, 1997

I. INTRODUCTION AND SUMMARY

A. Itinerary—Over the 1997 Memorial Day recess, between May 24th and May 31st, I made a week-long trip to East Asia to host a three-day conference in Beijing entitled "Working With America: Food Security and International Trade," put on by the Mike and Maureen Mansfield Center for Pacific Affairs and the Chinese People's Association for Friendship with Foreign Countries.

With the authorization of the Senate Committee on Finance, I visited South Korea, Japan, North Korea and Hong Kong as well as Beijing to discuss trade, security, agricultural and humanitarian problems in Asia. This report will inform the Senate on the substance of my discussions, particularly on food and security in Korea; China's application to enter the World Trade Organization; and Hong Kong's transition to China's sovereignty.

B. Goals—As I see it, our country has three long-term interests in Asia. First, preserving the peace which is critical to our national security and is also the foundation of Asia's current prosperity. Second, opening markets and creating more reciprocity in trade relations with Asian countries. And third, raising the quality of life and promoting long-term political stability by advancing human rights, fighting crime and protecting the environment. My goal on this trip was to understand more fully the immediate issues we must address in order to secure these long-term interests, and to advance if possible our policy goals on these issues.

In 1997 and 1998, the issues I believe most critical to securing these interests will be: (1) the security and humanitarian problems on the Korean peninsula posed by hunger and economic decline in North Korea; (2) China's application to enter the World Trade Organization; and (3) Hong Kong's transition to Chinese sovereignty. Thus, while I discussed issues ranging from food security to human rights, US-China security relations, environmental protection and agricultural trade with Korea, I concentrated on the first three issues.

C. Conclusions—I finished the trip feeling that current American policy on these issues is well conceived and well implemented. While I have differences with some of our specific positions and will mention them further on in the report, I believe that in general, we are on the right track.

In Korea, we are deterring conflict, preventing nuclear proliferation and providing humanitarian assistance as appropriate.

On China's WTO application, we rightly support China's WTO membership on a commercially appropriate basis, and are working with the other WTO members to make sure that while China understands we are not trying to block membership on political grounds, we also expect them to live up to the fundamental obligations of all WTO members.

And on Hong Kong's transition, we seem to have secured the direct US interests; we are in close contact with all the political actors and economic interests involved in the transition; and we are appropriately active without being confrontational on political and human rights issues.

All of these questions are highly complex. The Korean situation, in particular, is dangerous and becoming more so as North Korea's economy declines. All of them will demand a great deal of informed attention from Congress and the American public, as well as from the Executive branch and our diplomats and military leaders in the region. But on the basis of my visits, I am generally pleased with our policies and impressed with the people implementing them.

II. KOREAN PENINSULA

A. Visit—The Korean peninsula was the first stop on my trip. I arrived in Seoul on Sunday, May 25th, spent the next day in discussion with South Korean national security and agricultural officials, representatives of the US business community, and with American diplomats and military personnel. On the morning of May 27th I departed for Pyongyang, where I met with Foreign Ministry and Agriculture Commission officials, departing for Beijing the morning of the 28th. I also had the opportunity to discuss Korea later in the trip with Chinese political and military leaders, and with two senior officers of the Japan Self-Defense Forces during a refueling stop at Misawa Air Force before arrival in Pyongyang.

My purpose, in addition to discussing bilateral agricultural trade issues with South Korean leaders, was to look into the security and food questions we face on the Korean peninsula. I concluded that American policy with respect to these issues is well-conceived. We have a highly capable military force on the peninsula, which works together with South Korea in the Joint Command. Our political policies are carried out in tandem with South Korea, with the apparent endorsement of the neighboring countries. And we are providing food aid as the World Food Programme identifies the areas of need.

There is, no doubt, room for improvement. In particular, we could be speeding up our provision of missile defense for Seoul. North Korea's need for food aid may well increase this summer and require a higher-level effort. And while we seem to be in full agreement with neighboring countries on the contingencies we hope to avoid (i.e. war, nuclear proliferation, or sudden collapse into anarchy in the North), we do not appear to have grappled with our long-term positive goals for the Peninsula. But on the whole, I believe that we are confronting a very dangerous situation and doing it well.

The following sections will evaluate the food situation in North Korea; review the opinions offered by South Korean, Japanese

and Chinese officials on policy toward the Korean peninsula; evaluate U.S. policy; and provide a first-hand, if brief and incomplete, look at life today in Pyongyang.

B. Food Crisis—I discussed reports of food shortages in North Korea with U.S. diplomats and agricultural specialists; South Korean Agriculture Ministry officials; North Korean Foreign Ministry and Agriculture Ministry officials; and Chinese leaders. I had also asked to meet World Food Programme experts in Pyongyang, but was unable to do so.

My conclusion is that we can think of the food issue as a three-part problem. First, over the next few weeks North Korea will need humanitarian assistance. Second, this need is likely to reach crisis proportions over the summer of 1997. Third, North Korea needs to make some fundamental changes in its agricultural and military if it is to feed itself in the long term. I see little evidence that the government is prepared to do so.

1. US and South Korean Assessment—Most U.S. and South Korean experts believed the majority of North Koreans continue to receive basic subsistence rations, feeling the North Korean government continued to distribute some basic rations and some more food was available in small farmer markets. In more remote rural areas, however, hunger is probably very severe. This situation is likely to worsen soon, however.

Over the year as a whole, the U.S. Department of Agriculture forecast a shortfall of about 1.2 million metric tons of rice. To put the figure in context, USDA's estimate of a year's consumption of food in North Korea is 5.4 million metric tons. South Korean estimates were similar.

US and South Korean experts also agreed on the cause of the food shortages. While floods may be an immediate cause, long-term factors—loss of aid from Russia and China at the end of the Cold War, failure to make rural reforms, and spending of 25%–30% of GDP on the military—are much more important. A South Korean agricultural official noted very simply that North Korea uses its oil for military exercises rather than to make fertilizer or run tractors, and thus the agricultural sector has been short of energy throughout this decade. Chinese officials from Manchuria tell him, he said, that since 1991 North Korea has conducted a propaganda campaign calling for "two meals a day for the glorious unification of the peninsula."

2. North Korean Views—The North Korean officials appeared to realize they face an emergency. Foreign Ministry Officials spoke in general terms about food problems and North Korea's appreciation of foreign assistance. Agriculture Commission officials, led by Vice Chair Madame Kim Yong-suk, provided a highly detailed statistical review of recent flood damage, reclamation work in paddy fields, and overall food shortages.

According to Mme. Kim, the most pressing need for food aid will be quite soon. Spring planting had gone well, and in the absence of new flooding the fall harvest would be good. However, she said, "in July and August we will face a very tense situation," and in the interim North Korea "would accept with pleasure 1 million tons of assistance."

This recognition of an immediate crisis was not matched by any realistic appraisal of the causes of the present food crisis or of North Korea's long-term policy needs. Both the Foreign Ministry and Agriculture officials attributed the food crisis solely to flood damage in the last two years. The only long-term effort they said was necessary was a reforestation program to reduce erosion.

3. Policy Conclusions—North Korea is clearly in dire straits. While I did not travel outside the capital (because of time constraints rather than North Korean unwillingness), US and South Korean experts provided accounts of severe food shortages which I consider credible. Their views were generally in accord with the accounts of North Korean officials, international food experts, and recent travellers outside Pyongyang including Rep. Tony Hall and several journalists.

Up to now we have provided $25 million in humanitarian food aid. South Korea, China and Japan have also made contributions. Our diplomats believe the WFP is capable of providing assistance without significant diversion to the North Korean military, and I see no reason to question that assessment.

My own strong opinion is that, as a humanitarian matter we should provide short-term food aid to people proven to need it. This will be most urgent this July and August. However, longer-term aid or large-scale involvement in the North Korean agricultural and industrial economy should only be done in concert with South Korea, and should not proceed without willingness on the part of the North to address the basic economic and military issues that have caused this crisis.

C. Security on the Korean Peninsula—Despite North Korea's economic and food difficulties, US military officers and diplomats along with South Korean officials stress that it continues to pose a severe military threat to South Korea and Americans stationed in the South. It maintains a million-man army in a population of 23 million; spends 25–30% of its GDP on the military; and stations about 65% of its troops, and most of its artillery and rocket launchers in offensive positions very close to the Demilitarized Zone. Our response has come in two main forms.

1. Deterrence—The foundation of all US policy toward the North is strategic alliance with South Korea to deter North Korean military aggression. We have done this through permanent stationing of 37,000 American troops in South Korea, and complete cooperation in a Joint Command with South Korea.

Up to now, deterrence has succeeded. US military officers, including Supreme Commander Gen. John Tilelli, said that relations with the South Korean military are very good. South Korean officials agreed. Both sides emphasized the importance of continuing to work very closely together on military preparation, and also in any negotiations with North Korea. All agreed that if the North Korean industrial and agricultural economy continued to decline—as it seems very likely to do in the absence of any reform—the North Korean government would become more desperate and the military situation would become more dangerous.

Finally, I should mention that military officers had some concerns about quality-of-life issues for American soldiers, but felt that construction of new barracks under the last two Military Construction appropriation bills would help a great deal.

2. Nuclear Proliferation and the Agreed Framework—A corollary to our broader defense strategy in Korea is opposition to proliferation of nuclear weapons. These would not change the ultimate outcome of any conflict, but would raise its cost in human life, physical destruction and environmental damage enormously.

Since 1994, we have attempted to prevent nuclear proliferation through the "Agreed Framework." Under this agreement, North Korea agreed to freeze its nuclear program while we supply 500,000 barrels of oil and over a longer term replace the heavy-water nuclear reactor at Yongbyon, north of Pyongyang, with light-water reactors whose products cannot be used for weapons. Our military people and diplomats feel that North Korea is complying with this part of the agreement. I have no reason to disagree, and believe we should continue with the Agreed Framework.

While I will address political issues and negotiating proposals later on, I should note here that the Agreed Framework also calls for progress toward political and economic normalization of relations between the US and North Korea. North Korean officials, including the Foreign Minister, complained repeatedly about the slow pace of normalization with the US and our failure to lift sanctions, saying this had increased North Korean "suspicions" about US intentions and reliability. However, the Agreed Framework also includes a commitment to North-South dialogue aimed at reducing political and military tension between the two Korean governments. North Korea has not done this. American action on the political side of the Agreed Framework must depend on North Korean willingness to begin North-South dialogue.

3. Conclusions—I was extremely impressed by our military officers and enlisted people. I believe our strategy is appropriate and our coordination with South Korea is close. I would add only one point. I heard many times about the vulnerability of Seoul to North Korean missile, rocket and artillery fire. If we can ease that by providing some missile defenses to Seoul, we should do it as soon as possible.

D. Political Issues and Negotiations—Progress toward normal political relations, relaxed trade sanctions or assistance beyond short-term humanitarian aid, must result from talks leading to reduced military and political tension on the peninsula. These must address first and foremost the basic issue of North Korea's threats and aggressive military posture vis-a-vis South Korea, but can include North Korean concerns as well. And they must not lead to any separation of the US from South Korea, nor any unnecessary political conflicts with China, Japan or Russia.

1. Four-Party Talks—Last year, President Clinton proposed "four-party talks" on Korean issues including South Korea and North Korea along with the US and China as the two principal belligerent powers in the Korean War. These could address North Korean concerns about trade, economics and other issues as well as the concerns we and South Korea have about security. Based on my discussions in Seoul, Pyongyang and Beijing, I remain convinced this is the best approach to Korean security issues. Recent progress toward these talks bears out this conclusion.

2. North Korean Views—I repeatedly urged the North Korean Foreign Ministry officials to open a North/South dialogue as the Agreed Framework requires, and to begin four-party talks with South Korea, China and the US.

Foreign Minister Kim Yongnam and Vice Foreign Minister Kim Gye Gwan were my main interlocutors on this issue. The Vice Foreign Minister gave a peculiarly weak and unconvincing reason for North Korea's failure to engage in a North-South dialogue, saying North Korean public opinion had been offended when President Kim Young-sam of South Korea failed to offer condolences on the death of former President Kim Il-sung in 1994. He did, however, state support in principle for North-South dialogue, and neither

he nor the Foreign Minister, however, ruled it out after the election of South Korea's new President this December.

Both the Foreign Minister and the Vice Foreign Minister raised concerns about the four-party talks proposal, mostly questioning the reason why China should be involved. They also insisted that the US was following a hostile policy by continuing to impose sanctions and an overall trade embargo on North Korea. They did not, however, insist on large-scale food or economic aid as a precondition for entering the four-party talks.

3. The Chinese Role—As the largest local military power bordering on North Korea, and as a government with traditional ties to North Korea, China has very large interests in the Korean issue and will play a key role in any solution to it.

American officials in Seoul and Beijing generally felt that China is acting responsibly and helpfully. South Korean officials agreed. In a more general sense, they said they were satisfied with the state of South Korean-Chinese relations, and hoped US-China relations would remain "harmonious."

North Koreans, by contrast, seemed indifferent to China. They did not encourage Chinese participation in four-party talks—to the contrary, in fact, they called for a "3+1" formula with China playing an unspecified but clearly minor role. One official, commenting on the overall political situation of the Korean peninsula, said "the directly involved parties are the DPRK and the US, and we acknowledge that the South has some indirect concerns. China is not concerned."

E. Japanese and Chinese Views—During my trip, I met with senior policymakers in Beijing about Korean issues, and discussed Korean policy with two senior officers of the Japan Self-Defense Forces. A brief summary of these conversations follows.

1. Japanese Views—At Misawa Air Force Base I met with Gen. Akihiko Hayashi and General Minoru Hoso, of the Northern Command of the Japan Self-Defense Forces. These discussions were brief given our limited time, and concentrated on Japan's security role rather than on Japan's particular political concerns about its kidnapped citizens and the recent apprehension of a North Korean ship loaded with amphetamines at a Japanese port, or its broader political views on Korean issues. Japan is deeply concerned about North Korea's deployment of a new generation of medium-range missiles capable of targeting Japan, and working closely with us on attempts to deter conflict on the peninsula.

2. Chinese Views—The senior political leaders, Foreign Ministry officials and military officers I met in Beijing were quite interested in my visit to Pyongyang, and asked about my physical impressions of Pyongyang and the discussions I had with North Korean officials. None raised any basic objections to US policy toward North Korea.

On the political issues, their general view was that Kim Jong-il is a rational person who understands that, in the words of one Chinese officer, "to attack the South would be the act of a madman," and is unlikely to engage in any serious provocation. Further, they believe he is in firm control of the North, and that no political upheaval is likely in the short-term despite the food and economic problems.

With respect to economics and the food situation, Chinese said they were unsure whether North Korea's problems resulted from floods or from "poor economic organization." They said they would help with food needs "within China's capacity."

Finally, all the Chinese with whom I raised the Korean issue said that China's influence over North Korea is limited; that China would act with the goal of maintaining peace and stability on the Korean peninsula; and that China viewed the four-party talks proposal favorably. US diplomats generally agreed that China is acting very constructively on these issues. I believe it is essential that we continue to work with China on the four-party talks proposal.

F. Long-Term Issues—Opinions were divided as to North Korea's long-term prospects.

Americans and South Koreans tended to believe that the North was fairly resilient, that Kim Jong-il is in firm control of the government, and that could probably continue along its present path for several years. However, objective indicators pointed to a situation which is not sustainable indefinitely, and many felt that some abrupt collapse or desperate military assault on South Korea was possible. Chinese agreed that Kim Jong-il was firmly in control of the country, but felt more certain than US or South Korean sources that North Korea would remain politically stable.

Many people commented that South Koreans did not feel the German model of unification was ideal—it had been very expensive and difficult for the German economy to absorb, and they preferred a "soft landing" for the North followed by a longer transition. However, few seemed to have a vision of how to make this possible, and a number of Americans commented that a "soft landing" did not seem very likely.

North Korean officials gave essentially ideological explanations of why their country would emerge from the present "arduous march" and recover economically. The Vice Foreign Minister, for example, said that while many foreigners spoke of North Korea as "a broken airplane and some say it will soon collapse . . . my country is not going to collapse at all. We have the wise leadership of the Great Leader Comrade Kim Jong-il, and the entire people rally around in general and single hearted unity. We have a guiding ideal which is different from the USSR or Eastern Europe, and that is the juche [self-reliance] idea."

G. Personal Assessment of Pyongyang.—Finally, a visit to Pyongyang is unusual, and apart from the policy issues, my personal impressions of the city may be of some interest.

I arrived in North Korea on a specially arranged U.S. Air Force flight, which entered North Korean airspace at the Russian border on North Korea's far northeast, proceeded along the coast and then crossed over a mountainous area to Pyongyang. From the air, as far as I could tell, the fields and rice paddies look in bad shape and rivers show severe siltation.

We proceeded from the airport (we landed at 12:20 p.m.; at least one radar was turned off, and no other planes appeared to be active) by car to Pyongyang. We were able to drive around the center of the city on the way to several meetings, and took an unaccompanied 15-minute walk from the hotel to the city railway station and back. This relatively short experience revealed a city which resembles a ghost town—I can only compare it to my visit to Phnom Penh in 1979, just after the Vietnamese Army had expelled the Khmer Rouges.

We saw very few cars, few trucks or buses, and no sense of normal business or economic activity at all. Streets were almost empty, and no economic activity was apparent—I saw no people engaged even in waiting in lines at stores. The people we did see appeared in reasonably good physical health, although listless and low on energy. This applied to the many (but not well-armed) military people I saw on the street as well as to the civilians. And the physical plant of the city is clearly deteriorating. Electricity was spotty in our hotel, in surrounding buildings and on the streets. A number of trucks and buses appeared to be rusting and out of use, and a trolley car was essentially abandoned near the hotel with its back wheels off.

In preparing for this stop, I anticipated a highly repressive state. I expected poverty and perhaps visible signs of hunger, although I had been told this was less likely in the capital than in rural regions. And I expected constant surveillance. What I did not expect was the almost empty, eerie quality of Pyongyang. Clearly, the country is in dire straits. While I cannot speculate on North Korea's long-term prospects with any authority, it is hard to imagine that they can sustain their current domestic and military policies indefinitely.•

OPENING OF THE NEW NATIONAL AIRPORT

• Mr. WARNER. Mr. President, over the past 2 weeks, and culminating with ceremonies this past Sunday, the Metropolitan Washington Airports Authority opened the new terminal at National Airport.

This $450 million state of the art facility is just one element of a $2 billion capital development plan at both Washington National and Dulles International Airports, made possible by the creation of the Metropolitan Washington Airports Authority only 10 short years ago.

To understand the significance of this achievement, one only needs to recall what it was like to use either Washington National or Dulles International during the late 1970's and early 1980's.

Both airports were owned by the Federal Aviation Administration, and Congress was absolutely unwilling to appropriate more than the bare essential amount necessary to operate either facility.

National Airport was in a grave state of disrepair, and Dulles was called the great white elephant.

Looking upon these airports as integral parts of the areas economy was unfathomable, and the notion of customer service was even more unimaginable.

Then, thinking in the region began to change.

Encouraged by the desire of the Reagan administration to re-examine the proper role of Federal Government, area business leaders and members of the Virginia congressional delegation started asking the question: Why not divest the Federal government of these two airports, and let them be run like a business?

Fortunately, there was a Secretary of Transportation whose response to the question was: Why not indeed!

Not about to be discouraged by enormity or ambitious nature of the task, that Secretary of Transportation, Elizabeth Hanford Dole, enlisted the assistance of a very able and influential statesman, former Virginia Governor Linwood Holton, who worked tirelessly to help mold both a plan, and the consensus to transfer ownership of the two airports to a non-Federal authority.

This authority was authorized under an interstate compact to operate the airports and to raise the money necessary to renew National Airport, and to make Dulles the economic dynamo its creators once envisioned.

Following a very tortuous and uncertain course through the legislative process, a bill was finally placed on President Reagan's desk for signature, and in 1987, the Metropolitan Washington Airports Authority took control of the two airports.

Under the stewardship of James A. Wilding, and the leadership of a ten person board comprised of appointees from Virginia and Maryland and the District of Columbia, the Airports Authority designed a capital development plan which relied on the sales of bonds financed by future revenues.

This capital development plan became the catalyst enabling the Metropolitan region to achieve its dream.

Today, Dulles International Airport is a major force in the growing hightech and biotech economy of the region, and with the opening of the new National terminal last Sunday, the region now has a world-class dining, shopping, and transportation facility to welcome the more than 15 million passengers who come to the Nation's capital from cities within a 1,250 mile perimeter of the airport.

In fact, it is this perimeter, combined with a limitation on the number of flights that can arrive and depart from National Airport each hour, and a curfew on stage two aircraft after 10 P.M., that maintains the political and economic balance enabling National Airport to serve short-haul passengers, while Dulles International serves long-haul passengers from across the United States and around the world.

Without these tools, the community would be in a literal uproar over the noise and volume of air traffic at Washington National Airport, and Dulles would still be the white elephant it was in the 1970's and early 1980's.

Needless to say, the region's economy would be nothing like it is today had the vision of Secretary Dole, area business leaders and Virginia's Congressional delegation not been realized.

So, Mr. President, it is with gratitude that I salute all the thousands of people who helped make this dream come true.

Especially I thank the present and former members of the Metropolitan Washington Airports Authority board of directors including Linwood Holton, Ron Linton, and Robert Tardio; the staff and management of the Airports Authority including James A. Wilding, general manager, August Melton, manager of Washington National Airport, and Keith Merlin, manager of Dulles International Airport; and architect Cesar Pelli and all the construction personnel who turned Mr. Pelli's designs into a living, working masterpieces.

Congratulations to all. Job well done.●

TRIBUTE TO THE SAVANNAH INTERNATIONAL TRAINING CENTER AND THE OLYMPIC SOLIDARITY PROGRAM

● Mr. CLELAND. Mr. President, I rise today to praise the accomplishments of the Olympic Solidarity Program and its partnership with the Savannah International Training Center, the only recognized athletic training venue in the United States whose athletes are funded by the International Olympic Committee. This scholarship program has brought athletes from Africa and South America to Georgia, continuing the spirit of the 1996 International Olympic games by giving opportunities to athletes from developing countries.

The Savannah International Training Center is the largest Solidarity Training Center in the world. The Solidarity Program provides athletes with funds for room and board, education, visas, transportation and training costs. In June 1996, 25 Olympic Solidarity Athletes arrived in Georgia from countries such as Zimbabwe, Rwanda, and Colombia to participate in the outstanding track and field program. The facility hopes to be able to expand its programs to include weightlifting, swimming, and soccer. Essentially, the Solidarity Program provides athletes with a unique experience like no other in the United States or in the world.

This program not only enhances the quality of life for the athletes; the Olympic Solidarity Program has provided the community of Savannah and the State of Georgia with an international experience comparable to the 1996 Olympic games. Exposure to the variety of cultures existing among the participating countries allows the citizens of Savannah to develop stronger ties with these nations and improve foreign relationships.

The Savannah International Training Center continues to thrive and grow, exemplifying Georgia's commitment to the success of international athletics and the spirit of the Olympics. It is with great pride that I congratulate the Savannah International Training Center, the city of Savannah, the International Olympic Committee and the athletes involved for contributing to the unparalleled success of this distinguished program in the United States and for continuing the Olympic legacy in the State of Georgia.●

RECOGNITION OF BETTY GREGOIRE

● Mr. BOND. Mr. President, Today I stand before you to recognize a truly unique individual and personal friend for her exemplary service to my home State of Missouri at the time of her retirement. Betty Gregoire, has lived in Kansas City, Missouri for the past 24 years during which she has been a wife and mother, a volunteer and a public servant. Betty has shown the kind of lifelong devotion to her State that make it an honor to commend her for her many years of civic contribution.

After receiving a B.S. Degree from State University of New York, she taught in Long Island Elementary Schools and in Rochester, New York High School System. Betty came to Weatherby Lake, a community near Kansas City, in 1973 and by 1980 had established a position as Manager of the Prosecuting Attorney's office. Later she became the Administrative Assistant to the County Commission.

In addition to her service on the Weatherby Lake Improvement Board, as secretary, Legislative Committee, Missouri Assessor's Association, she was appointed by Governor John Ashcroft to fill the term of Assessor in 1985 and continued to serve for three terms.

Now part of the Finance Committee of St. Teresa Catholic church in Parkville, Betty is also a member of the Mid American Regional Council (MARC) Board and has held the position of Treasurer and 2nd Vice-President.

Betty was appointed by the Governor in 1986 to the Missouri Job & Employment Council then reappointed in 1992, and was District 3 Director of Missouri Association of Counties from 1991–94.

As an active member of several other civic organizations, Betty is an example for her fellow Missourians. I commend Betty for her many years of service and I am glad to say that the State of Missouri is enriched with her wisdom and leadership.●

THE 50TH ANNIVERSARY OF THE INDEPENDENCE OF PAKISTAN

● Mr. DURBIN. Mr. President, I rise today to honor the people of Pakistan on the occasion of the fiftieth anniversary of their independence. In August of 1947, Pakistan gained its independence from the British Empire. For the past fifty years, the people of Pakistan have shared with the people of the United States a common interest in the establishment of democracy. In recent years, Pakistan has reasserted its committment to democratic government and is deserving of both our recognition and our support.

The friendship between the United States and Pakistan goes back many years. In the mid-1950's, Pakistan and the United States joined together in a

security agreement to resist Soviet expansion in South Asia. In late 1955, Pakistan joined the Southeast Asia Treaty Organization and the Central Treaty Organization, demonstrating Pakistan's committment to the Free World. This commitment proved invaluable during the Soviet occupation of Afghanistan, as our two nations united in opposition to Soviet aggression. Without a doubt, a close, constructive friendship between the United States and Pakistan has been essential to the security of both nations.

Beyond the affairs of state, there are the economic and cultural exchanges which spur growth and development and enrich the lives of our nations. In 1996, the total value of U.S. trade with Pakistan was $1.3 billion. Pakistan has recently embarked on an ambitious economic reform program to jumpstart the economy of Pakistan and provide the necessary foundation for free and fair trade. The United States should support these efforts, as Pakistan has the potential to one day become a model for the newly independent states of West and Central Asia.

Pakistani-Americans are a vibrant part of American cultural and economic life. Across the nation, Pakistani-Americans share their knowledge and heritage with other Americans, contribute to our economy, and create homes and neighborhoods which are a vital contribution to the American dream.

And so, on this the fiftieth anniversary of the independence of Pakistan, I rise to honor the people of Pakistan and their commitment to forge a free and democratic society. I look forward to many years of continued friendship between the people of Pakistan and the United States.•

INCREASING INCOME FOR THE DISABLED

• Mr. ABRAHAM. Mr. President, I rise today as a cosponsor of S. 1054. This legislation, introduced by Senator COCHRAN, gives greater opportunity to disabled workers.

In a nation professing to honor and reward hard work, I find it distressing that individuals able and, more importantly, willing to work do not receive all the benefits they are entitled to. Presently, disabled individuals can maintain Social Security benefits only if they do not earn a substantial amount. For the disabled, this amount is $500 per month, or $6000 per year. Blind individuals, however, are able to earn nearly twice as much without diminished benefits; nearly $12,000 per year. This discrepancy is wrong.

During the 104th Congress, the Senate acted on legislation expanding senior citizens ability to work. The Senate passed the "Senior Citizens' Right to Work Act of 1996" by unanimous consent. This legislation, which I was proud to support, allows seniors to retain more of their Social Security benefits even if they continue to work. By the year 2002, seniors will be able to earn up to $30,000 in outside income without penalty. I see no reason why the Senate can extend the earnings limit to seniors and the blind, but does not extend the ability for greater income to the disabled. I urge my colleagues to support this legislation and correct this outstanding deficiency.•

SPECIAL COORDINATOR FOR UNITED STATES POLICY TOWARD TIBET

• Mr. MOYNIHAN. Mr. President, today the New York Times reports an important advance in United States diplomacy. Secretary of State Albright has agreed to appoint a special coordinator to oversee American policy toward Tibet. This brings to fruition the vision of our beloved former chairman of the Foreign Relations Committee, Senator Pell, who introduced a bill (S. 2554) at the end of the 103d Congress to establish a position in the Department of State to coordinate United States policy on Tibet.

Since 1959, the Tibetans have suffered the liberation of their country by the Communist Chinese. Tibet is a remote land. Tibetans at that time had no interest in relations with other countries. No interest in joining the newly formed United Nations. Perhaps if Tibet had, we would have paid more attention when it was invaded.

Now it's time to pay attention. Most importantly, we must focus on efforts to bring the Tibetans and the Chinese to the negotiating table to resolve their differences. The situation requires far more attention within the administration and a special coordinator can provide appropriate attention. While the Dalai Lama has stated repeatedly his willingness to begin negotiations, the Chinese continue to issue denials. As my daughter Maura wrote in a Washington Post article in April:

> Most policy makers do not realize that the Dalai Lama is not seeking territorial sovereignty for his captive nation; nor is he asking to be reinstated as the head of the theocratic government that ruled Tibet prior to the Chinese invasion. In an address to the European Parliament in 1988 in Strasbourg, France, the Dalai Lama offered the Chinese control of Tibet's military and diplomatic affairs if they would allow the Tibetan people a measure of self-governance and non-interference in religion and culture.

That is certainly a magnanimous offer. The response from the Chinese? Silence.

In creating this new position, we make clear that we have heard this reasonable offer and intend to pursue it. As Lodi Gyari, the able diplomat who represents the Dalai Lama in Washington, is quoted in the New York Times today:

> If the United States is consistent and sincere and vigorous in trying to persuade the Chinese Government to come to a settlement, I strongly believe it will happen.

The new post will also allow closer scrutiny of human rights abuses in Tibet, which continue at an appalling level. I would note, as the author of the provision which resulted in a separate Tibet report in the State Department's annual Country Reports on Human Rights Practices, that the Bureau of Democracy, Human Rights and Labor, led by Assistant Secretary Shattuck, has done a superb job in documenting the situation in Tibet. The excellent information the Bureau collects will be more readily acted upon by an officer focused solely on Tibet.

For too long, Tibet has fallen between the cracks of United States foreign policy. Such neglect has led Abe Rosenthal to wonder if Tibetans are not "Endangered Species," as he asked in the New York Times on May 21, 1994:

> Is anybody protecting, please, another of God's endangered species, which happens to be human, the Tibetans? Not yet. Neither the Republic nor the Empire nor any other nation, great or small, does anything about the Tibetans, except India, which gives them refuge when they can escape their cage.
>
> Would it help to say that just as there are laws against slaughtering hawksbill turtles, there are international laws against genocide—the elimination of nations and cultures? Probably not.

This is a rather somber note on which to end, yet the situation in Tibet is grave. I am pleased that the Secretary has decided to appoint a new special coordinator for Tibet and both Congress and the Administration can devote more attention to this "Endangered Species."

Mr. President, I ask that the article on the position be printed in the RECORD.

The article follows:

[From the New York Times, July 30, 1997]

ALBRIGHT TO NAME SPECIAL AIDE ON U.S. POLICY TOWARD TIBET

(By Steven Lee Myers)

WASHINGTON, JULY 29.—Secretary of State Madelene K. Albright told Congressional leaders today that she would appoint a new "special coordinator" to oversee American policy toward Tibet.

The announcement, which came in response to Democratic and Republican pressure in Congress, could create new diplomatic strains with China.

The United States has never had diplomatic relations with Tibet, which it regards as part of China, but the creation of the new position would significantly raise the profile of Tibetan affairs within the Government, according to Administration and Congressional officials familiar with the plan.

"We are prepared to have someone working in the State Department to see that the religious freedom of Tibetans is promoted and that their ethnicity is respected," a senior Administration official said, speaking on condition of anonymity.

The new coordinator, however, would not have the rank of ambassador, with the diplomatic credentials to act on behalf of the United States, nor would the appointment

bestow any diplomatic recognition on Tibet. In that sense the idea would fall short of recent proposals in both the House and the Senate, which the Administration has opposed.

But the appointment is likely to rankle China, which has repeatedly accused other nations of interfering with internal matters by raising concerns over Tibet.

President Clinton met in April with the Dalai Lama, Tibet's exiled spiritual leader, and promised to raise Tibet as a prominent issue when he meets President Jiang Zemin of China in the fall. The meeting with the Dalai Lama, a so-called drop by during the Tibetan's session with Vice President Al Gore that stopped short of an official visit, prompted protests from Beijing.

"I see this as a step in the right direction," said Lodi Gyari, president of the International Campaign for Tibet and a former aide to the Dalai Lama. "I hope this is the beginning of a trend. If the United States is consistent and sincere and vigorous in trying to persuade the Chinese Government to come to a settlement, I strongly believe it will happen."

Ms. Albright, visiting Singapore today, discussed the appointment in a telephone call with leaders of the Senate's Committee on Foreign Relations and the House's Committee on International Relations, which are considering new legislation to force the appointment of an envoy with ambassadorial rank, a move the Administration opposes.

The details of the position—including the scope of the duties and resources—were not disclosed.

After the meeting, an aide to a Senate Republican said, "We want to make sure this is not one guy sitting in the bowels of the State Department with no influence over policy in Tibet."

The special coordinator would have a broad mandate to orchestrate the Administration's policies internally and also to meet with Tibetan officials, including the exiled leaders based in India, officials said. The officials said the coordinator would also act as a mediator between Chinese and Tibetan officials, trying to restart contacts.

China seized Tibet in 1950.

U.S. TO PRESS FOR POL POT TRIAL

(By the New York Times)

SINGAPORE, JULY 29.—Ms. Albright said today that the United States would continue to press for an international war crimes trial for Pol Pot, the former Cambodian leader.

"What we do think is very important is that Pol Pot be tried," she said in a briefing for journalists traveling with her to Asia. "We consider him a war criminal." She added that the United States sought to have him tried "by some procedure that is internationally accepted."

She acknowledged that earlier explorations into using Canadian or Dutch law had run into complications, but said American officials were continuing to search for the right site and method for a trial.•

TRIBUTE TO GARY HURT

• Mr. BOND. Mr. President, I rise to pay tribute to a friend and outstanding member of the Missouri Highway Patrol, who is retiring after many years of dedicated service.

You have heard the expression, "you can bet your life on it." That was more than an expression for me during the 8 years my family and I depended on the Governor's security team. We literally bet our lives on Gary Hurt and his colleagues, just as all Missourians bet their lives on other members of the highway patrol every day.

Gary Hurt has devoted 28 years of service to the Missouri State Highway Patrol. Of this tenure, 18 years has been spent on the Governor's security division, where Gary has served as assistant director for 14 years. He learned his craft in the time-honored way, as a road trooper for a full decade.

Gary fought back several years ago from an injury that threatened to end his career with the patrol. An injury to his "gun arm" required two operations, extensive physical rehabilitation and tremendous grit to overcome but overcome it he did.

As Governor, I became very close to my security team members sharing every event and most waking hours. I am particularly grateful for their patience during the endless hours that, while driving to events, I read bedtime stories into a tape recorder for my son, Sam, for those nights I could not be home in time to read to him in person. Gary and I have shared floods, tornadoes, prison riots, hangings in effigy, election night victories and defeats, births, deaths, weddings, budget crises, and fiscal triumph. As an aside, one of the weddings we most recently shared occurred when Gary's son married a caseworker in my office of constituent services.

I regret that Missouri will no longer have Gary Hurt among its law enforcement members, but I am counting on him to continue to share his humor, insight, and experience through different avenues. Thank you, Gary, and best of luck in your retirement. You have earned the chance to do things you want to do for a change.•

INDIAN GAMING REGULATORY ACT AMENDMENTS OF 1997

• Mr. MCCAIN. Mr. President, there is an error in the statement that I submitted for the RECORD in introducing S. 1077, a bill to amend the Indian Gaming Regulatory Act. The portion of the statement alluding to a new process for the negotiation of gaming compacts was inadvertently included. There is no section concerning compacting in the bill I introduced.•

100 YEARS OF THE FORWARD

• Mr. MOYNIHAN. Mr. President, on July 22, 1997, the Washington Post contained a moving tribute to the Forward, a New York City journalistic tradition currently celebrating its centennial year.

The Members of the Senate are probably aware of the Forward's magnificent history; this daily Yiddish newspaper once enjoyed a daily circulation of over 250,000. It did its job of helping new arrivals assimilate and become Americans so very well, that its original readers' descendants can now enjoy the newspaper's superb English language edition, while a wave of new immigrants are being introduced to the nuances of American life by the newspaper's Russian edition.

The Forward's legacy lives on, not only in its three current editions, but with the tens of thousands of families whose ancestors learned about this country in the pages of Abraham Cahan's remarkable publication. On May 22, New York Mayor Guiliani hosted a reception at Gracie Mansion to mark the one- hundredth anniversary of the Daily Vorwaert's first issue. I sent a message to this reception which was reprinted in the Forward's Yiddish, English and Russian editions:

I have long believed that the Forward renders an invaluable contribution to American society. Your dynamic newspaper should be appreciated by all who cherish our national heritage of respect for intellectual creativity and journalistic integrity. Even those of us who couldn't enjoy A Bintel Brief in the original were long ago aware of the Forward's power to captivate, educate and inspire. Your vigorous English edition is a worthy companion to the historic Yiddish Forward.

Please accept my great congratulations on this magnificent milestone.

With my best wishes to the "gold standard" of ethnic journalism.

The Forward has played a significant cultural and educational role in its first century and I trust that the members of the Senate join me in wishing similar success to the three editions that so ably carry on the historic Forward tradition.

Mr. President, I ask that the text of the Washington Post article on the Forward's centennial be printed in the RECORD.

The material follows:

[From the Washington Post, July 22, 1997]

NEW VOICES FOR A NEW CENTURY—NEWSPAPER OF AN EXODUS SPEAKS A LANGUAGE ITS CHILDREN NO LONGER HEAR, BUT REACHES OUT IN OTHERS

(By John M. Goshko)

NEW YORK.—Some of this city's most prominent editorialists, academics and intellectuals lately have been waxing nostalgic about a New York institution now personified by a half-dozen elderly men hunched over rickety, ancient typewriters in a charmless office.

These men—not all in the best of health and able to put in a full day's work—are what remains of the Yiddish staff of the Forward, or Der Vorwaerts, once celebrated as the most influential foreign-language newspaper in the United States. Now marking its 100th anniversary amid growing uncertainty about its future, the Forward is known as the paper that did its job so successfully that it has come to the brink of putting itself out of business.

To survive into a second century, the Forward has had to start thinking about ways to reinvent itself. It actively is experimenting with moves away from Yiddish, seeking to attract new audiences with editions in English and Russian.

The English edition, in particular, has aroused considerable interest because of its aggressive, no-sacred-cows coverage of Jewish affairs under editor Seth Lipsky, a graduate of the Wall Street Journal's editorial page, and his staff of young reporters. The English version doesn't always sit well with many old-line readers who find Lipsky's combative conservatism jarringly at odds with the Forward's foundations in socialism and trade unionism. They say that while the name on the masthead of the English edition may be the same, the newspaper itself is not. To them, he Forward's identity cannot be separated from the language and culture that the great waves of turn-of-the-century immigration brought to this country from East European Jewish communities destined to perish in the Holocaust.

More than 2.5 million Yiddish-speaking Jewish immigrants poured into New York between 1880 and 1925, and many learned how to Americans from the Forward. At the height of the newspaper's influence, its daily circulation of more than 250,000 stretched from New York into the sizable immigrant communities of Boston, Philadelphia, Chicago and Los Angeles. And it used this influence to become a key player in shaping the modern American labor movement and leading the exodus of Jewish immigrants from European-inherited socialist politics to the New Deal.

"For people like me, the Forward is part of a culture; something that's in my genes," said Hyman J. Bookbinder, long the American Jewish Committee's representative in Washington. "I was brought up in a Forward home, where my parents, who came from Poland as teenagers, looked to the Forward for what amounted to their high school and college education."

In 1947, the Forward's 50th anniversary celebration packed Madison Square Garden. Today, the editor of the Yiddish Forward, Mordechia Shtrigler, worries that the paper, which became a weekly in 1983, might have to cut back further and go biweekly or even monthly. The grandchildren and great grandchildren of the original faithful have moved on. For the Yiddish edition, there remain only a geriatric generation whose imminent passing effectively will mark the dying out of Yiddish as a language with any currency in the United States.

"It's not just that the young people don't read or speak Yiddish," said Shtrigler. "We are almost out of people who can write commandingly and persuasively in Yiddish about politics and literature and culture. Many weeks I have to write more than half the newspaper myself. I fear what the future will be."

His anxiety is, in many ways, a testament to the certain vision of Abraham Cahan, an autocratic but brilliant editor who ran the paper for more than 50 years. Cahan arrived in New York from Lithuania in 1882 and quickly acquired a gift for writing in English that enabled him to become a star reporter for English-language newspapers. He gained even wider notice by writing two novels about Lower East Side ghetto life: "Yekl," which in the 1970s became the basis for the film "Hester Street," and the "Rose of David Levinsky," acclaimed at the time as a minor masterpiece of genre realism.

Both books dealt with the theme of assimilation as necessary and inevitable for survival in the new world, even when it meant a melancholy loss of one's youthful ideals. That was the message that Cahan carried over into the pages of the Forward. Cahan built a devoted readership from sweatshop laborers and pushcart peddlers with detailed, colorful coverage of New York's politics and its nascent labor movement. And he added a high-toned side, publishing the work of the best Yiddish poets and novelists. One, Isaac Bashevis Singer, published almost all of his stories in the Forward before their book publication.

But the Forward's basic message was underscored by Cahan's lead editorial on his first day as editor: "Send Your Children to College if You Can, but Don't Let Them Become Disloyal to Their Parents." It set the tone for future Forward articles that would attempt to act as a bridge between America and the shetl. They covered every conceivable subject including one, "Fundamentals of Baseball Explained to Non-Sports," which came complete with a diagram of the Polo Grounds.

By far the most popular and famous feature was the "Bintel Brief" ("Bundle of Letters"), where readers wrote in to seek advice about their most personal concerns and aspirations.

The letters included such pre-"Dear Abby" trivia as one from "The Unhappy Fool," who confessed that he considered the girl be loved flawed because she had a dimple. The Forward's tart reply:

"The trouble is not that the girl has a dimple in her chin but that some people have a screw loose in their head."

But others were what has been called "a cry from the depths of immigrant life": the new arrival's anguish at leaving his aged parents in Europe, the plight of the young mother deserted by her husband, the despair of a tenement janitor condemned to eke out his days in " a place where the sun is ashamed to shine."

If the people who wrote to the "Bintel Brief" have a present-day counterpart, it is the immigrants from the now defunct Soviet Union, whose population in the New York area has swelled to almost 400,000 in recent years. An estimated 95 percent of them are Jewish, and in December 1995, the Forward began a weekly Russian edition to cater to their needs, with a circulation now of 10,000.

It carries a heavy dose of news about the Russian immigrant community, particularly its problems of adjustment. It even carries a Hebrew lesson in each issue.

As to the descendants of those earlier immigrants who were the Forward's original audience, they are largely successful business and professional people who have graduated to the suburbs and Manhattan's tonier neighborhoods. The English edition, a weekly established in 1990, is hoping it can lay the foundations for a new kind of paper by establishing with the new generation the same bonds of passion for Jewish issues that existed between their forebears and the Yiddish Forward.

It has a ways to go. Its circulation is only about 25,000, and it hemorrhages red ink at the rate of about $1 million a year. Still, Lipsky optimistically insists that it is not unrealistic to harbor hopes of someday becoming a daily. In pursuit of that dream, he has hired a constantly revolving team of your talent.

Although they work just down the hall from the Yiddish staff, there is a respectful but clear separation between the two. The English edition does not use any material from its older sibling. And the younger staff members, their accents and sensibilities betraying the stamp of places like Berkeley, Cambridge and New Haven, have only the foggiest notions of the Talmudic arguments about assimilation and schisms in the socialist movement that preoccupied earlier generations of Forward editors and reporters.

Collectively, they turn out a newspaper distinguished by sophisticated arts coverage and a more probing, sometime sensationalist approach to Jewish issues than most other American Jewish publications, whose ties and funding sources generally cause them to tread cautiously around Jewish charities and organizations. The Forward also is unlike its competitors in that it frequently is willing to take some critical looks at Israel.

This attitude has earned the English edition a substantial number of enemies among Jewish organizations and individuals who feel the paper has treated them unfairly. Inevitably the biggest share of brickbats has been aimed at Lipsky's editorial positions which reader nostalgic for the old Forward consider an unpalatable mix of Reaganomics and Cold War rhetoric.

Rabbi Arthur Hertzberg, a professor of humanities at New York University, accused Lipsky of trying to turn "a newspaper of socialists and social democrats [into] an echo of the Wall Street Journal." Jack Sheinkman, former president of the Amalgamated Clothing and Textile Workers Union, expressed outrage at Lipsky's unapologetic defense of American involvement in the Vietnam War, and the literary critic, Alfred Kazin, protested that a Forward proposal to bomb North Korea's nuclear weapons facilities had no place in "a paper founded a century ago on the blood and toil of peaceful laboring people who believed in harmony with people like themselves.

Lipsky takes the criticism in stride: "A lot of people tiptoe around our ideological battles as through its something to be embarrassed about. Actually, I find it a matter of great zest." He even wrote an article in a recent issue of Commentary magazine arguing that "Abraham Cahan would have perfectly well understood the contours of the struggle we are in today and have responded in the spirit in which we carry on."•

BUDGET SCOREKEEPING REPORT

• Mr. DOMENICI. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of section 5 of S. Con. Res. 32, the First Concurrent Resolution on the Budget for 1986.

This report shows the effects of congressional action on the budget through July 28, 1997. The estimates of budget authority, outlays, and revenues, which are consistent with the technical and economic assumptions of the 1997 Concurrent Resolution on the Budget (H. Con. Res. 178), show that current level spending is above the budget resolution by $9.5 billion in budget authority and by $12.9 billion in outlays. Current level is $20.5 billion above the revenue floor in 1997 and $101.9 billion above the revenue floor over the 5 years 1997–2001. The current estimate of the deficit for purposes of calculating the maximum deficit amount is $219.9 billion, $7.4 billion

below the maximum deficit amount for 1997 of $227.3 billion.

Since my last report, dated June 23, 1997, there has been no action that has changed the current level of budget authority, outlays, or revenues.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 29, 1997.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report for fiscal year 1997 shows the effects of Congressional action on the 1997 budget and is current through July 28, 1997. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the 1997 Concurrent Resolution on the Budget (H. Con. Res. 178). This report is submitted under section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended.

Since my last report, dated June 23, 1997, there has been no action that has changed the current level of budget authority, outlays or revenues.

Sincerely,

JUNE E. O'NEILL,
Director.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, FISCAL YEAR 1997 105TH CONGRESS, 1ST SESSION, AS OF CLOSE OF BUSINESS JULY 28, 1997

[In billions of dollars]

	Budget resolution H. Con. Res. 178	Current level	Current level over/under resolution
On-Budget			
Budget authority	1,314.9	1,324.4	9.5
Outlays	1,311.3	1,324.2	12.9
Revenues:			
1997	1,083.7	1,104.3	20.5
1997–2001	5,913.3	6,015.2	101.9
Deficit	227.3	219.9	−7.4
Debt subject to limit	5,432.7	5,283.0	−149.7
Off-Budget			
Social Security outlays:			
1997	310.4	310.4	0.0
1997–2001	2,061.3	2,061.3	0.0
Social Security revenues:			
1997	385.0	384.7	−0.3
1997–2001	2,121.0	2,120.3	−0.7

Note.—Current level numbers are 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, 105TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1997 AS OF CLOSE OF BUSINESS JULY 28, 1997

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in previous sessions			
Revenues			1,101,532
Permanents and other spending legislation	843,324	801,465	
Appropriation legislation	753,927	788,263	
Offsetting receipts	−271,843	−271,843	
Total previously enacted	1,325,408	1,317,885	1,101,532
Enacted this session			
Airport and Airway Trust Fund Reinstatement Act of 1997 (P.L. 105–2)			2,730
1997 Emergency Supplemental Appropriations Act (P.L. 105–18)	−6,497	281	
Total, enacted this session	−6,497	281	2,730

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE, 105TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1997 AS OF CLOSE OF BUSINESS JULY 28, 1997—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Entitlements and mandatories			
Budget resolution baseline estimates of appropriated entitlements and other mandatory programs not yet enacted	5,491	6,015	
Totals			
Total current level	1,324,402	1,324,181	1,104,262
Total budget resolution	1,314,935	1,311,321	1,083,728
Amount remaining:			
Under budget resolution			
Over budget resolution	9,467	12,860	20,534
Addendum—Emergencies			
Funding that has been designated as an emergency requirement by the President and the Congress	9,228	1,917	
Funding that has been designated as an emergency requirement only by the Congress and is not available for obligation until requested by the President	315	300	
Total emergencies	9,543	2,217	
Total current level including emergencies	1,333,945	1,326,398	1,104,262

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 105–18 AND TREATY DOCUMENT NO. 105–19

Mr. SANTORUM. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaties transmitted to the Senate on July 30, 1997, by the President of the United States:

Extradition Treaty with Argentina (Treaty Document No. 105–18);

Extradition Treaty with Organization of Eastern Caribbean States (Treaty Document No. 105–19).

I further ask that the treaties be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's messages be printed in the RECORD.

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

The messages of the President are as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty between the United States of America and the Argentine Republic, signed at Buenos Aires on June 10, 1997.

In addition, I transmit, for the information of the Senate, the report of the Department of State with respect to the Treaty. As the report states, the Treaty will not require implementing legislation.

The provisions in this Treaty follow generally the form and content of extradition treaties recently concluded by the United States.

Upon entry into force, this Treaty would enhance cooperation between the law enforcement authorities of both countries, and thereby make a significant contribution to international law enforcement efforts. The Treaty would supersede the Extradition Treaty Between the United States of America and the Republic of Argentina signed at Washington on January 21, 1972.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *July 30, 1997.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaties between the Government of the United States of America and the governments of six countries comprising the Organization of Eastern Caribbean States (collectively, the "Treaties"). The Treaties are with: Antigua and Barbuda, signed at St. John's on June 3, 1996; Dominica, signed at Roseau on October 10, 1996; Grenada, signed at St. George's on May 30, 1996; St. Lucia, signed at Castries on April 18, 1996; St. Kitts and Nevis, signed at Baseterre on September 18, 1996; and St. Vincent and the Grenadines, signed at Kingstown on August 15, 1996.

In addition, I transmit, for the information of the Senate, the report of the Department of State with respect to the Treaties. As the report explains, the Treaties will not require implementing legislation.

The provisions in these Treaties follow generally the form and content of extradition treaties recently concluded by the United States.

Each Treaty will enhance cooperation between the law enforcement communities in both countries. That will thereby make a significant contribution to international law enforcement efforts. Upon entry into force of the extradition treaties between the United States and Antigua and Barbuda, Dominica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines, the Extradition Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland signed June 8, 1972, which was made applicable to each of these territories upon its entry in force January 21, 1977, and which continues to apply between the United States and each of the entities subsequent to becoming independent, will cease to have any effect between the United States and the respective country. Upon entry into force of the Extradition Treaty between the United States and Grenada, the Extradition Treaty between the United States and Great Britain signed December 22, 1931, which was made applicable to Grenada upon its entry into

force on June 24, 1935, and which continues to apply between the United States and Grenada, following its becoming independent, shall cease to apply between the United States and Grenada.

I recommend that the Senate give early and favorable consideration to the Treaties and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *July 30, 1997.*

NEED-BASED EDUCATIONAL AID ANTITRUST PROTECTION ACT OF 1997

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1866, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1866) to continue favorable treatment for need-based educational aid under the antitrust laws.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1046

(Purpose: To limit the application of an exemption of antitrust laws relating to need-based educational aid and to extend the period of applicability of that exemption)

Mr. SANTORUM. Mr. President, Senators DEWINE and KOHL have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SANTORUM], for Mr. DEWINE, for himself and Mr. KOHL, proposes an amendment numbered 1046.

Mr. SANTORUM. 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:

Strike section 2 and insert the following:

SEC. 2. CONTINUATION OF FAVORABLE TREATMENT FOR NEED-BASED EDUCATIONAL AID UNDER THE ANTITRUST LAWS.

(a) AMENDMENTS.—Section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) is amended—

(1) in subsection (a)—

(A) in the heading, by striking "TEMPORARY"; and

(B) by striking paragraph (4) and inserting the following:

"(4) to exchange through an independent third party, before awarding need-based financial aid to any of such students who is commonly admitted to the institutions of higher education involved, data submitted by the student so admitted, the student's family, or a financial institution on behalf of the student or the student's family relating to assets, liabilities, income, expenses, the number of family members, and the number of the student's siblings in college, if each of such institutions of higher education is permitted to retrieve such data only once with respect to the student."; and

(2) in subsection (d), by striking "September 30, 1997" and inserting "September 30, 2001".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect immediately before September 30, 1997.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1046) was agreed to.

Mr. SANTORUM. I ask unanimous consent the bill be considered read a third time and passed, as amended, the motion to reconsider be laid on the table, and any statements relating to this bill be placed at the appropriate place in the RECORD.

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

The bill (H.R. 1866), as amended, was considered read the third time and passed.

AUTHORIZING THE USE OF THE CAPITOL GROUNDS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 132, H. Con. Res. 98.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 98) authorizing the use of the Capitol Grounds for the SAFE KIDS Buckle Up Car Seat Safety Check.

The Senate proceeded to consider the concurrent resolution.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 98) was agreed to.

ADDITIONAL CONFEREE—H.R. 2203 AND H.R. 2169

Mr. SANTORUM. Mr. President, I ask unanimous consent that Senator INOUYE be added as a Democratic conferee with respect to the following:

H.R. 2203, energy and water appropriations, and H.R. 2169, transportation appropriations.

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

ORDERS FOR THURSDAY, JULY 31, 1997

Mr. SANTORUM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:15 a.m. on Thursday, July 31. I further ask unanimous consent that on Thursday, immediately following the prayer, the routine requests through the morning hour be granted, and the Senate immediately proceed to the conference report accompanying H.R. 2015, the Balanced Budget Act, as under the previous order.

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

PROGRAM

Mr. SANTORUM. Mr. President, tomorrow morning, from 9:15 a.m. to 10:15 a.m., the Senate will conclude debate on the conference report to the Balanced Budget Act. Under a previous order, at 10:15 a.m., the Senate will proceed to vote on the conference report. Following that vote, it is the intention of the majority leader that the Senate will begin debate on the conference report to the Taxpayer Fairness Act. As Members are aware, there are 10 hours of statutory debate time in order to this conference report. Therefore, Members can anticipate additional rollcall votes following the 10:15 a.m. vote. As always, Members will be notified as to when rollcall votes are required.

ORDER FOR ADJOURNMENT

Mr. SANTORUM. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order following the remarks of the Senator from New Jersey.

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

Mr. TORRICELLI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

THE PLAGUE OF TERRORISM

Mr. TORRICELLI. Mr. President, only hours ago, in a market in Jerusalem, the plague of terrorism once again struck the people of the Middle East. Simple people shopping for their goods and wares were struck down by a terrorist bomb. People who do not have the courage to stand on the battlefield or the wisdom to sit across a conference table with diplomats have, once again, sought to impose their own will on the people of Israel.

I rise on the floor of the Senate to express all of our sympathies for the families of the victims, the people of Israel, and to Prime Minister Netanyahu.

I know in all of us, there is not only a prayerful sorrow, but also a great anger. The sacrifices and the works and the hopes of so many might be dashed by these few who would impose their

will. The best message may not simply be our prayers or our condolences. Perhaps, Mr. President, as Americans, we are best to respond to this tragedy as Americans have always responded to those who act in violence and with such irresponsible actions. Our best message may be our uncompromising determination to pursue peace.

It is, after all, the interruption of the peace process that terrorists desire the most. If they had a coherent argument that had intellectual weight, they would have sought an entry into the peace process to make their arguments to diplomats. If they could make a coherent case to either the electorate in Israel or the people of the Palestinian Authority, they would have taken their case through a democratic process to those peoples. Their terrorist actions are the best evidence that they have no such arguments. They can make no such case. They, indeed, do not have confidence themselves in the strength of their own positions.

In responding to this terrorist action, President Clinton made clear that the United States will not be dissuaded, that we are not led away or apart from our current policy of seeking a peaceful resolution to events in the Middle East. I believe that President Clinton, when he speaks these words, represents all of us.

It is, therefore, only right and proper that, when the mourning ends and the dead are buried, our diplomats return to the Middle East with all dispatch. If it was the intention of the administration that they were to return in several days, the best message to the terrorists is that they return sooner. If it was their intention to remain a month, it is the best message to the terrorists that they should remain 2 months. If it was the intention of this Congress to continue American assistance to Israel for several years, the best message to these terrorists is, it shall continue for more years.

There are those through the years who do not understand the United States. They think that because we are a patient and a reasonable people, inclined towards peace and willing to talk, that we lack strength or resolve. Those who know our history, watched our actions, or understand us and our culture the best know that, in fact, nothing could be further from the truth. We are a people of enormous resolve. That resolve will best be demonstrated in the coming days when this administration sends our diplomats back to the negotiating table, this Congress continues with our commitments to Israel, and we make clear we will not be separated from our ambition of a strong and free Israel, with a Middle East with a lasting peace.

To the Palestinian Authority and its leader, Yasser Arafat, we are all grateful that Mr. Arafat has expressed to Prime Minister Netanyahu and to the families of the victims his condolences. It is, however, on this occasion, not enough. The best expression of condolence to the victims and to the people of Israel is for Mr. Arafat to renew his commitment to the peace process without condition. It is not enough simply to express regret at the suffering of those who are victims or for Mr. Arafat to express his commitment to find those responsible and to cooperate with the Israeli authorities.

It is also not enough to cooperate because of the deeds of this day, but to assure that tomorrow, and in all days that follow, the Palestinian Authority security forces will cooperate with Israeli law enforcement to share intelligence information, to open her borders and her files to ensure that this deed that has been suffered upon the people of Israel is not repeated.

Mr. President, the people of Israel have suffered on many such days. Terrorism has not become the exception, but sometimes it seems the rule of the politics of the Middle East.

In Israel, like in America, we are misunderstood. This much should be clear: There is no terrorist action so great, no number of victims so large, that the people of Israel will be convinced to compromise on the needs of their basic security, their determination that they and their children will live in an undivided Jerusalem. At times we seem so close to peace and yet more victims, more sacrifice is asked.

Wherever these terrorists might be hiding tonight, whatever cave may conceal their cowardice, let this much be clear: Israel will remain free, Jerusalem will remain Israeli, the future will be secured. And if the sacrifice of the people of Israel through all these years has not convinced these terrorists, or those who would follow them, of that fact, then add this to the equation: The U.S. Congress, this Senate in representation of all the people of the United States, are determined to make it so as well.

Mr. President, our prayers, our heartfelt sorrow go to the families of the victims of all the people of Israel. May the future at long last be different than the past.

I yield the floor.

ADJOURNMENT UNTIL TOMORROW AT 9:15 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:15 a.m. tomorrow.

Thereupon, the Senate, at 8:11 p.m., adjourned until Thursday, July 31, 1997, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate July 30, 1997:

THE JUDICIARY

SUSAN GRABER, OF OREGON, TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE EDWARD LEAVY, RETIRED.

DEPARTMENT OF STATE

PETER L. SCHER, OF THE DISTRICT OF COLUMBIA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SPECIAL TRADE NEGOTIATOR.

DEPARTMENT OF ENERGY

MARY ANNE SULLIVAN, OF THE DISTRICT OF COLUMBIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF ENERGY, VICE ROBERT RIGGS NORDHAUS, RESIGNED.

NATIONAL COUNCIL ON DISABILITY

ELA YAZZIE-KING, OF ARIZONA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1999. (REAPPOINTMENT)

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 12203:

To be brigadier general

COL. JAMES P. CZEKANSKI, [redacted].

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

To be major general

BRIG. GEN. JOHN G. MEYER, JR., [redacted].
BRIG. GEN. ROBERT L. NABORS, [redacted].

HOUSE OF REPRESENTATIVES—*Wednesday, July 30, 1997*

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Mr. GIBBONS].

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
July 30, 1997.

I hereby designate the Honorable JIM GIBBONS to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

May Your good word, O God, that comforts and gives strength, be with those who have suffered from violence and hatred and who have experienced the brutality of conflict. We remember especially those innocents who go about their daily lives seeking only to do their work and know their families and yet who suffer so tragically from the cruelty of malice and hatred. In spite of the strife known to nations and peoples, we pray that we will be instruments of peace and messengers of goodwill so that everyone may know the bounty of Your grace and Your peace. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from California [Mr. FARR] come forward and lead the House in the Pledge of Allegiance.

Mr. FARR of California led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2209. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 1998, and for other purposes; and

H.R. 2266. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1998, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 2209) "An Act making appropriations for the Legislative Branch for the fiscal year ending September 30, 1998, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. BENNETT, Mr. STEVENS, Mr. CRAIG, Mr. COCHRAN, Mr. DORGAN, Mrs. BOXER, and Mr. BYRD, to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 2266) "An Act making appropriations for the Department of Defense for the fiscal year ending September 30, 1998, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. STEVENS, Mr. COCHRAN, Mr. SPECTER, Mr. DOMENICI, Mr. BOND, Mr. MCCONNELL, Mr. SHELBY, Mr. GREGG, Mrs. HUTCHISON, Mr. INOUYE, Mr. HOLLINGS, Mr. BYRD, Mr. LEAHY, Mr. BUMPERS, Mr. LAUTENBERG, Mr. HARKIN, and Mr. DORGAN, to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 1757) "An Act to consolidate international affairs agencies, to authorize appropriations for the Department of State and related agencies for fiscal years 1998 and 1999, and to ensure that the enlargement of the North Atlantic Treaty Organization (NATO) proceeds in a manner consistent with United States interests, to strengthen relations between the United States and Russia, to preserve the prerogatives of the Congress with respect to certain arms control agreements, and for other purposes", disagreed to by the House and agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HELMS, Mr. COVERDELL, Mr. HAGEL, Mr. GRAMS, Mr. BIDEN, Mr. SARBANES, and Mr. DODD, to be the conferees on the part of the Senate.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain ten 1-minute speeches from each side.

TAX RELIEF

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, it appears to finally be here, we have an agreement on tax relief for working Americans. Congress and the White House have come together and developed a package that will sustain a strong economy.

Is it perfect or the best we could do? Probably not. But in a democracy we all give a little. So it is not perfect but tax relief is necessary and it is long overdue. The St. Louis Post Dispatch said it well when it said: Nobody asked wage earners in Missouri if they could afford President Clinton's 1993 tax increase. The Republican tax relief plan puts some of the money back where it belongs, in the pockets of working Americans. The tax relief plans passed by the House and the Senate are not government handouts. This money belongs to the workers of Missouri and they should not have to come on bended knee to the Federal Government just to keep more of what they worked so hard to earn.

It is the same for wage earners in Kansas in my district and across America, they should keep more of what they worked so hard to earn. I urge my colleagues to vote for the tax relief plan for working families. It is long overdue.

CONDEMNING TERRORISM IN JERUSALEM

(Mr. LANTOS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LANTOS. Mr. Speaker, I rise with a sense of profound outrage and steely determination to denounce the murderous terrorist attack against children, women, and elderly men in Jerusalem's open marketplace by the assassins of Arab extremism, who are hell-bent on destroying the peace process so desperately craved by millions of decent Israelis and Arabs in the region.

It is long past time for Arafat to order his huge police force to destroy the countless terrorist nests scattered

through the territory under his control. Until Arafat focuses his vast resources on destroying terrorism, there can be no progress toward peace in the region.

This morning I am introducing a resolution condemning today's terrorist attack in Jerusalem, expressing the solidarity of the Congress and the American people with the grieving families and people of Israel and calling on Arafat to begin in earnest a war against the assassins of people and peace in the Holy Land. This resolution is cosponsored by the distinguished Republican chairman of the House Committee on International Relations, Mr. GILMAN, and the distinguished ranking Democratic member of the Committee on International Relations, Mr. HAMILTON. It is supported by the Democratic leader, the gentleman from Missouri, Mr. GEPHARDT, and Senator HELMS and Senator BIDEN are concurrently introducing it in the other body.

TAX CUTS FOR MORE FREEDOM AND LESS GOVERNMENT

(Mr. BARTLETT of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARTLETT of Maryland. Mr. Speaker, the sun is rising this morning in America and shining on many happy faces. Taxpayers are celebrating because conservatives in Congress and President Clinton have agreed on plans to simultaneously balance the budget for the first time in more than 30 years while providing tax cuts for the first time in 16 years.

Liberals however have woken up and are crying boohoo. Liberals are aghast at the prospects of the Federal Government balancing its budget and reducing spending. Liberals are horrified by the Federal Government simultaneously letting taxpayers keep more of the money that they earn. Oh, the horror, the horror.

Tax cuts equal more freedom for individual hard-working American taxpayers and less power for the Federal Government in Washington. No wonder liberals are crying boohoo.

DEMOCRATS DESERVE CREDIT

(Mr. PALLONE asked and was given permission to address the House for 1 minute.)

Mr. PALLONE. Mr. Speaker, Democrats and Republicans have reached a historic balanced budget deal, and this morning I want to congratulate my Democratic colleagues and the White House for standing firm in defense of what we knew was right. There is no doubt that Democrats are responsible for the inclusion of some of the budget deal's most important provisions.

As a result of the Democrats efforts, the Federal budget will have $24 billion to provide health care for at least 5 million children who would otherwise have been uninsured. It will have a $500 per child tax credit for many families with incomes under $30,000, thereby covering 13 million more children than would have been the case under the GOP plan.

It will have education tax credits including the President's HOPE Scholarship Program that would have been denied to many students pursuant to the Republican proposals.

Mr. Speaker, the Republicans clearly felt the pressure from the White House and the congressional Democrats in the final days of the budget negotiations. Indeed as a result of our defense of what is right, we now have a budget that will benefit the average working American instead of just the rich one.

PROMISES MADE, PROMISES KEPT

(Mr. ROGAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROGAN. Mr. Speaker, what a difference a few years makes. In 1993, Republicans were entering their 39th year in the minority in this House. That year was significant because Congress passed on to working people the largest tax increase in American history. The next year Republicans made a promise to the American people. They said that we will return more hard-earned money to working families, and put our national fiscal house in order, when we balance our Federal budget.

Today, Mr. Speaker, we are on the verge of a historic agreement, because the promises made by our side are now promises kept for the American people. We are about to enact the first tax cut in 16 years and the first balanced budget since I was in the sixth grade.

Promises made, promises kept.

BORDER PATROLS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, due to an unfortunate shooting on the border, the Pentagon has removed our military troops from the Mexican border. That shooting must be investigated, but the simple truth is in the last 3 months seven Border Patrol agents were shot and the borders are now wide open.

And from the community where this young man was shot, a group came up to meet with me, and listen to what they said, Congress. They said they want open borders, no immigration. They oppose military troops on the border.

Of an 8-hour shift, the Border Patrol spends 6 hours in coffee shops, and their local sheriff was convicted and is in jail for smuggling 2,200 pounds of cocaine.

Beam me up. America has no drug program. We have got open borders. We have got heroin and cocaine on every street corner. Kids are dying and the White House is more concerned with politics than our children. Congress, wake up. When it is as easy to get heroin and cocaine as it is to get aspirin, there is something wrong in high places.

THE COLLINS FAMILY

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, back in the First District of Georgia what will the tax cut mean to the Collins family? Mr. and Mrs. Collins, who have a combined income of $61,000 and three kids, Dennis, Tom, and Sue Ellen, the $500 per child tax credit means the Collins' will pay $1,500 less in taxes next year.

Mr. Collins is a farmer. Mrs. Collins is a school teacher. Because he is self-employed, he can start deducting 100 percent of his health care costs. That makes health care for the Collins family more affordable and more accessible. And when it comes time to estate planning, to pass that family farm, that American dream back down the line to Tom, Dennis, and Sue Ellen, Mr. and Mrs. Collins will now have a $2.6 million unified tax credit on their death taxes that will be exempt from the taxes so that they can pass the farm on to the next generation.

Mr. Speaker, this is the American dream as the Republican Party has worked for it. We have worked in a bipartisan fashion. We believe that families like the Collins' are all over America.

CAMPAIGN FINANCE REFORM

(Mr. GEJDENSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEJDENSON. Mr. Speaker, we have seen great cooperation in the House Democrats, Republicans, the White House, all coming together on some incredibly complex issues. Taxes, health care. Now we can take our time and finally act on the promises we have had from the Speaker and from others in this institution over the last 3 years. Let us do campaign finance reform. Let us at least end soft money. Americans are being driven out of the political process when they see hundred-thousand-dollar contributions given to both political parties.

The Speaker says there is not enough money in politics. Every indication is, the more money that goes into politics, the less people are participating. Get rid of soft money. Let us take a first

strong step to clean up of the election process.

WEARING OUT OUR WELCOME

(Mr. GOSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, this week angry Haitian mobs protested the planned 4-month of extension of the U.N. mission to Haiti, an extension that received surprise Chinese sign-off for an as yet undisclosed price. Frustrated and victimized Haitians accused U.N. troops of only guarding the palace and Aristide's house instead of providing the law and order they are there for.

Ironically the United Nations also had to issue an apology recently for what Haitians saw as too much attention from U.N. troops in Port-de-Paix, where the U.N.'s soldier had to be rescued from the mobs by airlift. Haitian parliamentarians have also demanded an end to the occupation.

If we have worn out our welcome in Haiti, let us send our troops and the United States trainer/builders out of range of rock-throwing mobs and save further wear and tear on American taxpayers wallets. Aside from time, what can we buy in Haiti in a 4-month extension that $3 billion could not buy in the past 2½ years?

EVERYONE TAKES CREDIT

(Mr. FARR of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FARR of California. Mr. Speaker, yesterday everyone in the leadership took credit for getting the budget deal. It demonstrated that leadership means that we can get things done when we pull together.

But where is the leadership in campaign reform? The President stood here in this room and asked for it by the Fourth of July. Members of the House and Senate have both introduced comprehensive legislation. They have introduced legislation to do it in small ways or big ways. Yet nothing is moving, Mr. Speaker. Nothing is moving.

However, soon we will see big contributions moving into the coffers of the Republican Party. It seems only smart that we should have a vote on campaign reform before someone suggests that there is a link between tax breaks and campaign contributions. The public wants a vote, Mr. Speaker. The President wants a vote. I authored a comprehensive campaign reform, H.R. 600. I want a vote. This House wants a vote. When do we get it?

GOOD NEWS FOR AMERICA

(Mr. NEUMANN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NEUMANN. Mr. Speaker, I rise this morning to talk about the good news that is here for America. It is good news.

□ 1015

For the first time since 1969 we are going to have a balanced budget in the United States of America. For the first time since 1969, the people that are here in Washington are not going to spend more money than what they take in. They will do the responsible thing.

The news even gets better. After a balanced budget, in addition to a balanced budget we are also going to pass bills that lower the taxes on the American people.

I have heard a lot of rhetoric about who gets these tax cuts. I want to cut through all that rhetoric and get down to what it really means to a family of five in Janesville, WI. A family having three kids living in Janesville, WI, earning $40,000 or $50,000 a year because both parents are probably working, they have that income coming in, what they should do on January 1 of next year, this is not Washington rhetoric, they should walk into their place of employment and tell their employer they want to keep $100 more every month of their own money. Because that is what this tax cut package means to a family of five in Janesville, WI, or anyplace else in America.

For each of the children in the family there is a $400 per child tax cut, $1,200 for a year. That is $100 a month. And on January 1 the American people should start keeping that money instead of sending it to Washington.

BOTH PARTIES CIRCUMVENTING CAMPAIGN FINANCE LAWS

(Mr. MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MILLER of California. Mr. Speaker, as the ongoing Senate hearings and news reports have revealed, both parties are circumventing our campaign finance laws to raise hundreds of millions of dollars in soft money. The time has come to ban soft money.

Over 2 years ago the Speaker and President Clinton shook hands on campaign finance reform, but since that time nothing has been done. How many more pressing issues will Congress fail to address because of the insidious influence of money and politics? As we all know, delay means death for campaign finance reform.

Recently 25 Members and I wrote to the Speaker asking for a floor scheduled vote on banning soft money in the 1998 election cycle. If no such schedule is designated before we leave this week, Mr. Speaker, all Members should be prepared to arrive at work early and stay late, because regular order is intolerable while campaign finance reform remains absent from our calendar.

WHY CHANGE THE SUBJECT?

(Mr. LINDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LINDER. Mr. Speaker, this is fun. We have just agreed to the largest new budget proposal in generations, a balanced budget, tax cuts for everyone in America, and they want to change the subject to campaign finance reform.

The fact of the matter is both sides do not do it, the only side accused of taking illegal foreign contributions are the Democrats. The fact of the matter is, when Bob Dole accepted $75 million of taxpayers' money to run the Presidential campaign, that is all he spent. It was the President that took $75 million and then spent $40 million more illegally. They are not arguing with that. They want to say the system is broken because everyone does it.

That is not the evidence. That is not the evidence before the Thompson committee. But if I were in as deep a trouble as they are with respect to cheating on the current laws, I would want to change the laws too.

STOP HARASSMENT OF HISPANIC CANDIDATES AND VOTERS

(Ms. CHRISTIAN-GREEN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. CHRISTIAN-GREEN. Mr. Speaker, my colleagues on the other side of the aisle have singled out the gentlewoman from California [Ms. LORETTA SÁNCHEZ] and the voters of the 46th District of California for the kind of scrutiny and harassment this body has never seen before.

The Committee on House Oversight and former representative Bob Dornan, whom the gentlewoman from California (Ms. Sánchez) defeated, have led a widespread, abusive and costly search for voter fraud, claiming that the gentlewoman won her seat in Congress because of massive illegal voting by noncitizens and illegal immigrants.

After 9 months of inquiry, Mr. Speaker, and more than $300,000 in taxpayer dollars spent, my Republican colleagues have failed to prove that Mr. Dornan's loss was a result of electoral fraud.

Mr. Speaker, it is time to wrap up the House inquiry, as the Los Angeles Times said over 3 months ago. It is time to end this blatant harassment of the gentlewoman from California [Ms.

SÁNCHEZ] and the targeting of Hispanics in general. This effort to intimidate and harass new citizens with foreign surnames to stop them from voting must end.

BALANCING THE BUDGET, THE FIRST ORDER OF BUSINESS

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, having heard the comments of my colleague from the Virgin Islands, and indeed the comments of several of my liberal colleagues this morning, it is small wonder that the American people say, will we ever stop the partisan bickering and go to work on behalf of the American people?

Are there concerns we should all have with campaign finance laws? Absolutely. But paramount today is the subject of financing for the family and making sure that American families hang onto more of their own money and send less of it to Washington.

And, Mr. Speaker, this day and its significance should not be lost on the American people, as we pass the first balanced budget in a generation, as we save Medicare for the next decade and make preparations to deal with those serious questions, and as we offer tax relief in a tax cut for working families and providing tax relief at every stage of life for Americans for the first time in 16 years.

Try as they might, the professional politicians want to change the subject, but the American people know that balancing the budget and putting our family finances in order is the proper first order of business.

DEMOCRATIC PRIORITIES REFLECTED IN BALANCED BUDGET BILL

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, for the last several months Democrats have been urging budget negotiators to include important Democratic priorities in this budget bill; to include $24 billion for kids' health care, to include $35 billion in education tax credits, and to provide the child tax credit for all of America's families who work and who pay taxes.

Meanwhile, our Republican colleagues have been fighting for huge tax breaks for the richest individuals and corporations in this country and calling tax breaks for hardworking low income families welfare, including some of the families that they have brought up here this morning. Only a few days ago they were saying that those folks were on welfare.

Well, I am proud to stand here today and say that by standing up for Democratic priorities, tax cuts for working families, tuition credits for college, health care for uninsured children in this country, that in fact those Democratic priorities have prevailed. The long and the short of it is the hardworking middle income families of this country have benefitted from this tax package.

RENEW SUPPORT FOR MIDDLE EAST PEACE

(Mr. GILMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GILMAN. Mr. Speaker, sadly and regrettably I rise this morning to inform my colleagues of two devastating explosions that rocked the city of Jerusalem today in which 18 people were killed and 150 wounded. This busy marketplace in Jerusalem known as the Mahaneh Yehudah was infiltrated, apparently by two suicide bombers, who set off explosions within seconds of each other. More fatalities are expected.

Although PLO Chairman Yasser Arafat called Prime Minister Netanyahu to express his condolences, the latest violence indicated once again that Mr. Arafat and the Palestinian authority are not doing enough to root out terrorism. It is not enough to express mere condolences.

Apparently, that may be why the State Department has not issued a PLO Compliance Report in advance of any presidential certification for more money for the PLO. We now know what the State Department failed to acknowledge, that the PLO is not in compliance with its commitments and must do much more.

Legislation regarding this devastating loss is being prepared by the gentleman from California [Mr. LANTOS] and myself. We invite our colleagues to cosponsor the bill and to join us in extending our deepest sympathies to the families of the dead and injured, as we renew our steadfast support for peace for all the people of Israel and throughout the Middle East.

CONGRATULATIONS TO DR. RICHARD L. LESHER ON HIS RETIREMENT FROM THE U.S. CHAMBER OF COMMERCE

(Mr. GOODE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOODE. Mr. Speaker, I wish to make a few comments on the retirement of Dr. Richard L. Lesher, who is retiring after 22 years as president of the U.S. Chamber of Commerce.

During his tenure, chamber membership has grown to 215,000 business members, 3,000 State and local chambers, 1,200 trades and professional associations, and he guided the creation of BizNet, the American Business Network, and its two award winning television programs, First Business and It's Your Business.

He oversaw creation of the Center for Workforce Preparation, which helps ensure that Americans are ready to meet the challenges of a new economy. And he credits retired Virginia Justice Lewis F. Powell with the high profile that the chamber has taken. He implemented many of Powell's suggestions over the years.

Congratulations to Dr. Lesher on his successful years at the U.S. Chamber and best wishes on his retirement.

ANXIOUS TO MOVE AHEAD ON ANOTHER TAX PACKAGE

(Mr. KNOLLENBERG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KNOLLENBERG. Mr. Speaker, I am very pleased, and I know others are too, to hear that an agreement has been reached between the Congress and the White House on the tax cut package. I am especially pleased when I recall the last time Congress and the White House reached an agreement on the tax package Republicans were definitely not celebrating. They were not celebrating because that tax package was the largest tax increase in the history of this country.

So today marks a much different kind of agreement. And although I am pleased with the agreement on tax cuts, we should put this in perspective. Now, listen to this. The amount of net tax cuts over the next 5 years will be $91 billion. The amount of spending over the next 5 years will be $9 trillion. Nine trillion. Tax cuts $91 billion, spending $9 trillion.

So I would just like to say that this tax cut package is only a first step toward deeper tax cuts, more money in the pockets of Americans, and we also want to have some fundamental tax reform. I cannot wait to get going on another tax cut package.

CELEBRATION OF 100TH ANNIVERSARY OF WRIGHT BROTHERS FIRST FLIGHT

(Mr. HALL of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HALL of Ohio. Mr. Speaker, on December 17, 1903, two brothers in my district of Dayton, Ohio, solved the mystery of flying. Since that first flight by Wilbur and Orville Wright the airplane has changed the course of transportation and commerce and communication and war.

In the year 2003, our Nation will celebrate the hundredth anniversary of the

miracle of modern technology, and today my colleague, the gentleman from North Carolina [Mr. JONES], and I will introduce legislation to create the Centennial of Flight Commission.

The purpose of the commission is to help coordinate our national celebration of this milestone. This effort is intended to follow other major commemorative celebrations, such as the anniversary of the Constitution and the American Revolutionary War.

We hope that our legislation will help all Americans take pride in our history and renew the value of American ingenuity that made the Wright brothers so successful.

WAIVING REQUIREMENT OF CLAUSE 4(b) OF RULE XI WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS REPORTED FROM COMMITTEE ON RULES

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 201 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 201

Resolved, That the requirement of clause 4(b) of rule XI for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is waived with respect to the following measures:

(1) Any resolution reported before August 3, 1997, providing for consideration or disposition of the bill (H.R. 2015) to provide for reconciliation pursuant to subsections (b)(1) and (c) of section 105 of the concurrent resolution on the budget for fiscal year 1998, an amendment thereto, a conference report thereon, or an amendment reported in disagreement from a conference thereon.

(2) Any resolution reported after July 30, 1997, and before August 3, 1997, providing for consideration or disposition of the bill (H.R. 2014) to provide for reconciliation pursuant to subsections (b)(2) and (d) of section 105 of the concurrent resolution on the budget for fiscal year 1998, an amendment thereto, a conference report thereon, or an amendment reported in disagreement from a conference thereon.

The SPEAKER pro tempore (Mr. GIBBONS). The gentleman from Georgia [Mr. LINDER] is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts [Mr. MOAKLEY], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 201 waives clause 4(b) of rule XI, requiring a two-thirds vote to consider a rule on the same day as it is reported from the Committee on Rules, providing for consideration of specified measures.

Mr. Speaker, House Resolution 201 applies to rules for the conference report on H.R. 2015, the Balanced Budget Act of 1997, an amendment thereto, a conference report thereon, or an amendment reported in disagreement from a conference thereon reported before August 3, 1997.

□ 1030

In addition, the resolution also applies to rules for the conference report on H.R. 2014, the Taxpayer Relief Act of 1997, an amendment thereto, a conference report thereon, or an amendment reported in disagreement from a conference thereon reported after July 30, 1997, and before August 3, 1997.

As Members are aware, House rules require a two-thirds vote to consider a rule on the same day it is reported from the Committee on Rules. In order to expedite consideration of this historic spending and tax cut package that will balance the budget, the Committee on Rules granted a rule that will waive the two-thirds vote requirement for another rule on the spending cut portion of the budget agreement for Wednesday, Thursday, Friday, and Saturday. The rule would further waive the two-thirds vote requirement for a rule on the tax component for Thursday, Friday, and Saturday.

Mr. Speaker, the House wants to see the spending cuts conference report on the floor today and the tax cut conference report on the floor tomorrow. We have waited since 1969 for legislation that will bring our Federal budget into balance, and this resolution will help assure that we achieve this goal. The authority granted by this resolution will allow us the flexibility to get the important job done before the August district work period and respond to any changes the other body may make to the legislation through the Byrd rule.

Mr. Speaker, this rule allows us to consider a budget that is a victory for American families and smaller government. It is a budget that will provide this Nation with its first balanced budget in 30 years.

For decades, Congress proved that it could not restrain itself from spending more money than the Treasury collected in revenues. Past Congresses actually managed to spend all revenues and then some.

A new majority arrived in Congress in January 1995 that understand that the solution to our budget woes would be found in controlling spending. When the new Congress arrived, the deficit was $164 billion. In fiscal year 1996, it dropped to $107 billion. It will be approximately $67 billion by the end of fiscal year 1997. There was a report recently that the revenue estimates coming in August may make it even less than that.

There was a chronic growth of Government for decades, but we have been reducing the size of Government constantly. We all know that these significant achievements would have been absolutely unthinkable only 3 years ago.

With the help of this rule, we will fulfill our promise to the American people to balance the budget by cutting wasteful Government spending, preserve, protect, and strengthen Medicare, and produce real tax relief for middle-class families.

House Resolution 202 was favorably reported out of the Committee on Rules yesterday. I urge my colleagues to support the resolution so that we may proceed with debate and consideration of a historic budget that has less Government, less taxes, and more freedom for Americans to spend their money how they see fit.

Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I thank my colleague, the gentleman from Georgia [Mr. LINDER], for yielding me the customary half hour; and I yield myself such time as I may consume.

Mr. Speaker, anyone who thought the bipartisanship on the budget was too good to be true was right. Despite agreements with the White House, despite compromises on the part of my Republican colleagues, despite some very hard work by Democrats and Republicans, the Republican leadership has decided to throw bipartisanship right out the window.

The Republican leadership has decided to ram the budget bills through the House with this martial law rule. The Republican leadership, Mr. Speaker, has decided that the many, many days of hard work that went into these bills are not worth giving Members enough time to read them.

The rule we are considering today gives Members hardly any time to read the budget before they vote on it. These bills contain some $94 billion of tax cuts and $115 billion in Medicare cuts, $13 billion in Medicaid cuts, $1.8 billion in housing cuts. Some people say they are great bills, and I for one want to be able to vote for them.

But, Mr. Speaker, I need to know what is in the bills. I want to vote for tax cuts, but I want to know which tax cuts are in the bill. I want to vote for some of these spending measures, but, again, I want to know what spending measures are in this bill, and this rule certainly does not give me or anyone else in the House that opportunity. If this rule passes, the Republican leadership can bring up the spending and tax parts of the reconciliation bills immediately.

Mr. Speaker, the ink is not even dry yet. Mr. Speaker, 1,000 pages were dropped at my door at 3:30 this morning to read. It is impossible. Members have not even had that opportunity to see this bill. There is nobody, nobody in this House that has read this bill.

This is one of the most important bills we are going to be asked to vote on this year, and I think the membership should at least have 10 hours to look at this matter in order that they

can arm themselves and find out exactly what is in this bill. I think that something this important, this big, should be read as completely as possible before any vote is cast.

So I ask that my colleagues join me in defeating the previous question so we can guarantee that Members have at least 10 hours to read this bill. Mr. Speaker, this is not a dilatory tactic. I want to get out of here as soon as anybody else, but I want to be sure that my vote on this bill is as a result of being well-informed.

Nobody is well-informed on this bill. The only information we in the Congress have, most of us in the Congress have, is what we read in the papers this morning and yesterday or watched on TV. Mr. Speaker, that is not enough. So I urge my colleagues to oppose this rule. And, as I say, Members should at least have the chance to read this bill before we vote on it.

Mr. Speaker, I reserve the balance of my time.

Mr. LINDER. Mr. Speaker, I am just shocked that this is the first time this has ever happened. I have been here 5 years, and it never happened before when the Democrats were in charge. We will try to make that better for the gentleman from Massachusetts [Mr. MOAKLEY].

Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Speaker, I appreciate the comments made by my colleague from Massachusetts [Mr. MOAKLEY]. There is a pile of paper there. I am in support of this rule, and I think we should move on with the votes today. I will support the tax cutting bill and the balanced budget bill.

As a member of the Committee on Commerce, I have been heavily involved in the Medicare portions; and, so, I feel like I have a pretty firm grasp of what is in that bill. I also have made an extra effort to figure out what is in the tax cutting bill; and on the basis of that knowledge, I feel that I am well-informed and can make a good decision on whether to support these bills.

Let me explain to my colleagues why I am supporting these bills, because I am one of the Republicans who voted against the balanced budget bill earlier this month. The reason that I did that was because I am concerned about how well the economy is going to do. Just like everyone else in this body, I am praying that the economy continues to do well. I was also concerned that we should do a little bit more with reducing spending rather than having more spending in the bill.

However, these two bills that we are talking about have to do with keeping promises. On the tax cutting side of the bill, I made promises before I went to Congress to fulfill a $500 per child tax credit. And we are doing that.

On the Medicare side, we are making some significant improvements in Medicare. For instance, in my home State of Iowa, a health care plan would get paid in some of my rural counties about $250 per month to provide services for senior citizens; whereas in other parts of the country, we are looking at $750 per month payment to a health plan. That means senior citizens in those areas can get pharmaceuticals and eyeglasses and hearing aids, even membership in health fitness clubs. Yet, we in Iowa who are paying the same taxes do not get those benefits. This bill will move toward an equalization of that funding formula. That is only fair, and it is very important.

The medical savings accounts. I am very much in favor of medical savings accounts as an option. I believe that senior citizens will take advantage of this. It is not more for the rich and the healthy. There are just as many incentives for those who have illnesses to pick medical savings account.

Fraud. We are tightening up the home health care area with the prospective payment system. In the current Medicare system, we have maybe 20 percent fraud in that program. In the current Medicare system of the bill, in the bill that we are going to be voting on, we are going to tighten up that and reduce that fraud in that component.

In patient protections, I have worked very hard working with the chairman of all of the committees on both sides of the aisle to get some important patient protections in there. I have written a bill, the Patient Right to Know Act, which would ban gag clauses, clauses that HMO's put into their contracts that prevent physicians from telling patients all of their treatment options. And guess what? In this bill, we have a ban on those gag clauses. That bill is cosponsored by 286 Members of this body in a bipartisan manner and is endorsed by over 200 organizations, and it is in the bill. And we have a lay person's definition of an emergency, so that if you have crushing chest pain and you go to the emergency room because you are worried about having a heart attack, you cannot have your coverage denied if they find out that you have an intestinal infection instead.

So there are many important things in this. So we have a funding formula fairness correction. We have medical savings accounts. We are addressing fraud. We have got good consumer and patient protection in the Medicare portion of this bill.

On the tax side, it is promises made, promises kept. We promised middle-class taxpayers a $500 per child tax credit, and we are delivering on that. There are many things in this bill that will be important for small businesses, for farmers.

I represent a lot of farmers. We are going to have 3-year income averaging for farmers. That is important because some years the crops do not come in, you have bad weather, or whatever, so you have highs and lows. And a 3-year income averaging will even that out for them.

We have capital gains tax reduction. People say, well, capital gains reduction is for the rich. I tell my colleagues, according to a 1993 IRS study, something like 70 percent of all capital gains that are filed with the IRS are filed by people who earn less than $75,000. That is not the rich. Capital gains reductions will help those who are selling homes, et cetera.

We have in this bill a movement towards 100 percent deductibility for your health insurance. A bill we passed last year over a period of time would increase out to 80 percent. But in this bill, we are increasing that over a period of time to 100 percent deductibility for the self-employed. That puts them on an even par with people who are receiving their health insurance through a major employer, like General Motors. That is only fair, also.

Finally, we have in this a commission to look at the long term implications of what we need to do for Medicare reform. We, in this bill, are making Medicare solvent for about the next 10 years. But we have got my generation, the baby boomers, coming down the road; and in about 15 years, the baby boomers start to retire and we are going to need to look at pensions and health care entitlements.

So we are setting up a commission that is supposed to report back to Congress and the administration in about 18 months, and then Congress will look at those recommendations and will need to act on that. So I do not think that we are abrogating our responsibility in that area, also.

So, Mr. Speaker, I would just close by saying I support this rule. For all of my colleagues who voted against the balanced budget, I think that they should support the tax bill that we are going to be voting on in the next few days and the balanced budget bill.

There are lots and lots of good things in both of these bills. They have been worked on in a bipartisan fashion with the administration and with Members of the opposite aisle. They are good first steps toward financial solvency, balancing the budget, saving Medicare, and providing tax relief for working families.

Mr. MOAKLEY. Mr. Speaker, I yield 5 minutes to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN of Virginia. Mr. Speaker, I rise to oppose this rule, but I want to make it clear that I support this bill. I think we will find that many Members, at least on the Democratic side of the aisle, will vote against the rule even though they do support the bill itself.

Now why would we vote against the rule if we support the bill itself?

□ 1045

We have a responsibility to learn as much as we can about what we are voting on. There are a thousand pages in this bill. None of us will have read it. What we have to do is to take on faith what is contained in the bill. None of us would read all of the bill, even if we went by regular order and had an entire day. But what we would do is to look at those components of the bill that we have worked on personally, that we understand fully, and that we can advise our colleagues on. We do not have that ability when a thousand-page bill is presented at 3:30 in the morning and then the next morning we have to vote on it. That is what is going to happen today. I think our constituents expect more from us. They expect us to be better informed.

Why are we going to support the bill? What are we taking on faith? Well, this bill would accomplish 10-year deficit savings of $900 billion. Think of how important this bill is. Nine hundred billion dollars in reduced spending over the next 10 years. It would accomplish the first balanced budget since 1969.

It has $24 billion in block grants for children's health covering 5 million currently uninsured children. This is the largest expansion of children's health we have done in more than 30 years since Medicaid was enacted in 1965.

It increases taxes on cigarettes in the spending part of this bill, a very controversial issue, although one which I happen to support.

It restores SSI and Medicaid benefits to legal immigrants. It spends $3 billion in grants for welfare to work. It increases spending on food stamps by $1.5 billion for people who otherwise would have fallen through the cracks.

It cuts Medicare by $115 billion in 5 years, reducing payments to hospitals and doctors so that we can keep the Medicare trust fund solvent, but we need to know the particulars of that.

It cuts $4.8 billion from Federal employees' retirement plans, a very controversial issue, particularly in an area such as I represent where we have many Federal employees that are going to be paying half a percent more for their retirement plan. I would like to see the full legislative language on that.

It cuts $1.8 billion in student loans and $1.8 billion in housing over 5 years.

These are very controversial, very important issues. As we understand them, the decisions that were made were understandable compromises in virtually every case. But again we are having to take this on faith. I do think that the country would have been better served had this rule given the Members of this body a customary full day, as we normally have. There is a reason for that rule, so that if one is interested in an issue, they can take 24 hours and make sure that they know what they are voting on. We could be staying in Friday, we could have a full day, and we would have the opportunity to be knowledgeably voting on as important a bill as this body has considered for a very long time. We would be able to be much more responsible with respect to our vote which is what our constituents expect of us.

We have gotten into a pattern of waiving these rules. We ought to understand there is a reason for these rules, there is a reason why they should be followed, and I think we need to oppose this rule, although from everything we can learn that we have been told by others that were in the negotiations, a handful of people that were actually part of the negotiations, this is a bill we can and we should support and I would urge support for the balanced budget agreement itself.

Mr. LINDER. Mr. Speaker, I yield myself such time as I may consume. I am entertained by the crocodile tears that I hear about the length of time not to read the bill when everybody knows they would not have read it anyway. I believe it was in 1984 when Speaker Wright brought a $1.3 trillion budget to the floor with 1 hour notice and even the Committee on Rules did not see it.

Let me tell my colleagues what is in this bill. A significant part of the problem with large Government programs has been the Soviet-style administration of them, the central command economy that decides on high what a doctor should earn, what a hospital visit should pay for. And over time, these all become absolutely rife with fraud. We just learned 2 weeks ago that an audit of the Health Care Financing Administration shows that about $23 billion a year is wasted in fraud, overpayment, and misuse. The records are in such disarray that we do not even know at the Federal level who is overpaid and how to recover it, and indeed we discovered in that audit that many people were writing checks or signing checks for the Health Care Financing Administration of the Federal Government without the legal authority to do so. This bill begins to crack down on that fraud. That $23 billion per year over 5 years is exactly how much we are reducing the rate of growth in the increase in spending of Medicare and it is taken out by just fraud and abuse.

We heard last week that in administering home health care across this country, roughly 40 percent could be fraud. As much as 40 percent is going to people who are not in homes, being treated for home health care, not unable to leave their homes. Going to the prospective payment system is going to eliminate the incentive to do that. We are going to change the way we deliver these services so that we have less incentive to cheat and more incentive to save.

The ability to provide not the $500 child tax credit to low-income working families, that only goes to people who have actual obligations to the Federal Government, but by changing the way in which we provide the formula for the earned income credit, after having learned that 21 percent of the money being spent in the earned income credit is fraudulent; by changing the formulas, the administration and the White House has decided that they can find ways to save $4.5 billion in that program and use that to enhance their earned income credit for low-income working people to replace what the $500-per-child tax credit does for higher earning families. By changing the model, the structure of the delivery of these services from the large Federal command-style bureaucracies, so well known by the Soviet Union that we seem to have adopted here, and getting out the fraud and abuse, we are confident that we can save hundreds of billions of dollars over time and provide better services with the money we are spending.

Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. I thank the gentleman from Massachusetts for yielding me this time.

Mr. Speaker, I rise with hesitation and reservation about the rule, but with strong support for the underlying bill.

Mr. Speaker, this certainly is history in the making, and we do not use that term lightly when we bring both the tax cut and the spending bill before this body. This bill will receive my strong support both on the tax and the spending side because it helps small children, it helps small businesses and small farmers and it helps make Government smaller and smarter. It does that by structurally balancing the budget and balancing the budget with the right priorities. Structurally balancing the budget so we borrow $900 billion less but we also create new programs for children, new programs for education, restructure Medicare to extend its solvency by a decade to help our senior citizens. It is the right values to balance the budget and the right values on people. So I will strongly support this.

What does the $900 billion mean for us? That spending side of $900 billion in less borrowing is almost a tax cut by itself. That helps the American people by hopefully lowering their payments on mortgages and interest rates and helps the economy.

The other part, what about the tax cut part? What about the spending part on children's initiatives? I have to say, Mr. Speaker, that this bill for kids' initiatives for health came out of this body with $16 billion. It is now before this body with $24 billion, the largest expenditure on children's health since

1965 with the creation of Medicaid; the largest program for uninsured children in 32 years. I strongly support that.

I strongly support what this does for Pell grants. The largest increase in Pell grants in the history of the Pell grant program. We will spend more in new innovative ways to reform and modify education than the Great Society in the 1960's. This is a bill that helps our small farmers and small businesses, balances the budget, borrows less money, creates smaller and smarter Government, and I hope it receives bipartisan support.

Mr. LINDER. Mr. Speaker, I want to thank the gentleman from Indiana for his comments with respect to his comments on the Pell grants and funding for education. We are going to, without reducing any of the amounts of the numbers of students available for them, save $1.7 billion in improving the way they are administered, and that is a real savings that governments ought to look to.

Mr. Speaker, I yield 4 minutes to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank my distinguished colleague for yielding me this time.

It is amazing, Mr. Speaker, what we can do, the President and the Congress, when we work together in a bipartisan, pragmatic way for this country. That is why we are here today on an historic threshold, and I rise in strong support of the legislation before us today, Mr. Speaker, which will balance the budget and expand health care choices for the seniors of our country while preserving and protecting Medicare.

Not only do we save Medicare from bankruptcy but we build a strong foundation so that Medicare can be preserved for the next generation. We give seniors the increased health care coverage where they need it most, Mr. Speaker, before they become ill, by increasing the amount of preventive care covered by Medicare.

There are a few specific reforms I would like to highlight. One is the reforms we make to the AAPCC reimbursement formula. That reform, very, very important to cost-effective States like Minnesota that have historically delivered health care in a cost effective way. What we do by changing the reimbursement formula is expand choices for seniors in States like Minnesota, those that have been efficient in their costs and in their quality. This is a major reform, Mr. Speaker, in the Medicare managed care reimbursement formula. It will mean more equity for States like Minnesota and more health care options for Medicare beneficiaries in our State and others like ours.

Incorporating a bill that I introduced earlier this year, this legislation before us today will establish a payment floor and will blend the formula to bring fairness and equity to beneficiaries living in rural and efficient provider States like Minnesota.

The bill also includes an important new study of ways to provide health care to seniors to let them stay in their homes longer, to let them live independently longer by extending for 2 years the community nursing organization demonstration project. I think, Mr. Speaker, this reform will prove to be one of the most important reforms ever in Medicare. These very important community nursing organizations allow seniors to stay in their homes, to make their choice of staying in their homes as long as possible and at the same time saving Medicare dollars. This CNO, community nursing organization demonstration project, is vital to seniors in Minnesota and all over the country who have enrolled in this project.

I am also pleased that this bill includes a provision to help certain hospitals that have merged with nursing homes meet necessary requirements to maintain appropriate geographical classification. This means a great deal to a hospital in Hutchinson, Minnesota. I am glad we were able to make this necessary change in the bill.

Finally, Mr. Speaker, I thank the conferees for making all the necessary changes to Medicare to save this absolutely vital system for the seniors of our country.

From extending the life of the Medicare trust fund, to ensuring quality care as a major tenet of the centers of excellence program, I commend the conferees for their hard work on behalf of current and future Medicare beneficiaries.

Mr. Speaker, I strongly support this important legislation to preserve and protect Medicare and urge all my colleagues to support it as well and to continue working in a bipartisan, pragmatic way for the betterment of America.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Speaker, I rise in opposition to this rule, and I want to stress that it is not because of the underlying bill.

I feel very strongly that this spending bill does include a major program to cover uninsured children in this country and I am pleased with the fact that we have managed, I believe as Democrats, and particularly the President, in pushing the Republicans towards inclusion of a $24 billion package that will insure the majority of the Nation's uninsured children.

□ 1100

But it is for that very reason, because this bill is so important, that I think it is very unfair and wrong to present this bill at this time without having the opportunity to review the specifics of the measure. The bill, as my colleagues can see, is about a foot thick. I understand it was filed at around 3 o'clock in the morning. I have not had the opportunity to review all of the provisions in the bill. We did receive a summary of the bill this morning, but I think it is fair to say that a summary is not adequate.

Let me just give my colleagues an example on the kids' health initiative, which is such an important initiative and which I support wholeheartedly, but there are a number of things that we still do not know.

For example, many of us, including myself, on our Democratic Health Care Task Force were concerned about the benefits package. We knew we wanted to have the $24 billion, and we wanted to insure the majority of the kids. But we were concerned about whether the benefits package would be adequate, and language was put in and was negotiated in the last 24 hours on that, which I hope provides an adequate benefits package, but without reviewing the specifics of the bill myself and my other colleagues, we will not know whether it is completely adequate.

Similarly, we were concerned to make sure that the money was going to be spent so that States had to actually insure kids and not whittle it away or use it for other purposes. I understand in the summary we received this morning that 15 percent of the funds can be used for purposes other than to insure kids. Well, I would like to know the details of that and how specifically that 15 percent is set aside. We do not know that, and until we analyze it we will not know it.

And in addition to that, again on the kids' health care initiative, we were concerned, many of us on the Democratic side, to make sure that States had to keep providing the same level of funds, if not more funds, than they had in the past for kids' health care. We wanted to make sure the maintenance of effort, if my colleagues will, was in there. And we are not actually clear about the language for that as well.

So I want to join my colleague, the ranking member of the Committee on Rules, in saying, "Yes, we think this is a good bill, and we probably will vote for it, but it's not fair not to have the details, and there is no reason why we couldn't wait in this Congress another 24 hours so that everyone, including our staff, had the opportunity to review the details in something that is so important to this Congress and to the American people."

Mr. MOAKLEY. Mr. Speaker, I yield 4 minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Speaker, I thank the gentleman for yielding this time to me.

This is not just an esoteric procedural debate. I was insulted when the gentleman on the other said, "Well, so what if we're bringing up this bill delivered, one copy, to the Democratic

side at 3:30 in the morning. They wouldn't have read it any way." Well, I was here a few years ago, and I read the catastrophic care bill before it came to the floor of the House. I was one of the few Democrats to vote against it, and a whole heck of a lot of people had to change their votes a year later because they cast their vote for a bad bill.

This bill is a bad bill. I will not yield to the gentleman. This bill is a bad bill. But we are not going to be allowed time to read it. If we split this up among the 200 or so Democrats here, we would have a hard time getting through it in the time allotted.

We are going to vote on this bill within the next three hours. Do my colleagues know why? Because it is going to make prime time news. That is why we are going to vote on it.

This is an Alice in Wonderland budget process. We are going to get to the balanced budget by first increasing the deficit with retroactive tax cuts. It is slanted very much toward the wealthy people and the largest corporations in America. Then maybe later, we have heard this before, these cuts will go in place.

Do my colleagues know what the cuts are? A one-third cut in Social Security Administration. If someone has to wait 3 months now to get their claim processed, under this bill they will be waiting 6 months, 9 months or a year to get their claim processed. A 20-percent cut in veterans and cuts in other vital programs.

This is not a good path to the balanced budget. In fact, it is no path whatsoever.

This is stranger and stranger. We have stepped through the looking glass, it is getting more and more bizarre. This is no kind of a legislative process. No one on the floor can come to the floor today and say they have read this bill, they understand it and they are voting for it in good faith. That would be a lie.

Mr. LINDER. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. RADANOVICH].

Mr. RADANOVICH. Mr. Speaker, what a difference 4 years makes. It was a mere 4 years ago that a Democratic Congress, led by a Democratic President, passed the largest tax increase in American history. Today a Republican Congress will pass a budget that will be balanced by the year 2002. This Republican-led balanced budget will provide tax relief for families. It provides $24 billion to States for children's health, it provides $3 billion for welfare to work programs, and it saves Medicare for 10 years.

Yes, what a difference 4 years makes.

Tomorrow a Republican Congress will pass the first tax relief package for working Americans in 16 years. This Republican-led package provides $94 billion in tax relief over the next 5 years. It allows for a $500 per child tax credit, reduces the top rate of capital gains from 28 to 20 percent, and, most importantly, it provides immediate tax relief for the death tax for family farmers.

Mr. Chairman, this budget and this tax relief package is good for America. I am proud to join in support of this monumental agreement and support the rule and passage of this bill.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to reiterate that my argument is not against the spending bill, it is against the process, just asking that Members have enough time to read the bill.

Mr. Speaker, I yield 4 minutes to the gentleman from Rhode Island [Mr. KENNEDY].

Mr. KENNEDY of Rhode Island. Mr. Speaker, I thank the gentleman from Massachusetts [Mr. MOAKLEY], the ranking member, for yielding me this time, and I can tell my colleagues, having been chairman of the Committee on Rules in my State legislature in Rhode Island, I know martial law when I see it, I know a bad rule when I see it, and this is a terrible rule. When we consider the monumental bill that we have before us, that does so many huge things to this country, to think that we are going to have a debate about it for less than an hour and a half to me is just outrageous.

First of all, think about this budget. This budget is not going to be balanced when we consider that we are going to front-load the tax cuts to the tune of $95 billion, and we are going to call on the spending cuts to be done in future congresses, spending cuts like the former gentleman from Oregon mentioned, up to one-third of the Social Security Administration spending cuts.

I can tell my colleagues now this Congress is not going to keep the promise to cut Social Security administrative costs by 23 percent. Veterans benefits and services; it is going to cut 19 percent. Justice Department; it is going to be cut 18 percent.

Now just tell me that the next Congress is going to make these cuts? I can guarantee that the tax cuts are not going to be tampered with. The tax cuts are going to be locked in, and we are not going to make the necessary cuts on the spending side because this Congress, because it will be listening to the people, will not make those cuts.

This is bad for Medicare. It cuts $115 billion out of Medicare. Remember, we shut the Government down 2 years ago because of cuts that rivaled this for Medicare, yet no one is going to think twice about cutting $115 billion out of Medicare. Furthermore, they put 190,000 senior citizens in medical savings accounts. Anybody who knows this knows this is the beginning of the end of Medicare because they are going to take the healthiest and wealthiest of our senior citizens and they are going to take them out of the Medicare system, thereby ruining the system because all they are going to leave are the people who cannot pay and who are sick.

So they are going to terrorize the Medicare System by not only cutting $115 billion, but they are going to, through this Medicare select and privatization of Medicare, lead to its eventual undoing.

Remember the Speaker's dying on the vine that he attributed to Medicare? This is the beginning of it right now, and this is going to be in the bill that everyone is going to vote for this afternoon.

And, finally, this is bad not only for the budget, as I talked about, because it front-loads the taxes and does not allow for spending cuts to be made until future congresses, bad for Medicare, but it is also bad for fairness. Do my colleagues realize that the top 5 percent of the income earners in this country are going to get four times; let me repeat this, the top 5 percent get four times what the bottom 60 percent get in this tax bill. Undisputed, my colleagues cannot deny me on that. That is fact. Get it, people? Top 5 percent in this country get 60 percent of the benefits, four times what the bottom 60 percent get. That is fact.

So whatever people talk about this being a fair bill is bogus. This is not a fair bill. And, my colleagues, know what? Finally this, the Republican side, and I might add many of my colleagues on the Democratic side, will not even bring out the income distribution charts. They will not want to tell us where this deal, so to speak, really who it benefits. The reason is because we are not going to have enough time on the floor today to debate this. What we are considering right now is called a martial law. What that means is we better be thankful we even have a right to vote.

Mr. Speaker, this is a dictatorship that what we are talking about here under martial law. It says, "OK, read the newspaper, everybody, because you're not going to be able to read the agreement, because it's not going to be available to the Members of this Congress." I want to know as a Member of Rhode Island's delegation whether I am going to be able to go home and ask my constituents what they feel about this agreement when they know what is in this agreement. They do not know what is in this agreement.

I say to my colleagues today they do not know what is in this agreement, they do not know how this is going to gut Medicare, they do not know this is going to destroy veterans and the like, and I can tell my colleagues they are leaving it to future congresses to do the dirty work. That is what this budget agreement is all about, it is promises that are not going to be kept in future congresses.

Mr. LINDER. Mr. Speaker, I am compelled to yield myself 1 minute to point out to the gentleman from Rhode Island that rules of the House require that he address his comments either to the Chair or the House, not to the gallery; and, No. 2, his argument that the top 4 percent gets 60 percent of the benefits, or whatever, only is true if we use phony numbers to define who is wealthy; and, No. 3, I am curious to know when he referred to the former member from Oregon, the former gentleman from Oregon, whether it was formerly a gentleman or formerly from Oregon.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON] the chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Speaker, I was upstairs. We were just having a Committee on Rules meeting, and we bring down the rule which will bring this magnificent piece of legislation to the floor. But I just am really taken aback by some of the comments by the last 2 speakers on the Democrat side of the aisle, and I would just point to the signers of this conference, and one of those is a gentleman by the name of CHARLES RANGEL from New York.

Mr. Speaker, if this bill in any way, either this bill or the tax bill to follow it tomorrow, did any of the things that the gentleman from Massachusetts or the gentleman from Oregon said it did, I can tell my colleagues that the gentleman from New York [Mr. RANGEL], who has stood up for the indigent and poor of this country, and I will yield to my colleague when I am done perhaps, CHARLES RANGEL would never, never in a million years, sign this conference report.

Let me just say that the gentleman protests that he has not had a chance to look at the bill. This bill here was in front of the Committee on Rules at 3:14 and a half this morning down in room 152. It was given to the minority in the Committee on the Budget much earlier than that so that there have been 15 hours for people to sit down and talk to; I am talking about people on that side of the aisle, talk to distinguished Members from their party that have signed this conference report and know everything that is in it. Those members are people like the gentleman from South Carolina [Mr. SPRATT], the gentleman from Michigan [Mr. BONIOR] of the liberal wing of the Democratic Party, and I will yield when I am finished, the gentleman from California [Mr. FAZIO], the gentleman from Texas [Mr. STENHOLM] from the more conservative wing of the Democratic Party, and my colleagues know I can just go on, and on, and on: The gentleman from Michigan [Mr. DINGELL], who would never ever sign a bill, a conference report, as described by the previous two Democratic speakers. And as my colleagues know, they can look on through these signatures: The gentleman from Michigan [Mr. KILDEE], who is a very liberal member of the Democratic Party, but one of the most respected Members because he is very sincere in his beliefs.

□ 1115

Incidentally, he has two great sons that serve in the military, in an honorable career in our military. There is the gentleman from New Jersey [Mr. PAYNE]. Again, we can go on and on. There is the gentleman from Illinois [Mr. LANE EVANS], a noted liberal from Illinois; the gentleman from Michigan [Mr. LEVIN].

My point is this, Mr. Speaker: Everyone has to compromise. I have offered legislation on this floor that would have balanced the budget in 1 year, not 2, 3, 4, 5 or 7. I can remember getting only 16 votes for it. I can remember another time bringing a budget to the floor when my conservative group only got 75 votes, and then 99 votes.

But this is truly a bipartisan effort from liberals, from conservatives. We ought to be here working together on this legislation. We should not be here trying to tear each other apart on it. I think this matter is going to pass overwhelmingly with bipartisan, overwhelming support on the Democratic side, as well as almost every, if not every, Republican in this House. That is the way it should be.

Ronald Reagan once said to me that we cannot stick to our principles solely, because there is a House of Representatives, there is a Senate, and there is a White House. We all have to give a little. I think everybody has given a little.

I am going to give credit to the President of the United States of America, because he has given, too, as we Republicans have, to put together what is truly a great program that is going to mean that the future of my children and my grandchildren and all of the Members' are going to have a future in this country, and they are going to have a life as good as we have had when we were growing up. That is what we are here to do.

Mr. KENNEDY of Rhode Island. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Rhode Island.

Mr. KENNEDY of Rhode Island. Mr. Speaker, the point I am trying to make is this is a monumental agreement. The gentleman would agree with me on that?

Mr. SOLOMON. Yes, it is.

Mr. KENNEDY of Rhode Island. It effects $95 billion in tax cuts, 395,000 seniors going into Medicare Select, MSA's, all the cuts that are going to ensue, 15 percent in goals cuts, veterans, Social Security Administration, all that is to come down the road.

All I am saying to the gentleman is under martial law, we have an hour and a half to debate that. The gentleman points out, rightfully so, that there are a lot of good Members on my side of the aisle who signed onto this. But that does not excuse the fact that we will not have adequate time to debate something that I might add, if the gentleman would yield further for a second, that I might add would consume months of debate in future Congresses. The decision we are going to make today and tomorrow is going to impact enormously on the future of this country. Yet we have an hour and a half to decide something so huge.

Yet we are going to dilly-dally and spend months and months debating appropriations bills in future Congresses over just finite parts of this budget deal in the future.

Mr. SOLOMON. Mr. Speaker, I just have to reclaim my time to say to the gentleman, it is not an hour and a half. Under normal rules of the House we are having 1½ hours of debate, but we are having an extra hour on the rule we are bringing up; we will have an extra hour, so the gentleman is talking about 3½ hours of time.

All of the Members on both sides of the aisle have been briefed. I have sat through 17 hours of briefing on what is in this legislation. The White House has done the same thing with Members on the Democratic side of the aisle. So we have had ample time to discuss what is in this legislation.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I thank the gentleman for yielding.

I would simply like to respond to my good friend and neighbor, the gentleman from Rhode Island, that if we look at this debate that we are going to be having on this issue, it is really the culmination of what for many of us has been a decade or a decade and a half of debate on these issues.

My friend is relatively new to this body, and I think that he clearly should spend a lot of time discussing and looking at these questions. But the fact of the matter is, 90 minutes is not going to be the full debate time for this question.

In fact, we just had testimony upstairs, and let me just say that if we look at the fact that we 12 years ago introduced a resolution calling for the establishment of medical savings accounts, which my friend just raised, we have been debating that issue for well over 10 years.

So this really is the culmination of a very great, great accomplishment that has been done in a bipartisan way, and that is why I am strongly supportive of this rule.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I do not know if my chairman was on the floor when I

spoke, and I know he was not, he was attending to his duties, but this debate this morning right now is not about the spending bill. It is about the process. I just feel, and he said, this bill was dropped at my doorstep at 3:15 this morning. It is not enough time, not only for me but for the rest of the Members. To quote one of his favorite men in public office, Ronald Reagan, he said, "Trust, but verify." All I want to do is verify.

Mr. Speaker, I yield 2½ minutes to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, today Speaker GINGRICH seeks our approval of a resolution on a subject that this Republican Congress has quite obviously developed considerable expertise in. That subject is ignorance. Normally ignorance is demonstrated here in this House in ignoring the needs of the ordinary hard-working American family. Today that ignorance is demonstrated in a much more obvious way.

We know that an agreement was put together in the dead of night and presented to a committee, that copies of the bill are not even out here, that no one has seen this bill. Perhaps that is a bit of an overstatement. We have seen the bill. This is it. If Members have a photographic memory, perhaps they can see it right now. It is about a foot high. It weighs several pounds. It has what the Washington Post and the Washington Times, two papers of very differing views, both describe as significant increases in spending, in social spending. In fact, this bill represents billions, if not trillions, of dollars in spending that the American taxpayer will be asked to finance.

Mr. Speaker, I would submit that the Members on the Republican side who are speaking in favor of this martial law rule do not have the slightest idea what is in most of this several pounds, and that indeed few Members of this Congress, if any, know what is in that bill in terms of spending hundreds and hundreds of billions of dollars of the American taxpayers' money.

No, the ignorance resolution they ask us to approve this morning is based on that fundamental principle that got us into some of this mess in the first place; that is, that we should vote first and read later.

I am for the principle of a balanced budget, just do not confuse me with the details. I do not want to take the pep out of their pep rally, but those of us who tried to get a meaningful enforcement provision on this budget, both in the Committee on the Budget and on the floor of this Congress, do not want a budget that is balanced for a millisecond. We do not want to approve hundreds of billions of dollars of new spending without knowing what it is going to do and without actually reading the bill. Who knows what provisions for special interests are buried in these pounds of new spending?

We need the opportunity, not just for this House but for the American people, to have an opportunity to see what is in this bill, to understand it. If it is that great, it can stand the test of time, not a matter of a few minutes.

Mr. LINDER. Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield 2½ minutes to the gentleman from Minnesota [Mr. MINGE].

Mr. MINGE. Mr. Speaker, I thank the ranking member of the Committee on Rules for yielding time to me, and I would address my comments to my colleagues and to the Speaker.

Mr. Speaker, we certainly, as many speakers have already said this morning, have seen a historic agreement reached. It certainly is uncommon for us to see a major controversial piece of legislation drawing support from the White House, from the Republican leadership in both the House and Senate, and from most of the Democratic leadership in the House and Senate. It is a massive bill.

This morning we have been treated to repeated demonstrations of the size of the bill and the awkwardness of even trying to work one's way through it. I think it is fairly safe to say that nobody in this body will have a chance to review this bill in detail before it is voted on.

It has large provisions which most of us are familiar with and most of us probably agree with. It has small provisions that only a few of us know about because they affect our areas. I would like to just mention one of them which I think is of significance to American agriculture, to point out that this is typical of small things that find their way into big bills.

We have labored in American agriculture with a very restrictive ruling from the Internal Revenue Service that prohibited farmers from taking advantage of deferred payment contracts. It is because of the alternative minimum tax. This legislation corrects that.

Many say the devil is in the details. If this is the type of detail, I think we have had an exorcist that has taken the devil out. But the question is, how many other details are there that we have not had a chance to examine, and do we need to give that exorcist more time?

On a larger scale, I would like to say in concluding that I think that there are some very significant omissions in this legislation:

Social Security. We are borrowing this year $79 billion to balance the budget with Social Security. By the year 2002, it will be over $110 billion.

Medicare. We have a temporary fix to Medicare. We do not have a long-term fix.

Finally, enforcement. Many of us on both sides of the aisle have struggled for enforcement provisions in this legislation. We have been rebuffed. I think it is absolutely critical that we move ahead with enforcement provisions before this session of Congress ends.

I anticipate supporting this legislation, but I am a reluctant supporter. I urge that we focus on these deficiencies.

Mr. LINDER. Mr. Speaker, I yield myself 15 seconds.

Mr. Speaker, I would point out that unlike 1984 when Speaker Wright brought a $1.3 trillion budget to the floor with 1 hour's notice, not even letting the Committee on Rules see it, everybody in America could have read this. The full text of this budget is on the Internet, Speakernews.house.gov. Speakernews is one word. The Members can do it on the Democratic side even as we speak.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Speaker, this is the legislation that we received this morning. On principle, nobody in this House should vote for legislation which he does not understand, has not seen, and contains hundreds and hundreds of pages with many provisions that we know nothing about.

But Mr. Speaker, we do know some of the aspects that we are going to be asked to vote on. We do know that in a time when millions of elderly people are unable to pay for their prescription drugs, when they are paying more and more for private insurance to cover what Medicare does not cover, we do know that we are going to be asked to cut Medicare by $115 billion. That is wrong. We also know there are significant cuts in the Social Security Administration and in veterans programs. That is wrong.

Mr. Speaker, in order to pay for the cuts in Medicare, in the Social Security Administration, and in veterans programs, what the Congress is proposing is to provide huge tax breaks for the wealthiest people in this country, unfortunately; precisely the people who do not need it. The wealthiest 5 percent of Americans will receive almost half of the tax cuts. The upper 20 percent will receive over 70 percent of the benefits. The upper 1 percent, when this plan is full-blown, the upper 1 percent will receive more benefits from this package than the bottom 80 percent.

So the people who really need the help are not getting the help. The people who do not need the help are getting more help than they are entitled to. Under this plan, the average tax cut for middle-income families and individuals will be less than $200. The wealthiest 1 percent, however, will receive over $16,000 in tax breaks.

□ 1130

As the New York Times said today in an editorial, and I quote:

Even after last minute horse trading around the edges, the deal remains unfairly

tilted in favor of the better off citizens of society. It drills scores of new loopholes into the tax code, mostly for the benefit of very wealthy families at the cost of opening up large deficits early next century conveniently beyond the 10-year period that the deal tracks.

In other words, what is going to happen is, 10 years from now, when we have all of these loopholes for the wealthy and for large corporations, we are going to be back here again with another huge deficit and we are going to have Members here saying, we have got to cut more into Medicare, more into Social Security, more into veterans programs, more into housing. So my friends, before we pass a budget like this, first of all, have the courage to look at it and, second of all, let us not balance the budget on the backs of the weak and the vulnerable in order to give huge tax breaks to the wealthy.

Mr. KENNEDY of Rhode Island. Mr. Speaker, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Rhode Island.

Mr. KENNEDY of Rhode Island. Mr. Speaker, is the gentleman saying that the top 5 percent get four times the tax cut as the bottom 60 percent?

Mr. SANDERS. Yes, Mr. Speaker.

Mr. LINDER. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. SMITH].

Mr. SMITH of Michigan. Mr. Speaker, there are some Members that would like to put off a decision on balancing the budget and having tax cuts. There are some Members that would hope that we could discuss this enough that they might discourage the President from going along with this tax cut and balanced budget for the American people. Regarding the questions whether we have had time to review this legislation, we never have enough time for each Member to totally understand the text of this legislation without the help of specialists. Look at Medicare, which is the large portion of this bill.

It is essentially the same Medicare proposal that was offered by the Republicans over 2 years ago. It is the same Medicare bill that was demagogued last year in the election. Obviously Members have had 2 years to review that proposal. If we want to look at the other provisions of this bill, many are similar and we have talked about them since we voted on similar change in 1995.

This legislation, this agreement has been on the table since last April in terms of what Republicans and Democrats working together actually signed off on a detailed agreement. We are doing what the American people want us to do. That is balancing the budget and cutting taxes. There is a lot more to do but this is a good start.

Mr. MOAKLEY. Mr. Speaker, I yield 1 minute to the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Speaker, I want to say that I am not going to vote for this bill because I cannot even find the bill. I went down to the Clerk's office just now because I was told that is where the only copy of the bill was. In fact, I was told that it was filed at the Government Printing Office at 4:15 this morning. So then we call over to the Committee on Ways and Means. I said, I will run over to the Committee on Ways and Means and get the bill. I call over to the Committee on Ways and Means, and they said, we have only got the sections that deal with our committee. We have got Social Security, we have got Medicare, we have got Medicaid.

I said, let us take a look and see if it is up in the Committee on Rules. They said, no, the Committee on Rules does not have the bill. Maybe there is one copy down on the floor, maybe the gentleman from Massachusetts [Mr. MOAKLEY], maybe the gentleman from New York [Mr. SOLOMON] have that copy.

Then I said, well, let us go to the web site. So we went to Thomas.loc.gov. Guess what? The bill is not on the web site. I am not elected by the gentleman from New York [Mr. SOLOMON]. I am not elected by the gentleman from Massachusetts [Mr. MOAKLEY]. I am elected by the people of the Ninth Congressional District of Ohio. I cannot get a bill, and I do not want to listen to the gentleman from South Carolina [Mr. SPRATT] because he did not elect me. The people back in Ohio elected me.

To bring this kind of a bill to the floor today and tomorrow, what is the rush? Are we afraid the American people might actually know what is in this bill and would not want us to vote on this until September when we have had a chance to study the bill? What is the rush? I can see a fast ball when it comes.

Mr. LINDER. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. DREIER], my colleague on the Committee on Rules.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding me the time.

I would like to give this to my colleagues: Speakernews..House.gov.

The World Wide Web has it. It is there. It has been there since early this morning. Obviously my friend did not move to the appropriate site.

Ms. KAPTUR. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Speaker, I would love to know why the Clerk's office did not know what site it was at?

Mr. DREIER. Mr. Speaker, because I had not stood here yet to announce it: Speakernews.House.gov. That is maybe why the Clerk did not know it yet. The fact is, it is there. It can be found. At 3:14 this morning my very dear friend from Glens Falls pulled another allnighter. He went right to the office of the gentleman from Massachusetts [Mr. MOAKLEY] and delivered this thing.

It was delivered at 3:14 this morning. The gentleman from New York [Mr. SOLOMON] wanted to take it to the house of the gentleman from Massachusetts [Mr. MOAKLEY], but his better judgment told him to simply take it to the office at 3:14 in the morning. This is in fact a very good package. We should move ahead with it as quickly as possible.

Mr. MOAKLEY. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, despite what we heard at the microphone from my very dear friend, if one calls up the Speaker's line, you will get a summary. This bill is not in print anywhere except the copies that I have and the gentleman from New York [Mr. SOLOMON] has. It will not even be in the CONGRESSIONAL RECORD until tomorrow. We are talking about the bill itself.

If the previous question is defeated, I will offer an amendment to the rule which would make certain that Members will have no less than 10 hours to read the bills before the House begins to consider them. I believe that is only fair for major bills such as these.

Mr. Speaker, I include for the RECORD the amendment to which I referred:

At the end of the resolution add the following:

"SEC. 2. The waiver prescribed in the first section of this resolution shall not apply to a resolution providing for consideration of any measure unless the measure has been available to Members for at least 10 hours before the consideration of such resolution."

Mr. LINDER. Mr. Speaker, I yield myself such time as I may consume.

Let me point out that the White House, the conferees have read every word, every summary, every piece of it. And every bill that comes through here we have to trust the folks on the committee or on the conference report to give us the best advice. They have done that. We have got some of the most distinguished Democrats in this House who have signed onto this bill. They know what is in it. We have been debating some of these issues for 3 and 4 years. This is a specious argument to try and delay the action on a very good bill. Most of the arguments against the process have come from the most liberal Members who do not like the bill. I think that is curious.

Let me say, this is a rule that we have used in the past under Democrats and Republicans. It is a rule that should be supported as well as the bills.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore [Mr. GIBBONS]. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MOAKLEY. Mr. Speaker, I object to the vote on the ground that a

quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 5 of rule XV, the Chair will reduce to 5 minutes the minimum time for electronic voting if ordered on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 226, nays 201, not voting 7, as follows:

[Roll No. 341]

YEAS—226

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Crane
Crapo
Cubin
Cunningham
Davis (VA)
Deal
DeLay
Dickey
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Foley
Fowler
Fox
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Greenwood
Gutknecht
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Livingston
LoBiondo
Lucas
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Molinari
Moran (KS)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Shimkus
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stump
Sununu
Talent
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (FL)

NAYS—201

Abercrombie
Ackerman
Allen
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cramer
Cummings
Danner
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Fazio
Filner
Flake
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHale
McIntyre
McKinney
McNulty
Meehan
Meek
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran (VA)
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pickett
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schumer
Scott
Serrano
Sherman
Sisisky
Skaggs
Skelton
Slaughter
Smith, Adam
Snyder
Spratt
Stabenow
Stark
Stenholm
Stokes
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Towns
Turner
Velázquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOT VOTING—7

Diaz-Balart
Foglietta
Forbes
Gonzalez
Lazio
Schiff
Young (AK)

□ 1156

Mr. JACKSON of Illinois, Ms. SLAUGHTER, and Messrs. BOSWELL, JOHN, and GUTIERREZ changed their vote from "yea" to "nay."

Mr. ROYCE changed his vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. GIBBONS). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MOAKLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were— yeas 237, nays 187, not voting 10, as follows:

[Roll No. 342]

YEAS—237

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Fawell
Foley
Fowler
Fox
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Granger
Greenwood
Gutknecht
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Hooley
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lucas
Manton
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Molinari
Moran (KS)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Pascrell
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shays
Shimkus
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Torres
Traficant
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller

Wexler	Whitfield	Wolf
White	Wicker	Young (FL)

NAYS—187

Abercrombie	Gejdenson	Moakley
Ackerman	Gephardt	Mollohan
Allen	Goode	Moran (VA)
Andrews	Green	Murtha
Baesler	Gutierrez	Nadler
Baldacci	Hall (OH)	Neal
Barcia	Hall (TX)	Oberstar
Barrett (WI)	Hamilton	Obey
Becerra	Harman	Olver
Bentsen	Hastings (FL)	Owens
Berman	Hefner	Pallone
Berry	Hilliard	Pastor
Bishop	Hinchey	Payne
Blagojevich	Hinojosa	Pelosi
Blumenauer	Holden	Pickett
Bonior	Hoyer	Pomeroy
Borski	Istook	Poshard
Boucher	Jackson (IL)	Price (NC)
Boyd	Jackson-Lee	Rahall
Brown (CA)	(TX)	Rangel
Brown (FL)	Jefferson	Reyes
Brown (OH)	John	Rivers
Capps	Johnson (WI)	Rodriguez
Cardin	Johnson, E. B.	Rothman
Carson	Kanjorski	Roybal-Allard
Christensen	Kaptur	Rush
Clay	Kennedy (MA)	Sabo
Clayton	Kennedy (RI)	Sanchez
Clement	Kennelly	Sanders
Clyburn	Kildee	Sandlin
Conyers	Kilpatrick	Sawyer
Costello	Klink	Schumer
Coyne	Kucinich	Scott
Cummings	LaFalce	Serrano
Davis (FL)	Lampson	Sherman
Davis (IL)	Lantos	Sisisky
DeFazio	Levin	Skaggs
DeGette	Lewis (GA)	Skelton
Delahunt	Lofgren	Slaughter
DeLauro	Lowey	Snyder
Dellums	Luther	Spratt
Deutsch	Maloney (CT)	Stabenow
Dicks	Maloney (NY)	Stark
Dingell	Markey	Stokes
Dixon	Martinez	Strickland
Doggett	Mascara	Stupak
Doolittle	Matsui	Taylor (MS)
Doyle	McCarthy (MO)	Thompson
Edwards	McCarthy (NY)	Thurman
Engel	McDermott	Tierney
Ensign	McGovern	Towns
Eshoo	McHale	Turner
Etheridge	McIntyre	Velázquez
Evans	McKinney	Vento
Farr	McNulty	Visclosky
Fattah	Meehan	Waters
Fazio	Meek	Watt (NC)
Filner	Menendez	Waxman
Flake	Millender-	Weygand
Ford	McDonald	Wise
Frank (MA)	Miller (CA)	Woolsey
Frost	Minge	Wynn
Furse	Mink	Yates

NOT VOTING—10

Foglietta	Lazio	Shaw
Forbes	Ortiz	Young (AK)
Gonzalez	Riley	
Graham	Schiff	

□ 1205

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid upon the table.

PERSONAL EXPLANATION

Mr. SHAW. Mr. Speaker, on rollcall No. 342, I was inadvertently detained. Had I been present, I would have voted "yea."

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2015, BALANCED BUDGET ACT OF 1997

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (Rept. 105–218) on the resolution (H. Res. 202) waiving points of order against the conference report to accompany the bill (H.R. 2015) to provide for reconciliation pursuant to subsections (b)(1) and (c) of section 105 of the concurrent resolution on the budget for fiscal year 1998, which was referred to the House Calendar and ordered printed.

Mr. SOLOMON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 202 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 202

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 2015) to provide for reconciliation pursuant to subsections (b)(1) and (c) of section 105 of the concurrent resolution on the budget for fiscal year 1998. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The conference report shall be debatable for ninety minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget.

The SPEAKER pro tempore. The gentleman from New York [Mr. SOLOMON] is recognized for 1 hour.

Mr. SOLOMON. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Massachusetts [Mr. MOAKLEY] pending which I yield myself such time as I might consume. Mr. Speaker, concerning the time just yielded to the minority, all time yielded is for debate purposes only.

Mr. Speaker, this rule is the standard rule for consideration of a conference report on reconciliation legislation. All points of order are waived against the bill and its consideration. The rule further provides that the conference report shall be considered as read.

Finally, the rule provides 90 minutes of general debate equally divided and controlled by the chairman and ranking minority members of the Committee on the Budget.

Mr. Speaker, I would also point out that we have extended the debate time from the customary 1 hour to 90 minutes in order to maximize the time for the House to debate this very historic agreement. And when I state "very historic agreement," Mr. Speaker, I want to heap praise on the gentleman from Ohio [Mr. KASICH], chairman of the Committee on the Budget, who has brought to this floor something that many of us have worked so hard for over all these years. And it could not have happened without the leadership of the gentleman from Ohio [Mr. KASICH], certainly his committee, and the staff of the Committee on the Budget.

Mr. Speaker, on July 20, 1969, Neal Armstrong and the crew of Apollo 11 made their famous leap for mankind onto the surface of the Moon. Later that same year, the Federal Government recorded its first balanced budget in a decade, an actual budget surplus of $300 million. Both are milestones, Mr. Speaker, because the budget has not been balanced since that time back in 1969.

In fact, in 1997, the Government spent over $6,000 for every man, woman, and child in America. And that is up from $500 in 1960. Each person's share of that national debt is more than $14,500, and that is up from $1,300 in 1960. This goes to show us what has happened over the years.

And even worse, the Federal Government is three times larger than in 1960, and the tax burden is unconscionable on the American people, particularly middle-class American people, who make up the real backbone of this Nation.

Today, Mr. Speaker, this Republican Congress and President Clinton will stem the tide of this rising sea of red ink, and it will stop the growth of Government. Today, the Republican Congress will deliver America's working families the first balanced budget in a generation.

Mr. Speaker, as my colleagues recall, in 1994, when the American people gave Republicans control of the people's House, we pledged to balance the budget. Today, we deliver on that promise.

□ 1215

Mr. Speaker, this body has debated balanced budgets many times over the last few years, but today's debate is special. It represents a historic achievement for the future benefit of America's children, for their families and for the economy of this Nation. For today we do not just debate a balanced budget, we actually deliver one for the American people, what they have been asking of this body for so many years now.

This endeavor proves that Congress, working with the administration, can achieve common goals without compromising fundamental principles, showing the American people that we can work together to solve problems, and the American people are applauding this every day now since we came to this agreement.

Mr. Speaker, I am also proud to inform the American people that our democratic process, something that has been maligned in recent years, is working. This democratic process, even with the Congress and with a President of opposing parties has produced a bipartisan balanced budget agreement that cuts taxes for the first time in 16 years, that preserves Medicare and protects it from bankruptcy into the 21st century, that slows the growth of total Federal spending to 3 percent a year.

That is no easy task. And that shifts power, money and influence away from Washington and to the people in the States and communities.

Mr. Speaker, while this is a bipartisan agreement, it is useful to recognize just how far we have come. Just 4 years ago, this Congress under a Democrat majority passed the largest tax increase in the history of the United States of America. Today we cut the tax burden on American families for every single working American in this country.

Just 4 years ago, Mr. Speaker, this Congress expanded new entitlement programs and they increased spending by tens of billions of dollars. What is different today? Today we slow the growth of entitlement spending. Today we increase budget enforcement, and today we actually reduce Federal spending to 18.9 percent of the Gross Domestic Product by the year 2002. That will be the first time since 1974, 25 years ago, that spending has fallen below 20 percent of the GDP.

Mr. Speaker, just 4 years ago this Congress passed increased Government spending packages. Today we make the Federal Government smaller, allowing the free market to provide the stimulus for the economy to create long-term job growth. Mr. Speaker, what a difference a Republican Congress has made to the economy.

Since the 1994 election, the Dow Jones Industrial Average has more than doubled from 3,900 points to 8,100 points, interest rates have dropped from 8 percent to 6 percent, and 6.4 million new jobs have been created. The economy is growing because taxes, spending, and the Government are not growing.

But, Mr. Speaker, we are not here today to only look at the past or even the present but to the future of this great country. The balanced budget we debate here today is built on a solid foundation of programmatic and economic assumptions, a foundation that will generate benefits to American working families for years to come. This is a package that will keep on delivering financial relief to families and to businesses in the form of lower taxes, lower interest rates, higher job growth and a stronger economy, and we are locking it all into law so that it has to happen.

For example, Mr. Speaker, in my district in upstate New York, a balanced budget will significantly enhance the opportunities of working families to care for their children and to help their communities. Alan Greenspan, greatly respected by both sides of the aisle, Democrats and Republicans alike, and by the American people, he is the Chairman of the Federal Reserve, and he has testified that a balanced budget will lead to lower interest rates, as much as 2 percent lower on home mortgages, on family farms, on auto loans, on student loans. For the average homeowner in my district, before even calculating in the benefits of the cuts in the capital gains tax, a 2 percent lower interest rate on a home mortgage as a result of a balanced budget would save that family over $130 a month. That is $130 more a month to send a kid to college, to buy groceries or to pay for child care, which is so badly needed today in the pockets of the American people. It means more investment in the local community, a stronger local economy, and higher wages.

Under these circumstances, Mr. Speaker, these hardworking families will do more in 1 year to help the less fortunate, the young and the old, than this Congress could do under a banner of compassion in an entire decade. All these benefits result merely from Congress fulfilling its moral obligation to balance this budget year in and year out.

In closing, Mr. Speaker, I would like to make one final observation. During this debate today, many of my friends on the other side of the aisle will assert that Republicans are only interested in helping the so-called wealthy in America. Mr. Speaker, let me state for the record right now that I plead guilty to that charge. I believe that a growing economy helps all of America's families, for it was not a Republican President but it was President John F. Kennedy that said "a rising tide lifts all boats."

Furthermore, and this is so terribly important, a recent NASDAQ report summarized in a recent Los Angeles Times story found the following facts. These are facts, these are not Republican rhetoric, these are facts out of NASDAQ:

Fifty-five percent of the stocks in America today are held by household families. Fifty-five percent. That means middle class America holds 55 percent of the stock today.

Forty-seven percent of all investors are women. Fifty-five percent of all investors are under the age of 50. And 10 percent of all investors, and this is so terribly important, have started to invest within the last 10 years.

These numbers do not even include all of those who have their pensions invested in the stock market or in mutual funds, which is the case for many older Americans. These so-called wealthy people are middle class working families that know that a balanced budget, lower taxes, and a smaller Government mean higher wages, more jobs, and a stronger economy.

That is really what we are all here on this floor to try to do. That is why I urge all Members to join these American families in supporting the balanced budget we have here before us today. It is good for families, it is good for America. The future will be better because of what we do here today.

And, Mr. Speaker, what we do here today is what the Republican Party stands for, and that is cutting taxes for all working Americans, every single one of them, cutting runaway entitlement spending, saving Medicare from bankruptcy. But most importantly, Mr. Speaker, we are here today balancing the budget and shrinking the size and the power of the Federal Government.

Mr. Speaker, I have never been so proud to be a Republican Member of Congress for what we are doing here today.

Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. GINGRICH], the Speaker of the House.

Mr. GINGRICH. I thank the gentleman for yielding me this time.

Mr. Speaker, I just want to say to my good friend from Massachusetts, I was concerned by his earlier concerns. I went back and checked. The gentleman was correct. When we initially announced that the entire bill was available at http://speakernews.house.gov in fact it was not all fully uploaded. I waited to make sure the entire bill was totally loaded. It is now available not just to any Member of the House, not just to all the congressional staffs who I hope are watching this debate, all of whom can access it simultaneously without having to xerox it, but in addition it is available to every citizen in this country and anyone worldwide on the Internet.

As the gentleman knows, we are still having growing pains learning how to be in the information age, but we have now made this available to every citizen in the country. We are going to test this afternoon when we file the tax bill and see how long it takes to totally upload the tax bill for the same process. Sometime late this afternoon, every citizen in the country, without a lobbyist, without a trade association, without any payment, will have access to the tax bill in full. I do thank the gentleman for bringing it to our attention. We are still learning, but I did want to make that available.

By the way, if I might, this is the last page. We printed it out, because my good friend had pointed out earlier that he could not get them all printed out.

Mr. MOAKLEY. Mr. Speaker, I hope the Speaker will autograph it for me.

Mr. Speaker, I am very happy to hear that from the Speaker and I am glad that all the citizens of America have this now. If the Republican Party would just allow them a few hours to read it, I think the public service would really be done.

Mr. Speaker, I thank the gentleman from New York [Mr. SOLOMON], the chairman of my committee, my dear friend, for yielding me the customary half-hour, and I yield myself such time as I may consume.

Mr. Speaker, again I want to begin by registering my frustration at being expected to vote on this very enormous bill that was dropped outside my door at 3:30 this morning. It came the same time as the milkman. But I am not exactly sure if my Republican colleagues drafted the bill we expected them to draft, and I suspect that no one else is sure either. This bill has come to the floor with an unprecedented bipartisan compromise in cooperation. It is a shame that it ended today with the martial law rule. Members should have the chance to carefully consider this bill before voting on it.

Mr. Speaker, although this bill will balance our budget in the short term, I do not believe it gets us where we need to be in the long term. I know that quite a few of my colleagues will support this bill, and there are very good reasons to do so, but I at this present time cannot. It squeezes funding for education, training, health programs, and school construction, and I do not believe that it should.

One particular problem for me, Mr. Speaker, is the hit that the hospitals will have to take. We in Massachusetts are very fortunate to have some of the world's greatest hospitals and research facilities. They already bear an enormous share of the financial burden of our health care problems, but this bill will cut Medicare spending by $115 billion by reducing payments to these very same hospitals and the doctors that serve in them. It also cuts Medicaid spending by $13 billion by reducing payments to these same hospitals that serve large numbers of poor people, like our Boston City Hospital. Mr. Speaker, the hospitals in my district are already facing enormous budget crunches. They cannot stand it anymore.

This bill also cuts $4.8 billion from Federal employees' retirement programs over the next 5 years. Federal employees work just as hard as those in the private sector, but because they work in public service rather than the private sector, they are going to be penalized.

Mr. Speaker, this bill also makes changes that will cut $1.8 billion in student loans and $1.8 billion from housing programs. It reduces section 8 adjustments and replaces the FHA foreclosure relief program. Another provision in this bill which many of my colleagues may not be aware of is an increase in the public debt limit to $5.95 trillion.

Mr. Speaker, thanks to the Democrats in Congress and the Clinton administration, this bill is a lot better than it was. It expands health care for children, although not enough. It restores Supplemental Security Income and Medicare benefits to legal immigrants. It also contains funding for States to help welfare recipients find jobs. Again, Mr. Speaker, not enough.

There are good reasons to support this bill, and I understand why many of my colleagues will do so. But as I said, because of those other matters, I just cannot at this time. For the sake of our hospitals, for the sake of our students, for the sake of our housing programs, I cannot support the bill.

I cannot support a bill that will hurt Massachusetts hospitals as much as this one will. I cannot support a bill that, although it provides much needed money to help poor children get health insurance, it provides the money in the form of block grants which may or may not be used for that purpose.

There are some very good provisions in this bill that I very much support, and I congratulate my colleagues for their hard work on this bill. I am relieved to see many of the education issues and the food stamp problem have been taken care of.

□ 1230

And although I strongly suspect that this bill will pass and that our President will sign it, I simply, as I said, cannot support it. So I urge my colleagues to defeat the previous question in order to increase debate time to 3 hours.

Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from South Carolina [Mr. SPRATT], the ranking member on the Committee on the Budget.

Mr. SPRATT. Mr. Speaker, I thank the gentleman from Massachusetts for yielding this time to me.

Mr. Speaker, I intend to vote for this conference report, and I am satisfied, and even proud, of the outcome, but I cannot vote for the rule in this case, and I want to explain why.

I think it is being brought to the floor, this conference agreement, with unseemly haste for something so serious and so far-reaching.

I was here until midnight last night. The Democratic staff of the Committee on the Budget were here until after 2:30. Most of that time of our staff on the Committee on the Budget was spent trying to prepare reports so that we could tell Members on our side from our inside perspective as the Committee on the Budget just what is in this conference agreement and what is not, what compromises have been cut, what deals have been done that they need to know about before they make their decision to vote, and it was a frustrating, sometimes fruitless, effort to call different places on the Hill and try to find out what was in the conference report because we did not have a copy of the conference report.

The staff left at 2:30, the conference report was filed at 3:20 this morning, it was not until we got back to work this morning, just an hour before the House convened that we found the conference report on our doorstep. We finished posthaste the reports so that we could deliver it to Members on our side. They got it at 10 o'clock this morning, just before the House convened to take up this matter.

Now there are strong reasons for having a certain delay. The rules of the House, the rules of the House longstanding, call for a 3-day layover for conference reports, 24-hour layover for rules which have been waived, but 3 days for a conference report, and there are good reasons for that. Conference reports are the last station on the track. We are making law. There are no more opportunities on our part to correct mistakes, to add something, change something, to perfect a piece of legislation.

Furthermore, in the House we have what in the State legislature they call free conference powers virtually. As everybody knows, conference reports are hammered out behind closed doors. The conferees make deals, cut compromises, go out of scope all the time, and the rule waives any points of order for going out of scope. And my colleagues will find plenty of things in this conference report, I am sure, which are out of scope, one in the House bill and one in the Senate bill, that have been concocted by the conferees.

That is why the longstanding rules of this House have provided 3 days for Members to see what is in it, sauce and blow it, weigh it and come to a deliberate decision as to whether or not they would support it.

And then when the matter finally comes to the floor, there ought to be ample time to discuss something so far-reaching as this because this is not just an ordinary conference agreement, this is probably the single most important piece of legislation that this Congress will adopt in the 105th Congress. Yet we are going to take it up in an hour and a half. The Senate provides for 10 hours of debate, 10 hours on the tax reconciliation bill, 10 hours on the spending reconciliation bill. We have an hour and a half, and I have Members over here pulling at my coattails because they want to say something.

Mr. Speaker, they want to explain why they are voting for it or why they are voting against it; they want to say they are in favor of this. That is the way the House operates. They want to have a real debate, and we will not be able to have it with the truncated time that has been allowed for this particular bill.

This is too fast a track for legislation so serious. It should not be railroaded against this House. We should vote against the previous question.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY of Massachusetts. Mr. Speaker, I have heard the chairman of

the Committee on Rules quote my uncle, President Kennedy, saying that a rising tide lifts all boats. I would say that in this tax bill what we have is a tax cut that will raise the yachts in places like the Ocean Reef Club and other Republican strongholds of this country, but the people that own the little bass boats of America, the only rise they are going to get is when they go up on the rocks as a result of the cuts that are going to be created in order to pay for the wonderful tax cuts that are contained in this bill.

Look, the Republicans shut down the Congress of the United States last year because of our protests about the level of budget cuts contained in terms of the Medicare budget. This bill, make no mistake, my colleagues, this bill contains the exact same level of Medicare cuts as last year's bill did. That is the hidden truth that we are not seeing everybody who is walking around, giving each other high fives and whooping and hooping down at the White House or on the floor or off in the Halls of the Congress saying what a wonderful thing this is. Everybody is all talking about how we are going to balance the budget of this country.

Mr. Speaker, we are balancing the budget in the most unbalanced fashion one can possibly imagine, lining the pockets of the wealthiest Americans, pretending to working people that they are going to get a tax cut. They get a tax cut. Seventy-five percent of these tax benefits go to the top 20 percent of the American people. It is a sham.

In order to pay for it what are we going to do? We have cut the housing budget by 25 percent, we are cutting the homeless budget by 25 percent, we come back, we are going to get rid of the fuel assistance program. They say they are going to do so much to help out education, but we come back, they are going to cut almost 20 percent of the entire research and development accounts of the Government. They say before the American people this year we are going to put 6 percent more into the National Institutes of Health budget in order to look after women's health and breast cancer research, but then we are going to come back somehow, according to these numbers, we are going to come back and cut 20 percent out of that same budget over the course of the next 5 years.

This budget is a sham, and we ought to have the truth about the budget come out before we are forced to vote on it.

This rule that we are going to be forced to vote on gives us 15 minutes, 15 minutes to discuss what is in fact in this bill, and I say, "Take your 15 minutes and stuff it, stuff it the same place you ought to stuff this tax bill, stuff it the same place you ought to stuff these spending cuts. It's not right to force spending cuts on the working families in order to provide a tax cut to the rich."

Get rid of this tax bill.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am somewhat surprised by the gentleman from Massachusetts in his delivery.

As my colleagues know, I was very proud to have been a John F. Kennedy Democrat, I was very proud of it, and I was for many years until the Democratic Party drifted away from the principles of John F. Kennedy and JERRY SOLOMON, in my eyes, and that is why Ronald Reagan and I switched parties and became Republicans, because we really believe that the people back home know better than the people here in Washington.

Let me just take one more second to say I cannot believe the gentleman would tell these people to stuff it. The gentleman from South Carolina [Mr. SPRATT] a very, very distinguished Member from the gentleman's side, the gentleman from Michigan [Mr. BONIOR], a liberal Member from the gentleman's side, the gentleman from California [Mr. FAZIO], the gentleman from Texas [Mr. STENHOLM], the gentleman from Michigan [Mr. DINGELL], the gentleman from Michigan [Mr. KILDEE]; this reads like Who's Who in the Democratic Party, the gentleman from New Jersey [Mr. PAYNE], the gentleman from Minnesota [Mr. OBERSTAR], the gentleman from Illinois [Mr. EVANS], the gentleman from New York [Mr. RANGEL]; Mr. Speaker, CHARLIE RANGEL signing this conference report and voting for this conference report. I do not think they are going to stuff it, the gentleman from Michigan [Mr. LEVIN], and on the other side of the aisle Senators LAUTENBERG, SARBANES, Senator MOYNIHAN from my State, very, very respected Democrat, and Senator ROCKEFELLER are going to vote for this conference report that the gentleman says, "Stuff it."

Mr. KENNEDY of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield 30 seconds to the gentleman from Massachusetts.

Mr. KENNEDY of Massachusetts. Mr. Speaker, I thank the gentleman from New York for yielding briefly.

I would just point out that the gentleman probably had a long list of Democrats that voted for the 1981 budget cuts that in 1982 wished they had not, and probably a lot of Republicans felt the same way.

The truth of the matter is that for the gentleman from New York to use President Kennedy on this House floor indicating that he would support the kind of cuts in terms of the programs that are necessary to fund a tax cut that is largely going to the wealthy is, I think, reshaping the history of what President Kennedy stood for when he cut taxes in 1960.

Mr. SOLOMON. Reclaiming my time, Mr. Speaker, I not only think John F. Kennedy would be voting, and supporting and bringing this bill to the floor, I think TED KENNEDY, whose picture is here with the President yesterday in the New York Times applauding this legislation, would also be voting for it.

Mr. Speaker, I yield 3 minutes to the gentleman from Florida [Mr. GOSS], a very distinguished member of the Committee on Rules and someone who has led the fight for balanced budget and fiscal responsibility in this House for many years.

Mr. GOSS. Mr. Speaker, I thank my friend from Glens Falls, NY [Mr. SOLOMON] for yielding me the time and I share his enthusiasm. I rise in strong support of this appropriate rule, and I believe his observation about the tide is correct.

Mr. Speaker, it has been nearly 30 years since Congress has balanced the Nation's books, a generation and a half that is, of spending money we do not have, running up the tab on our children and our grandchildren, avoiding tough decisions, and Americans are tired of that. So today and tomorrow and the day after we are going to be putting in place the final details of the first real achievable balanced budget in 30 years. The magnitude of the change in the direction this legislative accomplishment represents is very, very great indeed. Consider that just 4 years ago the White House and Democratic majority here pushed through the largest tax increase, the largest tax increase in American history, just 4 years ago. What a difference 4 years and a new majority can make.

I know some will be skeptical that may be just another promise that we cannot keep here, and I do not blame people who wish to withhold their full exuberance about this until the ink is dry and the effects of this historic agreement are felt across the land. But the bills we vote on in the coming hours and days hold more than a promise to balance the budget and bring about tax relief for American families. These bills are the implementation of the promises, and there is accountability built in for all of us. We cannot run, we cannot hide, we will be here, and we will be judged.

As chairman of a legislative and budget process subcommittee, I want to take a second to point out to Members that this bill includes a series of clean up provisions in our budget enforcement rules, including extending the pay as you go and spending limit procedures. Of course we know additional work is needed to beef up budget enforcement, and budget process reform will take place in this Congress as has been promised.

Mr. Speaker, for too long Americans have had to get by with less while the folks in Washington rolled merrily along taxing and spending to support the ever growing Federal Government. Look around, my colleagues will see it.

This agreement means tax relief for individuals, for families with children, for students, for small businesses, for homeowners, for those with family farms. It brings a measure of fairness to the system, and it is predicated on the fundamental belief that Government taxes too much, not too little. We are getting control over spending under the discretionary side, and we are shrinking the size and scope of the reach of Government and, man, is that good news for America.

This legislation takes the first steps toward solving the long term problems with Medicare, laying the groundwork for us to come together on a comprehensive plan to rescue the problem for coming generations. We are expanding choice and benefits for seniors, clamping down on waste, fraud and abuse, a problem whose vast proportions have made news in recent days; in fact are in the headlines today. And we are modernizing the program's payment and care delivery systems. This is a long overdue down payment on Medicare, and America's current and future seniors come out the winners.

Mr. Speaker, there are many, many details in this plan, and I am sure it is still not perfect. I fully expect that the coming days will bring efforts by those who prefer the status quo of big government, to pick it apart provision by provision, and indeed we have already started to hear some of the clamor on the floor today. But we have done the unthinkable by Washington standards. We have kept our promise to the American taxpayers, and that is what this is about. We pledge to balance the budget. We are doing it. We pledge to save Medicare. We are doing it. And we pledge to cut taxes, and we are doing it.

I cannot think of a single reason to delay this process. It is all long overdue, it is wanted by the people we represent and work for in this country. The time is now. Any deviation to go to motions to commit or other dilatory tactics are just delaying the inevitable. We are going to give this country the relief this country deserves and wants, and we are going to do it this week.

Mr. Speaker, I urge support for this rule and for the wonderful agreement that has been worked out.

□ 1245

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. I thank the chairman in exile for yielding time to me, Mr. Speaker.

Mr. Speaker, we promised and we delivered. In August 1981, President Reagan, when he signed the tax bill of 1981, said that we will balance the budget as a result of this bill by October 1, 1983. That was the promise. What was delivered? Four and one-half trillion dollars of new debt.

Two courageous Presidents looked that debt in the eye and acted. One was a Republican, George Bush. In 1990, he said the deficit is a problem, and we must act. He was savaged, savaged by his own party and by the Speaker of this House.

In 1993, a courageous President with vision said we must confront this deficit, for this generation and for generations yet to come. Almost to a person, Republicans rose and said the economy is going to go into the dumpster, unemployment will rise, inflation will rise, and deficits will rise.

Mr. Speaker, exactly the opposite happened. Not one Republican had the courage or the vision to vote for the 1993 bill. But for that bill, we would not be here this day.

Mr. Speaker, I intend to support both of these bills. They are not what I would have written, and perhaps what no Member individually would have written, but we have collectively come together and we are going to act. In my opinion, it will be good for people and it will be good for the economy, which is good for our country and for our people.

But let there be no mistake about what the history of this fight has been. Bill Clinton said we needed to confront this deficit, but we needed to do so while investing in our people, in making sure that average working families were advantaged by this particular piece of legislation.

We came to grips with that issue, realizing full well that there would be a political cost, and indeed there was in 1994. There was a cost, because across this land our candidates were attacked as taxers and spenders. But in fact, what they did was bring the deficit down for 5 years in a row, and people say the last time it was done was 1969. That was, of course, following 8 years of Democratic Presidencies through January of 1969, Mr. Speaker; Democratic leadership, we had a balanced budget. And again, we are going to have a balanced budget because of Democratic leadership that has brought the deficit down 5 years in a row, the first time that has happened since before the Civil War.

I stand to say that I am proud of the fact that I voted for that 1993 bill. We would not be here today but for that. I am proud of the fact that my President, your President, has led us to a point where we can balance the budget while investing in America's future and our people.

Mr. MOAKLEY. Mr. Speaker, I yield 2½ minutes to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Speaker, I rise in opposition to the rule because of the time constraints on debate, but I support the underlying budget spending bill. The reason is because today Congress is taking a major step in cutting the number of uninsured children.

Over a year ago Democrats had made this a top priority, while Republicans were balking at finding a solution. Earlier this year, while Democrats were leading the charge to reduce the ranks of the 10 million uninsured children, Republicans were questioning the need to help working families provide for their uninsured children.

It was not until the President's inclusion, after Democrats' urging, of funding for children's health care in his initial budget that Republicans realized that resistance would be hopeless. Even then, though, they had to be dragged to the table. House Republicans pushed a children's health care block grant program that did not guarantee one penny to actually insure kids. The Congressional Budget Office estimated 500,000 kids would be covered and most of the $16 billion in funding could be drained away by the States for other purposes. Democrats protested the Republican plan and voted unanimously for a motion to recommit that would implement the proposal of our health care task force.

The idea was to attach requirements that States actually use the money to insure kids through Medicaid or an alternative State health insurance plan. We insisted as Democrats that the direct services option, which allowed certain exemptions from using money to insure kids, be eliminated or severely curtailed. In addition, Democrats demanded an adequate benefits package for kids.

As the negotiations over the budget continued, Democrats joined in the series of letters to the budget negotiators urging inclusion of an additional $8 billion through a cigarette tax, and provisions intended to insure that all the new funds for kids' health care would supplement and not supplant current State efforts to provide children with health coverage.

In the end, Mr. Speaker, the Republicans relented and the bill before us today includes $24 billion, requires that kids actually be insured with the money, and caps the direct services option to 15 percent of the funds.

The benefits package is adequate, in my opinion, and language is included so States have to spend at least what they do now on kids' health care.

Mr. Speaker, the kids' health care plan in this bill, in my opinion, is a major victory for the President and congressional Democrats. Thanks to Democratic values and perseverance, America's children will be the winners of this budget agreement.

Mr. MOAKLEY. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. CAPPS].

Mr. CAPPS. Mr. Speaker, I rise today in support of the balanced budget legislation. When I ran for Congress, I pledged to the voters of my district that I would work to make the House more bipartisan and solution-oriented.

This bill and my support of it is a reflection of that pledge. It is good for the residents of the central coast of California, it is good for our country.

I am very happy that we have increased the amount of funding for children's health care to $24 billion. It is unconscionable that millions of American children have no health insurance. I also strongly support the restoration of benefits for millions of legal immigrants who were callously cut off from disability benefits under last year's welfare reform bill. Today we are finally treating these individuals with the dignity they deserve. I urge my colleagues to vote for this historic and important bill.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. TIERNEY].

Mr. TIERNEY. Mr. Speaker, I rise to discuss not the bill but the rule before us in this particular case.

Since I came here some 6 months ago or 7 months ago, it seems that all I hear from the party that said over and over again while it was in the minority is how it was going to do things better when it became the majority; in fact, all we hear now is, when they do something that is totally unconscionable, well, you did it, too, or you did another version of it.

In fact, that is not a good enough answer for people in this country, and I do not think people are going to be satisfied that this deliberative body or this body that is supposed to be deliberative spent virtually no time debating one of the more important bills that is going to come out of legislation this year.

The real issue is not whether we have this particular tax cut or this spending bill this year. There are larger issues in this country, not the least of which is what is happening to working families and why we have companies reporting 15 percent profits and 1 percent additional revenues, and we know the difference is because they are squeezing that out of American workers.

Those American workers have less health care benefits and they have less pension contributions, and they are told by employers that they are going to have the company move to Mexico or they are going to have replacement workers in if they try too hard to get a raise.

The real question is what does this tax package, what does this spending bill do for those American workers. And just a few minutes ago they said, we put it on the Internet, go read 20 inches of material and find the answer out for the voters. That is not appropriate. The American people say they want this body to deliberate. They want this body to know what is in that bill.

It is a darned good thing that I am a nocturnal sort of person, because since I have gotten here very little that is put on the floor by the majority is ever put on in the light of day, and very often that is because I suspect most of what they are putting forward will not suffer well the light of day.

In fact, this particular bill was delivered at 3:45 in the morning, and we have the audacity for the chairman of the Committee on Rules to say, like that is a great thing, like at 3:45 in the morning it was delivered to the minority member, ranking minority member, which gave us all plenty of time between 3:45 this morning and now to read 20 inches of documents and debate it and deliver it for the American people.

That is not conscionable. That is not right. This is not a good rule.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I suggest to the previous speaker that he follow the rules of the House, and be a little careful about how he might reflect on the integrity or character of another Member.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Columbus, OH [Ms. DEBORAH PRYCE], who is a very valued member of the Committee on Rules, and someone who has been a true advocate of families and children in this Congress.

Ms. PRYCE of Ohio. Mr. Speaker, I thank the distinguished chairman of the Committee on Rules for yielding me this time.

Mr. Speaker, I rise to express my enthusiastic support for this rule and for the Balanced Budget Act, and to point out to the last speaker, and to all the body, that we are already 50 percent fairer than the other party was in their rules in the last time they had control of this House.

What is exciting this day, Mr. Speaker, is that today Americans in this country, the earners, the savers, and the taxpayers, the people who play hard, work hard, take a few risks, strive every day to build a better future for their families and communities, are about to realize something for it.

For years, their message to us has been crystal clear. They wanted Congress to cut the tax burden on Americans. They wanted us to reduce Government spending and Government size. They wanted us to create new jobs and opportunities. They wanted us to shift power and influence to the States and local communities, where creative local solutions could take the place of broad Federal mandates. Most of all, they wanted us to balance the budget.

Finally, the message has sunk in. We are relearning the lessons of the 1980's, when we did cut taxes, when we did restrain Federal regulation and lower Government spending, because when we did those things prosperity made a huge comeback. Jobs were created, income started to rise, and people felt more secure about their economic futures.

Today we are about to kickstart that economic revolution again. Imagine that, Mr. Speaker, we will actually balance the budget by the year 2002, the first time since 1969. That was the year I graduated from high school. That was the year Neal Armstrong walked on the Moon. That was a long time ago, Mr. Speaker.

Not only that, we are extending the life of Medicare for 10 years. We are saving it from bankruptcy, and giving seniors expanded options in meeting their health care needs.

At the same time, the Balanced Budget Act makes important investments in people, like the children's health initiative, preventive health programs, and the new welfare to work program to move welfare recipients off the public assistance rolls and into the payrolls.

Mr. Speaker, these are just a few of the provisions in this historic legislation, and I commend the bipartisan negotiators who worked hard through many long days and nights to bring us to this conference agreement today.

I especially want to recognize my colleague, the gentleman from Columbus, OH, Mr. JOHN KASICH for his steadfast leadership in the fight to achieve a balanced budget over the years. Back in Ohio, we are so doggoned proud of Chairman KASICH that we could bust. Not only him, but all the negotiators that came up with this agreement are national heroes.

Mr. Speaker, we have the opportunity today to begin a new chapter in our Nation's history. Let us seize it. Let us grasp this once-in-a-lifetime opportunity. Vote for this rule. Support the conference report.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Speaker, let us make no mistake on what we are about here today; the cuts we are about to adopt today, with precious little debate, are to finance the tax cuts of tomorrow. There is a direct and irrefutable relationship. So the cuts in Medicare, the cuts in veterans' benefits, the cuts in Social Security Administration costs, are to finance tax cuts tomorrow. Tomorrow perhaps we will get the debate on the merits of the tax cut.

The point is, earlier the esteemed chairman of the Committee on Rules responded to my earlier statement saying, well, so the gentleman has not had time to read the bill. So there is only one copy. Now it is on the Internet. That is great. But he said earlier, he said, he should just rely on the judgment of some of his colleagues. Can he not follow them?

□ 1300

First off, I doubt that they have had an opportunity to read the entire bill.

And secondly, no, I did not check my brain at the door when I got elected to Congress. I do not hand my voting card to anybody else. And to say that, well, the Democrats were abusive so we should not give them adequate time to read and review the bill, so we are going to do the same thing, I voted against those reconciliation bills when we had a Republican President and a Democratic Congress, and they kept shoving them through here and we did not have to read them.

I even signed a pledge never to vote for another one unless we were given a minimum of 24 hours to read it. No one has been given 24 hours to read however many thousand pages there are, and I do not know, because there is no index and it is not numbered. But it is probably a couple of thousand pages. Makes amazing changes.

I would ask the gentleman if he is particularly familiar with the cuts in veterans. We have an aging veterans population, and by the year 2002 we are going to see a reduction of $4.1 billion in veterans benefits in the year 2002 to achieve this theoretically balanced budget or, if one wanted to be more cynical, to finance tax cuts for the wealthy, a 19-percent cut.

How is it we are going to reduce veterans benefits with a dramatically aging veterans population, not just the World War II people and the Korean war vets, my own generation, the Vietnam generation, is beginning to develop aging problems. We cannot do it. It will not work.

We are not going to debate those veterans provisions here on the floor. We are not going to debate the merits of them. We are not going to be given time to even examine them. It took me a while to find them in this pile.

Let us talk about the Social Security administrative costs. Social Security is underfunded for administration, and it is paid for out of the trust fund. It is paid for out of the trust fund, yet we are going to cut Social Security administrative costs by 25 percent. So the next time that your mom or dad or your grandparents or the gentleman from New York [Mr. SOLOMON] in a few years tries to find out what has happened to their Social Security check, they are going to be put on indefinite hold. Right now it takes 3 months on the average to process a claim.

Under this legislation, it is going to take 6 months or 9 months, and with an aging population, who knows how bad it will get?

These are not the places to cut the budget. They are not fair cuts. In fact, I do not believe these cuts will ever be made. In fact, under this bill the deficit gets larger next year for the first time in 5 years. Is that not ironic? We are going to balance the Federal budget, but the deficit has been going down since 1992. Under this for the first time since 1992, the deficit goes on.

Mr. SOLOMON. Mr. Speaker, I do not know whether the gentleman is a veteran or not, but I am a veteran. I am a member of the AARP. Half of the AARP are made up of veterans and their families and they support this bill, as I do very, very strongly.

Second, if you read the bill, spending on veterans programs will rise each year with outlays increasing from 39.4 billion in fiscal year 1997 to 42.4 billion in fiscal year 2002.

Mr. Speaker, I yield 1½ minutes to the gentlewoman from Connecticut [Mrs. JOHNSON], a very respected member of the Committee on Ways and Means.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I rise in strong support of the rule and of this budget. Together the budget and tax package we will pass this week demonstrate that hard work and able, commonsense leadership can balance the budget, cut taxes, and address critical unmet needs of our people responsibly and effectively.

With this budget we have won a great victory for our children. Three months ago people said Congress would not take action on children's health insurance this year and we are proving them wrong today. In this budget agreement we set aside $24 billion for a children's health insurance program under a law that allows States to structure their program to effectively reach the uninsured children of working parents. Six million kids from working families, families who need and deserve our help, will get that help to ensure that their children will have the health care that they need. We have worked long and hard, and millions of children will lead healthy lives as a result of our bipartisan efforts today. This Congress should be proud of its accomplishments. There is no higher priority than protecting the health of our children.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. GUTIERREZ].

Mr. GUTIERREZ. Mr. Speaker, it is interesting to see so many of my colleagues so eager to vote on this spending bill. They are excited. They cannot wait. And I know what it feels like. I know what it is like to vote for a deficit reduction package, to vote for a bill that puts our fiscal house in order.

I already cast my vote that makes a balanced budget a reality. None of my colleagues on the other side of the aisle have ever done so. But I already did it. Did I sneak onto the floor last night to cast that vote? Or is it true what they say about Chicagoans, that we vote early and often?

Mr. Speaker, I cast that vote 4 years ago in 1993. I passed and voted for the largest deficit reduction package in U.S. history. It was a package that represented fairness, demanded shared sacrifice in the name of common good asked those of us who were doing well to share in the burden. Unfortunately those principles that just 4 short years ago appeared to be antiquated, out of style, and politically unpopular today, it was a package that passed without the vote of a single solitary member of the Republican Party. In fact, rather than standing with us in 1993, they stood and they jeered and they taunted us who voted for it. And yet look at the facts.

It is only thanks to what we did in 1993 that we can even consider this package today. You see, I hear a lot of my colleagues slapping each other on the back congratulating each other for doing something historic. Let me tell my colleagues about historic deeds and the people who were responsible for them, our veterans, men and women who fought for our country. And what does today's historic agreement mean to them? It means $2.7 billion in cuts to the VA medical services, $4.1 billion in cuts in total.

It means under this bill a low-income veteran who took a bullet or two at Iwo Jima or in Vietnam has to make another sacrifice to help an investor who wants to take a profit on Wall Street. It tells a veteran: You saved us from fascism in World War II; I hope you saved up some money, too, to pay for your health care; you are going to need it, now in your seventies and eighties.

Vote against this rule and these spending cuts.

Mr. MOAKLEY. Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin [Mr. OBEY], ranking member on the Committee on Appropriations.

Mr. OBEY. Mr. Speaker, I very badly wanted to vote for this budget deal. I had expected I would be able to because I thought that the White House would hold out long enough to have a package that would truly be fair to average working Americans, and I am sorry that they did not do that.

I support three-quarters of this deal. I support the child tax credit. I was one of the original four sponsors of that proposal with Vice President GORE when he was then in the U.S. Senate. I am a sponsor of the education tax breaks because I believe in them deeply. I support the children's health care package. There is much that is going to be good in this deal. But there are certain standards that must be met when we are talking about distributing almost $600 billion of the people's money.

First of all, most of that relief should go to middle-income working families, not the economic elite of this country. Second, this bill should be used to close rather than widen the gap in income between the wealthiest 2 percent of the people in this society and everybody else.

Third, this should prevent the unraveling of Medicare and, last, it should not cripple the long-term investments necessary for our country to grow in the future.

These bills fail those tests. The most well off 5 percent of people in the country, as demonstrated by this chart, the most well off 5 percent of the people in this country, those who make $112,000 a year or more will gain six times as much tax relief in these bills as the 60 percent of the American people, well over a majority, who make less than $37,000 a year. That is not fair.

The wealthiest 1 percent of people in this society who make more than $250,000 a year will get a $16,000 tax cut under this proposal. But if you make under $19,000 a year, on average you will have a tax increase. That is not fair.

This package is also based on the assumptions, as have been indicated in the past, that we will cut the Social Security administration by 25 percent over the next 5 years. We already have a 3-month backlog now in handling Social Security cases.

Do we really believe Congress is going to vote for a package that will extend that waiting period for a year? We are told that we are supposed to cut health care by 16 percent over the next 5 years. The bill which will come to the floor later today for this year is going to raise National Institutes of Health spending by 6 percent. Are we really going to vote to raise it this year and then to cut it by 16 percent in future years? Come on. I cannot believe this House would be that dishonest.

Are we really going to vote to cut veterans benefits by 19 percent over the next 5 years? I cannot believe we would be that ungrateful.

Are we really going to vote to cut community development programs by 30 percent? Seventy percent of the funding to the community development block grant program or to FEMA for emergencies? We just raised the budget for FEMA. Are we really going to cut it 30 percent? Come on. Get real.

Are we really going to cut agriculture programs 23 percent over the next 5 years? Not if you come from agricultural districts, I will bet my colleagues. But those are the promises upon which this deficit reduction package is based. Those are false promises. I do not believe a majority of Members of either party will vote for those kinds of reductions when the time comes. That means the reality of this package in terms of the deficit is that we will be causing upward pressure, not downward pressure on the Federal deficit.

I am sorry about this today. I am sorry that we do not even have the chance to further examine this package. It is a national disgrace to make decisions over the future content of the Tax Code, to make decisions which will determine for 5 years or more what happens to people's pocketbooks, what happens to their education, what happens to their veterans benefits, it is unconscionable that that is going to be made without having at least 5 hours to review what is in this package. Who knows what other special gimmicks are wrapped into this package. Vote against this rule. Vote against these bills tomorrow. You do not know what is in them and you will come to regret what is hidden from the public in all of these packages.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Speaker, in 1 minute I do not have time to answer all of the charges by the last speaker.

I would point out that we are dealing with a tax cut of about $90 billion. About $70 billion of that $90 billion over the next 5 or 6 years goes to a $500-per-child tax credit for families that earn less than $110,000.

But I want to answer the charge that people have not had time to look through this bill. Here is the Medicare bill. It is not like this was just dumped on people's doorsteps last night. It is 95 to 98 percent of this bill that has been out there for weeks. This was what the House and the Senate passed. The great majority of this bill was agreed to weeks ago by the administration, and the House and the Senate.

Yes, there were some differences and in the last couple weeks there has been ample newspaper and news coverage of how we have come to a resolution on some of those contentious issues. I am very interested in this issue. So for those last final remaining items that were in dispute, all we have to do is look in those sections and know what is in the bill. For those who are interested in housing or veterans, the same thing applies.

Mr. SOLOMON. Mr. Speaker, I yield 1 minute to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. Mr. Speaker, I thank the chairman of the Committee on Rules for this time.

I again rejoice for this debate on the House floor because once again it points up some very important differences. I listened with great interest to the ranking member of the Committee on Appropriations essentially call this exercise, and I believe I am using his words accurately, "a national disgrace."

□ 1315

Mr. Speaker, I do not believe it is a national disgrace to allow hard working people to hang onto more of their own money and send less here to Washington. I do not believe it is a national disgrace to allow for the reduction in the overall growth of spending, to make sure we save and preserve programs for Americans.

That is what we are doing with this Balanced Budget Act, as we work to preserve Medicare into the next generation, as we preserve veterans' benefits, as we work to make sure that this Government takes less money out of the pockets of working Americans, to allow them to keep more of their money to save, spend and invest as they see fit.

The fact that over 70 percent of these tax cuts go to families making under $75,000 is not disgraceful, it is the truth, and it is good for the American people.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the gentleman from Claremont, CA [Mr. DREIER], the vice chairman of the Committee on Rules, one of the most distinguished and respected Members of this body.

Mr. DREIER. Mr. Speaker, I thank my friend, the gentleman from New York [Mr. SOLOMON] for yielding me this time.

It is very clear Bill Clinton will, by virtue of supporting this measure, be leaving one of the greatest Republican legacies in recent history, and we are very proud to be able to play a strong role in bringing that opportunity about.

This debate that has been going on has to do with whether or not Members have utilized Speakernews.House.Gov. When I last stood here, I said that it was on line. Obviously, I was a real visionary. It was about to be on line, and it now is there and available.

I did speak a little too soon, but the fact of the matter is virtually everyone has been following this debate. The Democratic Caucus and the Republican Conference have been discussing this measure for a long period of time. We have had hearings, we have had debates on these issues for years in some cases.

I am particularly proud of several of the provisions that are included in this balanced budget agreement. One of them includes 390,000 demonstration cases for medical savings accounts. As we were discussing this up in the Committee on Rules earlier this morning, I mentioned the fact our former colleague French Slaughter and I, 12 years ago, introduced legislation called the health care savings account.

It was modeled after a package put together by the Center for Policy Analysis in Dallas, TX, and it actually was designed to be a successor to Medicare, because even more than a decade ago we were looking at the problems of Medicare and pursuing the idea of health care savings accounts. So I am hoping that these 390,000 demonstration cases will be a real plus and a benefit as we look at baby boomers moving toward retirement and the health care costs for retirees.

One of the other provisions that I think is very important is what is called the Disproportionate Share Hospital funding formula, known as DSH. It is not perfect from the perspective of a Californian, but I believe it goes a long way toward addressing a number of the very important concerns.

Mr. Speaker, I also want to point to this issue, which a number of us have

been very sensitive to, specifically on our side of the aisle the gentleman from Florida [Mr. DIAZ-BALART], the gentlewoman from Florida [Ms. ILEANA ROS-LEHTINEN], and a number of us from California, and that has to do with legal immigrants who could conceivably be thrown off of SSI. I believe as we look at the fact that a legal immigrant clearly is to have a sponsor, we did not want to see those who were elderly or infirm in any way jeopardized. This agreement addresses that.

Most important, it gets us right on to that glidepath toward a balanced budget, and I believe we have a very, very good opportunity to do that. That is why this is a great day for both the Republican and the Democratic Parties and all of the American people, and I urge strong support of the rule and then support for this package, and tomorrow the greatest tax cut that we have had in 16 years. I anxiously look forward to supporting that.

Mr. MOAKLEY. Mr. Speaker, I yield myself the balance of my time.

If the previous question is defeated, Mr. Speaker, I will offer an amendment to increase the debate time to 3 hours. Everybody is calling this measure an historic agreement. With only 90 minutes of debate, Mr. Speaker, there will not be much of an historical record.

Republicans refuse to give us sufficient time to read it; they should at least give us time to discuss it. So I ask that my amendment be printed in the RECORD immediately before the vote on the previous question, and I urge my colleagues to vote "no" on the previous question so that I may offer that amendment.

Mr. Speaker, I insert the following for the RECORD:

Amendment to be offered by Representative JOHN JOSEPH MOAKLEY if the previous question is defeated: At the appropriate place in the resolution, strike "ninety minutes" and insert "three hours."

Mr. Speaker, I yield back the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield myself the balance of my time.

Earlier in the debate I mentioned that Ronald Reagan and this Member of Congress used to be John F. Kennedy Democrats until the Democrat Party abandoned Kennedy's principles and moved so far to the left.

I vividly recall back in 1962 that President John F. Kennedy, in introducing his tax cut plan to the American people, he, President Kennedy, stated, and this is a quote, "Prosperity is the real way to balance the budget. By lowering tax rates, by increasing jobs and incomes, we can expand tax revenues and finally bring our budget into balance."

President Kennedy was right then and the bills before us today are right also. Members should come to this floor, cast their vote to cut taxes, to cut spending, to balance the budget, to save Medicare and, most of all, to shrink the size and the power of this Federal Government.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore (Mr. BOEHNER). The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MOAKLEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of agreeing to the resolution.

The vote was taken by electronic device, and there were—yeas 226, nays 197, not voting 11, as follows:

[Roll No. 343]

YEAS—226

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Brady
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Cook
Cooksey
Cox
Crane
Crapo
Cubin
Cunningham
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Foley
Fowler
Fox
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Greenwood
Gutknecht
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Livingston
LoBiondo
Lucas
Manzullo
McCarthy (NY)
McCrery
McDade
McHugh
McInnis
McKeon
Metcalf
Mica
Miller (FL)
Molinari
Moran (KS)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Riggs
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Shimkus
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stump
Sununu
Talent
Tauscher
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traficant
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (FL)

NAYS—197

Abercrombie
Ackerman
Allen
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Berman
Berry
Bishop
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Cummings
Danner
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fazio
Filner
Flake
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (WI)
Johnson, E.B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McDermott
McGovern
McHale
McIntyre
McKinney
McNulty
Meehan
Meek
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran (VA)
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pickett
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sánchez
Sanders
Sandlin
Sawyer
Schumer
Scott
Serrano
Sherman
Sisisky
Skaggs
Skelton
Slaughter
Smith, Adam
Snyder
Spratt
Stabenow
Stark
Stenholm
Stokes
Strickland
Stupak
Tanner
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Towns
Turner
Velázquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOT VOTING—11

Blagojevich	Forbes	McIntosh
Bryant	Gonzalez	Schiff
Fattah	Houghton	Young (AK)
Foglietta	McCollum	

□ 1339

Mrs. KENNELLY of Connecticut changed her vote from "yea" to "nay."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. BOEHNER). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF JOINT RESOLUTION WAIVING CERTAIN ENROLLMENT REQUIREMENTS WITH RESPECT TO TWO SPECIFIED BILLS OF 105TH CONGRESS

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 105–219) on the resolution (H. Res. 203) providing for consideration of a joint resolution waiving certain enrollment requirements with respect to two specified bills of the 105th Congress, which was referred to the House Calendar and ordered printed.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 408. An act to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

□ 1345

CONFERENCE REPORT ON H.R. 2015, BALANCED BUDGET ACT OF 1997

Mr. KASICH. Mr. Speaker, pursuant to House Resolution 202, I call up the conference report on the bill (H.R. 2015) to provide for reconciliation pursuant to section 104(a) of the concurrent resolution on the budget for fiscal year 1998.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. SOLOMON). Pursuant to House Resolution 202, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of July 29, 1997.)

The SPEAKER pro tempore. The gentleman from Ohio [Mr. KASICH] and the gentleman from South Carolina [Mr. SPRATT] each will control 45 minutes.

Mr. SPRATT. Mr. Speaker, I yield 15 minutes to the gentleman from Washington [Mr. MCDERMOTT] and ask unanimous consent that he be permitted to yield that time to Members on my side in opposition.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Ohio [Mr. KASICH].

Mr. KASICH. Mr. Speaker, I yield myself 1 minute. This obviously is the beginning of a very important debate and the beginning of a very exciting 2 days. We bring before the House today and tomorrow the first real budget in real terms with real savings starting immediately, for the first time adding up to a balanced budget for the first time since Neil Armstrong, a great American and fellow Ohioan, walked on the Moon. It will also be the first tax cuts to provide jobs and to help families for the first time in 16 years.

Mr. Speaker, I know there are a lot of people out there that still think that this is all being done with disappearing ink, but at the end of these 2 days and upon the signing of the President of the United States, we should have a deal that commences the era that recognizes the limits of Government and begins to transfer power, money, and influence from this city.

Mr. Speaker, I yield 3 minutes to my young protege the gentleman from Wisconsin [Mr. NEUMANN], a member of the Committee on the Budget.

Mr. NEUMANN. I thank the gentleman for yielding me the time.

Mr. Speaker, this truly is a great day for America. What an exciting thing to be a part of out here. The first time since 1969. I was a sophomore in high school, the first time since I was a sophomore in high school, 1969, that we are actually going to balance the Federal budget. It is about more than words. It is about the hopes and dreams of the children in America today and the restoration of their opportunity to live the American dream. That is what this is all about today.

In 1995 the American people. And they should get credit for this, too, the American people had a mandate. The mandate was get us a balanced budget, get the tax burden off our back and restore Medicare for our senior citizens. Between today and tomorrow, we are going to make good on all three of those points.

To the gentleman from Ohio [Mr. KASICH], the chairman of the committee on the budget, to the gentleman from Georgia [Mr. GINGRICH], the Speaker, to the folks on the other side of the aisle that were so actively involved and the rest of the Republican leadership team, and all the Members and my colleagues here, this truly is a tribute to what can be done if we work in a bipartisan way for the good of the future of this great Nation that we live in.

I think we need to look at why this is happening. It is equally important as the fact that it is happening. When we came here in 1995, we had a vision for a different America. We had just gone through the tax increases of 1993, and the American people rejected those tax increases. In 1995, we came here with a new mission. The mission was to curtail the growth of Washington spending. Spending had been growing by 5.2 percent a year before we got here. It has been curtailed to 3.2, a 40 percent lowering of the growth of Washington spending. That means Washington spends less, so they borrow less. When they borrow less, there is more money in the private sector, so the interest rates stay down and this is where it gets out of Washington and back to America. When the interest rates stayed down, people could afford to buy houses and cars, and when they bought houses and cars, somebody had to build them. So that meant job opportunities. And all of a sudden, the opportunity to work hard and live the American dream is back available to the American people. It is the right way to go about doing this.

What a great opportunity we have here today. For our senior citizens, they can go to bed tonight resting assured that Medicare has been restored for them for at least a decade. That job is done. For the people in the work force, tomorrow we will pass the first tax reduction in 16 years, 16 long years, and for the first time that tax burden on American families, on American workers, it is about to come down. What a great 2 days this is going to be.

Most important of all, for the children in America today, for our children and for our grandchildren, for the first time since 1969, the people in this Congress are going to do the right thing for the future of this country. We are no longer going to continue the practice of spending more money than we have. We are going to fulfill the mandate of 1995 and balance the budget. For seniors, Medicare has been restored. For workers, taxes are coming down, and for their children the future is once again secure in this great Nation that we live in.

The SPEAKER pro tempore. Without objection, the gentleman from Connecticut [Mr. SHAYS] controls the time on the majority side.

There was no objection.

Mr. SPRATT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is the last station on the track. The train leaving here will take us to a balanced budget. But I would never let the occasion to open up pass without recalling exactly why we are here, what brings us to this point where we can say credibly that we are within reach of a balanced budget.

I have to take us back to 1993. George Bush was about to leave office. January 13. He filed his Economic Report of the President, and in it he predicted that the deficit for that fiscal year would be $332 billion. That was the deficit that President Clinton found on the doorstep awaiting him when he arrived at the White House 1 week later. On February 17, he laid on the doorstep of the Congress a plan for dealing with that deficit.

I would take exception with the gentleman from Wisconsin who said this is the first time we will begin to stand up to this problem. We stood up to it in 1993. We passed that deficit reduction bill by the skin of its teeth, and the deficit went down in 1994 to $203 billion, in 1995 to $164 billion, last September 30 when we closed the books on fiscal year 1996, the deficit was $107.8 billion. Five fiscal years in a row, because of that legislation, the deficit has come down.

This year, according to today's predictions, this year when the books are closed on fiscal year 1997, the deficit should be less than $50 billion; almost certainly it will be. It will probably be less than $40 billion. We have come from a projected deficit of $332 billion in 1993 to an actual deficit in 1997 of about $40 billion. That is phenomenal progress. It is the reason we are here, the reason we are about to claim victory, because of the foundation that has been laid since 1993. The deficit has been brought down by 80 percent.

Nevertheless, when we started this session of Congress with a divided government, the House and the Senate held by Republicans, the White House held by a Democrat, it was not clear at all that in a divided government we could mount this effort to finish the job, balance the budget and say we had finally achieved victory. We did it. We are here today because the President leaned into the problem, he called the Republicans to negotiate, and they responded earnestly, in good faith. We sat down to talk, then to negotiate, and finally to hammer out the elements of an agreement which took months and months to accomplish.

That agreement, when it came to the floor in the form of our budget resolution, drew big support on this side of the aisle. One hundred thirty-three Democrats, if I recall correctly, voted for it. That is a margin of nearly 2 to 1.

But when the budget resolution was put out to the committees of jurisdiction, it picked up all kinds of unwanted baggage, controversial, contentious things from medical malpractice to multiple employer welfare arrangements, things that we not only did not support, we had resisted and fought for years. As a consequence, we lost traction on this side. A number of Members simply said they would not vote for the bill with those things in it.

I stood here in the well of the House and said I am going to bet on the come. I am going to bet we can go back to conference and recapture that bipartisan agreement that built the agreement in the first place and bring both parties back together behind an agreement, a genuine budget agreement that deserves the moniker, deserves to be called a bipartisan budget agreement. I can say to my colleagues on this side of the aisle today, I think we have succeeded to an extent that I was not sure at all when I cast that vote we would succeed.

There are more successes by far than setbacks as a result of this conference. We call this a deficit reduction act but we need to remind ourselves that what we have here is more than just a deficit reduction bill. What we have hammered out in this bill is a plan to balance the budget over 5 years, yes, but it is really more than that. We have not been so caught up, so fixated on balancing the budget that we forgot that the country has got other problems, too. We are wiping out the deficit but we are also doing more than has been done in years to see that all Americans have the opportunity to obtain higher education. We are taking down the deficit but we are also taking steps to see that children in working families have medical insurance. We hope to reach at least 5 million of them as a result of this bill. We can all be proud of that.

We are lowering the cost of Medicare and Medicaid because Medicare is the biggest spike in the budget, the fastest rise. Yet not only are we protecting beneficiaries, we are actually making the program solvent so that they do not have to worry about its solvency for 10 years; but we are adding $4 billion in preventive care benefits for things like annual mammograms, and in time I think they will more than pay for themselves.

There are still provisions in this conference agreement that I do not like. I wish they were not there. They will be hard to swallow. No doubt there are many on my side who will find many other things in this agreement to which to object. But on the whole, I think what we have achieved here accomplishes far more than we on our side as Democrats could ever have achieved without a bipartisan compromise. I am satisfied with the outcome, and I plan to vote for the conference agreement today, and I encourage my colleagues, particularly those on this side of the aisle, to do the same.

□ 1400

Mr. MCDERMOTT. Mr. Speaker, I reserve the balance of my time.

Mr. SHAYS. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. THOMAS], the chairman of the Committee on House Oversight, a senior member of the Committee on Ways and Means and chairman of its Subcommittee on Health.

Mr. THOMAS. Mr. Speaker, I want to start off by complimenting everyone.

We have a portion of the balanced budget bill in front of us, and it is amazing what has occurred in a relatively short period of time in terms of everyone's reaction to making changes in the Medicare portion of the package.

One of my favorite old songs is a song by Dinah Washington: What a Difference a Day Makes. What a difference a year makes, what a difference a willingness to sit down and fundamentally address the problem makes as well.

I am very pleased to say that my ranking member, friend, and colleague from California [Mr. STARK], and his chief of staff Bill Vaughan have been with us on this journey from the beginning, through subcommittee, full committee and during conference to make sure that although at times they may not have been in agreement with what we were talking about doing, they were at least informed. And I cannot help that the gentleman's President did not do what he believes he should have done during the conference.

I want to thank not only the gentleman from Ohio [Mr. KASICH], the chairman of the Committee on the Budget, and the gentleman from Texas [Mr. ARCHER], the chairman of the Committee on Ways and Means, but the members of the subcommittee on Health of the Ways and Means Committee who worked long hours to make sure on a bipartisan basis they understood not only what needed to be done, but just as importantly what could be done, and I think the package we have in front of us today, with the able help of the staff headed by Chip Kahn, is the most fundamental reform in the history of Medicare.

I know we have some friends on the other side of the Capitol who are disappointed that we did not go farther, but we have to appreciate how far we have gone. Oftentimes we judge ourselves by our failures rather than our successes.

Before we started this process we had a Medicare system which was a fee for service when someone who was sick. When this measure is signed by the President, we will have a Medicare which is a preventive and wellness structured Medicare. It will provide choices for seniors that are available in the general health area. It provides, as was indicated, a preventive package which will be expanded, when science tells us to expand it and not politics. It provides opportunities for choice over a broad spectrum so that people do not have just one other option, they have a number of options, and to help them in those choices we have a handsome educational package long overdue.

So I am here basically not to talk about what is in the bill, but to thank

all those people who worked with us to put together a Medicare package in which no one will be afraid to run on in the next election. We will all embrace it and say this is a handsome first step, obviously we need to do more, we have a commission built in to do more, but before that commission even triggers we are going to sit down and continue to build a Medicare Program which is based upon prevention and wellness. The seniors deserve nothing less.

Mr. McDERMOTT. Mr. Speaker, I yield myself as much time as I may consume.

The gentleman from South Carolina has said that the budget deficit has been reducing, begun by the Democrats in 1993, and it would be balanced within a year or so without this whole exercise. So make no mistake, what we are doing here is making cuts in this bill in entitlements in order to give tax breaks tomorrow. Today, if today did not happen, tomorrow would not and could not happen.

Now as I see it, this issue of Medicare is the reason I will vote against the bill because it is a sugar-coated poison pill, it will taste good going down, everybody will say, well, we are saving Medicare, but there is no question in my mind that the social insurance principles on which Medicare was created are being eroded in this bill. Rather than strengthen the program, which everyone says they are doing here today, the bill creates a multitiered Medicare Program, one for the super rich, one for the rich, and one for the rest of the folks.

Now in Germany when they did that in their health care program, if someone wants to opt out of the system, as this bill will now allow seniors to do, they can never come back. But our wisdom in this body did not say we will not let people back. We will let them go out, take advantage of the system, game it in every way possible, and then when the problem comes they can jump back into our system. It creates incentives for for-profit health care plans to siphon off America's healthy and wealthy seniors and leave the rest of the problem for the Federal Government. In my view, that is in the long term not good for the country.

Now also in the area of health care is the reduction in the DISH payments. For those listening who do not understand, DISH means disproportionate share. It is those hospitals that take care of a disproportionate share of people who do not have health care insurance. We have 44 million Americans. Not one single one of them is better off because of this bill, because they are not getting insurance in it. We are taking away the money that the hospitals use to cover those people when they show up at the emergency room in a crisis. And my view is that the city hospitals and the rural hospitals of this country within 2 years will all be in serious problems because of the reductions we have made in the disproportionate share payments.

For that reason I think we should not be passing this bill, we do not need to make tax breaks tomorrow, the American public is not clamoring for tax breaks, especially tax breaks where 50 percent of them go to people making $109,000 or more, and yet we rush forward here today to make these cuts in Medicare and the service that we provide through the disproportionate share payments.

Mr. SHAYS. Mr. Speaker, I yield 1½ minutes to the gentlewoman from Texas [Ms. GRANGER], the former mayor of Fort Worth and a member of the Committee on the Budget.

Ms. GRANGER. Mr. Speaker, I am pleased to rise in strong support of this historic bipartisan agreement to balance the budget.

This proposal we consider today is more than a blueprint to balancing the budget. It is a blueprint to building the future. This budget is not about numbers or theories. It is about people, real people with real dreams for themselves and for their children, for their parents. We owe them, we owe our constituents a budget that balances just like they have to balance themselves. We owe our children a nation that is debt free, and this balanced budget cuts off the flow of red ink for the first time since 1969; that will be 30 years ago.

We owe our working young parents access to the American dream of more jobs and home ownership. This balanced budget will create more than 4 million new jobs and reduce the cost of a typical new home by more than $30,000. We owe our parents and our grandparents a Medicare system that takes care of them if they become ill, and this balanced budget will protect Medicare and let us keep our commitment to our seniors. And finally, we owe the American people something more important and much more profound. We owe them our word.

The balanced budget agreement ends 28 years of promised balanced budgets and broken promises. Twenty-seven years, 5 Presidents and 14 Congresses have not balanced our budget. If we pass this budget today, the 105th Congress will be different. Today we can say to the American people, promises made, promises kept.

I urge my colleagues to support this historic agreement to balance the budget for our children, our working parents and our seniors. We now have a blueprint, so let the building begin.

Mr. SPRATT. Mr. Speaker, I yield 1 minute to the gentleman from Maryland [Mr. CARDIN].

Mr. CARDIN. Mr. Speaker, first I want to concur in the comments that the gentleman from South Carolina [Mr. SPRATT] made a little earlier, and that is we need to look first to 1993, to the Deficit Reduction Act that was passed under the leadership of President Clinton and the Democrats in Congress, for why we are able to reach this point today. I am very pleased that the final chapter we are doing in a bipartisan manner, the passage of these two bills.

There are many reasons to support it. We are at last going to have a balanced budget, and we are going to protect the priorities that are important for the future growth of this Nation.

Let me just mention some of the specifics that are in this bill for why the Members should support it:

First, the Medicare, we are providing for 10-year solvency, additional solvency of the Medicare system, improving benefits to our seniors in preventive health care and access to emergency care. Our academic centers will be getting some badly needed relief to make sure that we have excellence in health care in this country. Twenty-four billion dollars to expand health care for our children.

This bill acknowledges the special needs of Amtrak and capital involvement, and the welfare bill from last year has changed to provide more resources for welfare to work and to remove some of the punitive aspects against legal immigrants.

It is a good bill. I urge my colleagues to support it.

Mr. SHAYS. Mr. Speaker, I yield 1½ minutes to the gentlewoman from Washington [Ms. DUNN], an elected member of the Republican leadership and a member of the Committee on Ways and Means.

Ms. DUNN. Mr. Speaker, today we take a historic step in reducing the size of Federal Government and providing for a balanced budget in 5 years. We are building a path to the future that restores both hope and opportunity for all Americans. Today and for the future we are dramatically changing the fiscal direction of our country from a path of out of control growth of Government to a path of sustained expansion of the economy and job creation.

Achieving a balanced budget will provide lower interest rates, higher productivity, improved purchasing power for all Americans, more exports and accelerated long-term growth. It will also, we believe, revive the possibility once again for the American dream. Americans can once again look toward their children having the chance to do better than they.

Our balanced budget is about more than just accounting and tidy bookkeeping. Budget deficits sap private investment, they drive up interest rates and they provide that the service on the national debt is a cost to the average taxpayer of $800 in 1 year in taxes.

Mr. McDERMOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, with this bill we can embark on a new and responsible

course by balancing our Nation's budget by restoring hope, confidence and opportunity. This balanced budget agreement is the first in a generation. It represents GOP ideals, and it shows that a Republican majority at the helm in Congress can and will deliver on its promises.

Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BENTSEN].

Mr. BENTSEN. Mr. Speaker, I believe this is a good blueprint to get us into balance by 2002. We have to remember of course this is a blueprint, there are no guarantees, but we certainly all hope that that is the case if it does become law. It is also far better than what we saw in the 104th Congress.

Just for instance, if we look at Medicare and Medicaid, we are looking at reductions of $130 billion versus $450 billion that we saw in 1995 and 1996 that led to Government shutdowns. So we have come a long way; the largest increase in education since the Eisenhower administration and starting to address children's health care.

Now, let me address just a couple of issues very quickly in specifics. With respect to disproportionate share for Medicaid, I want to thank the gentleman from South Carolina [Mr. SPRATT] the chairman, the gentleman from Ohio [Mr. KASICH], my colleague from Texas [Mr. ARCHER], and the administration for fixing that program, ensuring that States like mine of Texas and 12 other so-called high DISH States are treated more fairly under this bill than they were when the bill left the House of the other body.

In addition, as the other gentleman from Maryland just spoke, we are finally addressing the needs of the academic medical centers, such as those in my district, by carving out and requiring the managed care companies to pay into medical education through medical education. This is a good compromise. I hope my colleagues will support it.

Mr. Speaker, I rise in support of this legislation to balance the Federal budget for the first time since 1969. What a difference 2 years makes. In 1995 and 1996, Congress was in stalemate over budgets that would gut Medicare, education, and environmental protection. Now after the American people rejected that approach, we have before us a bipartisan compromise that not only balances the budget, but improves and strengthens Medicare and makes necessary investments in the health and education of our children. This is the commonsense approach we should have been taking all along.

I especially want to thank the conferees and the administration for addressing one issue of special significance to my State of Texas, and that issue is fairness in the way cuts are made to the Medicaid Disproportionate Share Hospital [DSH] program. When I voted for this legislation on June 25, I did so with the commitment of Budget Committee Chairman KASICH, Budget Ranking Member SPRATT, and the administration that they would address this issue in conference. They have made good on their word, and I want to thank Mr. KASICH, Mr. SPRATT, the administration, Ways and Means Chairman ARCHER, my colleagues in the Texas Delegation, and the many others who have worked to return some equity to the way Medicaid cuts are carried out.

Under this agreement, no State will have its total Medicaid funding cut by more than 3.5 percent in any 1 year. I want to emphasize that no State will lose more money than it would have lost under the original House bill. This agreement is much more fair to Texas and the other 12 so-called high-DSH States that would have had their Medicaid disproportionate share funding cut by twice as much as other States, while some States had no cuts at all. High-DSH States would have had their Medicaid DSH funding cut by 40 percent in the year 2002, and Texas would have lost $920 million under the House bill and $1.15 billion in the even worse Senate bill.

While not perfect, this agreement is much more equitable. It restores Medicaid funds that Texas hospitals desperately need to provide basic health care to the poorest patients. This funding is especially critical to our public and children's hospitals, which have high Medicaid and indigent caseloads.

I also want to call attention to two provisions in the Medicare reform section of this legislation that I and other Members have advocated and that would greatly benefit our Nation's health care system. These provisions, which are similar to legislation I have introduced, will help ensure that senior citizens have real choice under Medicare and our Nation continues to invest properly in medical education at teaching hospitals.

The first provision would give senior citizens who choose a managed care plan the right to buy supplemental insurance, or Medigap, to pay for prescriptions, copayments, and other uncovered services if they return to traditional fee-for-service Medicare. Many seniors now fear that if they choose managed care they may be locked in forever. That is because, if they choose later to return to traditional Medicare, they may not be able to purchase Medigap. Current law requires insurers to sell Medigap policies to seniors only when they first enroll in Medicare. The agreement requires insurers to also sell Medigap to seniors who, within the first year of enrolling in Medicare managed care, decide to switch back to traditional Medicare, ensuring real choice in health care for seniors.

This agreement will also ensure that Medicare managed care plans help fund medical education in the same way as fee-for-service Medicare. Under current law, the Medicare Program provides extra payments to teaching hospitals based on the number of fee-for-service Medicare patients served at these hospitals. However, Medicare managed care plans are not required to make such a contribution, causing a funding shortfall as more senior citizens join managed care plans. This agreement includes a provision to carve out graduate medical education [GME] amounts from the Average Adjusted Per Capita Cost [AAPCC] payment to Medicare managed care plans and direct this funding, approximately $5 billion over the next 5 years, to teaching hospitals. This plan does not increase Federal spending; rather, it recaptures funds from the current Medicare managed care reimbursement formula so that all Medicare plans help pay for the cost of graduate medical education.

This agreement is an important step toward ensuring that our Nation continues to support its teaching hospitals in this era of managed health care. It will ensure stable, guaranteed funding to train future doctors and other health care professionals and conduct vital clinical research. This is an essential step toward ensuring that the United States continues to have the best health care system in the world.

Altogether, the Medicare provisions of this legislation will extend the solvency of the Medicare Hospital Insurance Trust Fund for 10 years, while providing more health care choices, consumer protections, and preventive benefits for our Nation's senior citizens. This agreement includes $4 billion to provide a package of preventive benefits for Medicare beneficiaries, including new or expanded coverage for mammography, pap smears, screening for prostate and colorectal cancer, diabetes self-management, and the diagnosis of osteoporosis. It increases the health insurance options available to Medicare beneficiaries beyond the traditional fee-for-service program to include the various managed care options generally available from private plans. And it includes important consumer protections for Medicare beneficiaries, including the Medigap protection I have already discussed. Other protections include provisions banning gag rules that restrict what Medicare managed care doctors can tell their patients; requiring managed care plans to have a grievance and appeal process to protect patient rights; and establishing a "prudent layperson" definition of an emergency to ensure patients are covered by Medicare when they seek care from emergency rooms.

Mr. Speaker, I also strongly support the important investments included in this agreement, especially in the areas of children's health and education.

This agreement makes a $24 billion investment in children's health, which will help end the national shame that 10 million children lack health insurance and access to basic health services such as immunizations and regular checkups. My State of Texas leads the Nation in the number of uninsured children—2.6 million Texas children lacked health insurance for at least a month over the past 2 years. This agreement will go a long way toward helping these children and their families. It will help more children get cost-effective preventive health care rather than more expensive care when they get sick.

I also applaud this agreement's investment in education, which is absolutely the right priority in our global, information-age economy. We must expand access to college because more and better education is needed to get ahead and earn a good wage in this economy. Together with the tuition tax credits in the tax reconciliation bill, this legislation makes the largest investment in higher education since the G.I. Bill in 1945. It includes the largest Pell grant increase in two decades; boosting the maximum Pell grant from $2,700 to $3,000 and expanding the program to more poor independent students.

This legislation is a bipartisan compromise that, like all compromises, requires each of us to accept provisions we may not support. But on balance, it is a good bill, a fair and fiscally responsible bill that makes necessary investments in our future. I urge my colleagues to support the Balanced Budget Act of 1997.

Mr. SHAYS. Mr. Speaker, I yield 1½ minutes to the gentleman from Oklahoma [Mr. WATTS].

Mr. WATTS of Oklahoma. Mr. Speaker, I am delighted to stand today in support of H.R. 2015, the Balanced Budget Act of 1997, because my wife and I have five wonderful, healthy, vibrant children, and this bill is all about them and all about their future.

□ 1415

After almost three decades of deficit spending, finally we see an end to this generation spending the resources that belong to future generations, to our children and to our grandchildren. Finally, we have taken the first step toward reducing our Nation's terrible debt.

Am I 100 percent in agreement with every provision in this bill? Of course not. No, not one Member of this body, Democrat or Republican, is in 100 percent agreement with every provision of this bill. But I am in 100 percent agreement with the fact that we have scored a major victory for our kids and for our grandkids.

We have gone from increasing taxes in 1993 $265 billion to reducing taxes by over $90 billion in this legislation. We have scored a major victory for the next generation of Americans. We have taken the first step toward passing on to them an America that is not crippled by debt or deficits, but liberated by a responsible government that lives within its means.

Vote today for America's kids. Vote today for America's future. Vote "yes." I encourage a yes vote, in favor of the Balanced Budget Act.

Mr. SPRATT. Mr. Speaker, I yield 1 minute to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN of Virginia. Mr. President, nice going; White House staff, nice going; the gentleman from South Carolina [Mr. SPRATT], well done; the gentleman from Ohio [Mr. KASICH], we have a good balanced budget agreement here.

The most important thing is that it is balanced not just in terms of dollars and cents, but in terms of priorities: A $900 billion reduction in deficit spending over the next 10 years, but the highest increase in higher education since the GI bill of 1945, the largest increase in children's health protection since Medicaid in 1965, more than 30 years ago.

We have got a $500-per-child tax credit for 27 million families. We have got entitlement reform. We have got a lot of the brownfields and empowerment zones tax initiatives, $3 billion for welfare to work initiatives. The fact is that speaking as a Democrat, the White House got what it wanted, which is our priorities—better education and health care for our children, tax fairness for middle class families, and an end to the legacy of debt we have been deferring to our children.

This bill deserves to be supported. It is a fiscally responsible bill, it is a bill that emphasizes our priorities. It is a bill that on both sides of the aisle we should vote for.

Mr. MCDERMOTT. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. STARK].

Mr. STARK. Mr. Speaker, I am having a little trouble. I guess I am the only person here who does not have both arms broken from patting myself on the back. I am having a little trouble understanding this bill.

Before I explain it, I want to take this opportunity to thank the chairman of the Subcommittee on Health of the Committee on Ways and Means, the gentleman from California [Mr. BILL THOMAS] for his open and fair manner in handling the Medicare portion of this bill, which, as the House originally wrote it, was quite good; but the Senate gooped it up and the White House caved to the Senate, so we do not have a very good Medicare bill.

But the fact is we have a lousy bill. We would have been better if we had stayed home. Look, the budget is going to balance next year without a bill. In this bill, it takes 5 years to balance. After it balances, we get deficits again. If we had no budget bill, we would balance and get surpluses. So I say to the Members, great job. They just stretch out the time and then give us more deficits.

Medicare, it is going to go to 2007. Hot dog. If we did not have a tax bill, we would have the money to take Medicare to 2022. So these geniuses have just cut 15 years off the salvation of Medicare. Good job again.

What about children's insurance? Super job. They are going to spend $2,500 bucks a kid to insure 2 million more kids, and if Members had let it alone and used that same money to put them into Medicaid, they would have had 5 million kids insured, so I thank the geniuses for the 3 million kids who are going to walk around without any health insurance due to this budget.

Here is the perfect example of government run amok. They have fixed everything. The Senate bill adds the Kyl amendment and others, which will, for the first time, allow doctors to charge Medicare beneficiaries an unlimited amount of money and basically kick them out of Medicare.

My heavens, how awful, to suddenly find that we are going to have Medicare live up to the Speaker's intention of withering on the vine because it is going to be a two-class system. Medicare beneficiaries will be able to be charged unlimited amounts for the rich. This is the country club health care relief act to end them all. Medicare costs are going to go up $1.5 billion to try out a medical savings account, which will only, again, help the wealthy and the healthy.

So as we go along, we have the right-to-life group who wanted to have this Medicare amendment that Senator KYL put in there, and it is useless. We were going to cut $100 million out of poor inner-city hospitals; save it, as we like to say. Where are we now? We are going to save $600 million out of inner-city hospitals, $500 million bucks more out of the poorest hospitals in every one of the Members' districts, those hospitals that help the needy and the indigent.

Mr. Speaker, this is a lousy bill. Vote "no." Go home and know you are going to be better off for not having a bill.

Mr. SHAYS. Mr. Speaker, I yield 1½ minutes to the gentlewoman from Kentucky [Mrs. NORTHUP], a new Member to Congress and a very important member to the Committee on Appropriations.

Mrs. NORTHUP. Mr. Speaker, it is a privilege to be here today. Before I comment on this balanced budget, I want to thank all of the people who have come before me that have kept the hope alive and the belief alive that it was possible to balance the budget, to cut taxes, to save Medicare, and to meet the emerging needs of our communities.

They were often ridiculed. They sat through years of where we raised taxes, where we spent more money, and they kept the hope alive for Americans that it was possible to change that course. They inspired me, and they inspired my community that this was a possibility. So for them, I thank them for the leadership and the lonely days they spent in this Congress.

Mr. Speaker, this bill says I love you to our children. For me, it is my six children: David, Katie, Joshua, Kevin, Erin, and Mark. For all the other parents who have children that believe that we should restrain our spending and pass on better opportunities to our children, that is what we are doing today when we vote for this bill.

It is a pleasure to be here. It is an honor to be a part of this. I think more than the numbers, more than what it does to interest rates, more than what it does to stop the bleed of red ink, it also helps to reestablish the faith and the trust that the American people have that this system of Government can address its needs, can come to an agreement, and can reflect what they have believed in so long. That is that we should balance our budget.

Mr. SPRATT. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. LEVIN].

Mr. LEVIN. Mr. Speaker, the basic principle of the Democratic Party has

been economic growth with equity. The 1993 Deficit Reduction Act was instrumental in promoting economic growth. Despite the overall growth, there were pressures on middle-income families, so this bill includes a child credit and also an educational tax credit and deduction. I support both bills.

Let me say a word about the piece that I worked most on, the human resource piece. I supported the Welfare Reform Act. People on welfare should move from welfare to work. But when the President signed the bill he pointed out several inequities. One related to legal immigrants. He promised to work to provide benefits to elderly and disabled legal immigrants who should not have been penalized in the first place. I joined in that promise. Today we are keeping that promise. It is a much better bill in that respect than when it left the House.

The President also promised to work for a welfare to work provision. We have kept that promise. There was an effort, though, in this House to penalize people who move from welfare to work, to treat them as second-class citizens, to withdraw them from the protections of Federal law in terms of wages, in terms of safety on the job.

We have today, in this bill, repelled that effort. People who work are to be treated as first-class citizens, without discrimination. We have also repelled the effort to withdraw from mostly elderly women the protections of maintenance of effort under SSI in terms of payments from the State. This is a bill that is a step in the right direction. I urge broad support for it.

Mr. SHAYS. Mr. Speaker, I yield 30 seconds to the gentleman from Washington [Mr. NETHERCUTT], a new member of the Committee on Appropriations and the Committee on Science.

Mr. NETHERCUTT. I thank the gentleman for yielding time to me, Mr. Speaker.

One of the many good reasons to vote for this bill, this legislation, is its impact on diabetes. This particular bill has a component, a prevention component relative to diabetes that will improve the health of all Americans with diabetes. There is also a special section entitled "Special diabetes programs for children with Type 1 diabetes." There is a funding for special diabetes program for Indians.

Diabetes is a very serious disease. The gentlewoman from Oregon [Ms. FURSE] and I are chairmen of the Diabetes Caucus. We have had great support in this body for the cause of diabetes and curing it. I am delighted to be involved in supporting this bill along with my colleague, the gentlewoman from Oregon.

Mr. SPRATT. Mr. Speaker, in order to complete the colloquy, I yield 30 seconds to the gentlewoman from Oregon [Ms. FURSE].

Ms. FURSE. Mr. Speaker, like my cochair, the gentleman from Washington [Mr. NETHERCUTT], I want to see that this budget contains good news for 16 million Americans, 16 million Americans who suffer from diabetes, including my own beloved daughter, Amanda. Thanks to my good friends, the gentleman from Florida, [Mr. BILIRAKIS], Mr. BROWN, and the 87 members of the Diabetes Caucus, we have put together a strong, bipartisan effort that will truly make a difference to the lives of people with diabetes.

I want to thank the gentleman from Florida [Mr. BILIRAKIS], who is the chairman of our committee, and all the diabetes organizations who worked so hard on this.

Mr. SHAYS. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. BILIRAKIS], a senior Member of Congress and the chairman of the Subcommittee on Health and Environment of the Committee on Commerce.

Mr. BILIRAKIS. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, it has been an honor for me to work with the gentleman, members of the budget conference and Committee on Commerce and Committee on Ways and Means members on historic legislation which will balance our Nation's budget for the first time, the first time since Neil Armstrong walked on the Moon, and at the same time reduce taxes, save Medicare and Medicaid, provide education and other family incentives and opportunities, and guarantees $24 billion to provide better health care for children.

In recent years many have said that we could not balance the budget and also reduce taxes. We have done that and more.

Regarding Medicare, we have saved the program for the next 10 years without hurting beneficiaries in any way. In fact, this legislation contains many worthwhile changes which greatly benefit the elderly. Our legislation gives seniors a choice of coverage through the new Medicare Plus Program, provides consumer protections, addresses fraud and abuse, and adds additional preventive health benefits. It also creates a commission to make recommendations on how Medicare could be preserved for future generations.

Regarding Medicaid, this legislation allows States to provide better and more cost-effective medical coverage for low-income people by giving States more flexibility. Under the children's grants, States will receive funds to initiate and expand health coverage and services to uninsured low-income children.

This bill, Mr. Speaker, must be judged on its merits, must be judged on its benefits to our constituents today, and to their future, and to the Nation and its future.

This legislation would not have been possible, Mr. Speaker, without the great work of staffers Howard Cohen, Eric Berger, Patti DeLoache, Ed Grossman, and others, many others, that put in many hours over the past several months, and I want them to know how much I and all Americans appreciate their efforts.

□ 1430

Mr. McDERMOTT. Mr. Speaker, I yield 1 minute to the gentleman from Chicago, IL [Mr. GUTIERREZ].

Mr. GUTIERREZ. Mr. Speaker, we are hearing the word "balance" a lot today. We applaud ourselves as we balance the budget. It is an important accomplishment, a difficult accomplishment to balance our budget. But I am afraid our Nation is losing its balance in a lot of other areas, like keeping our promises to our veterans who are facing cuts in this budget, like protecting our seniors who face an uncertain future because of this budget, like acknowledging the contribution of immigrants who are still targets for blame and discrimination in this budget, and like the simple idea of tax fairness that the wealthiest in our Nation should contribute a little more to our Treasury.

Our budget might be balanced, at least until the tax cuts explode again in the future. But we are creating a lot of new deficits. Deficits of keeping our promises. Deficits of fairness. Deficits of equity. Deficits of caring. These are the deficits I cannot support today, and that is why I will cast my vote against this budget.

Mr. SPRATT. Mr. Speaker, I yield 1 minute to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Speaker, I intend to vote for this bill, not because it is a perfect bill. Not because I agree with all that is in it. There is much that I do not agree with, but there is much more I do agree with. I think balancing our budget is important for our country. Some of the things I do agree is that we have made more provisions for education. We have made scholarships for those families who are going to college. We have made provisions to give tax relief for families with children. Also importantly, we have made provisions not to take away the working rights for mothers and those who are on welfare to make sure that they have the same opportunities as others in there.

Yes, there are things in this bill you wish were not in there. But there is also tax relief for farmers and small businesses which they critically need in my area and also tax relief for education. On balance it may not be perfect, but I think it is good for America. I intend to vote for it and I urge my colleagues to do the same.

Mr. SHAYS. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. ARCHER], chairman of the Committee on Ways and Means and the chief architect of this historic budget

agreement between the White House and Congress.

Mr. ARCHER. Mr. Speaker, I thank the gentleman for yielding me the time.

The conference agreement that we vote on today is a bridge, a bridge that reaches across to unite generations today and tomorrow. It saves Medicare for this generation of seniors, and it balances the budget so that we can save the next generation from the crushing burden of debt. It says that Washington has to change its ways so the American people will not have to change theirs. It tells the American people that Congress does not live by special rules. We will no longer spend more than we take in. The American people understand this.

They know they have to balance their family budgets each month. And so should we. Last year my 12th grandchild was born. When I went to visit him as a little premature baby, and I am happy to say he survived and he is home with his parents and doing well, I could not help but think that his pro rata share of the interest on the national debt during his lifetime would be $189,000, if he was an average income earner. That is unconscionable for our generation to leave to the coming generations. Today we do something about it. I say to Archer Hadley, my little grandson, this is for you.

Mr. SPRATT. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. DAVIS].

Mr. DAVIS of Florida. Mr. Speaker, I would like to highlight two portions of this conference report that lead me to support it today. The first is getting us to a balanced budget. The amount of interest that we are paying annually right now on the Federal deficit more than exceeds the total amount of income tax payments paid by every individual west of the Mississippi.

We need to get the budget balanced and then attack the deficit. This spending plan is accompanied by tax cuts that are paid for while we will still balance the budget. The White House succeeded in keeping those tax cuts affordable. That is terribly important.

Second, this budget agreement constitutes a massive reallocation of our resources into education. To encourage more of our high school seniors, more community college students, more university students to be the best they can be in school and to succeed in obtaining well-paying jobs for themselves and their families. Most importantly it will send another strong message to adults throughout our country to engage in a lifetime of learning, to go back to school supported by their employers or supporting themselves, to further their jobs skills, to broaden their job skills, to sharpen their job skills to prepare for the 21st century.

Mr. Speaker, I rise in strong support of H.R. 2015, the Balanced Budget Act, which will balance the budget within 5 years while at the same time protecting our Nation's commitment to our seniors, investing in health care coverage for children, expanding educational opportunities for students, and restoring fairness for thousands of legal immigrants.

Mr. Speaker, as a member of the Budget Committee I want to first commend my ranking member, the gentleman from South Carolina [Mr. SPRATT] for his hard work and dedication throughout these long negotiations. Without his leadership and his commitment to working with both the administration and the Republican negotiators, this agreement would not have been possible. Our Nation owes a debt of gratitude for all that he has done over the past 6 months.

H.R. 2015, the spending portion of the reconciliation package, is truly a historic bill—historic not only for what it does, but also for what it represents. This bill demonstrates a commitment by both parties to the principle that we should not be spending beyond our means; that we must not saddle our children and grandchildren with debt; and that we should balance the budget while protecting our Nation's spending priorities. Furthermore, this bill is an example of what bipartisan cooperation can accomplish. If we set aside the rhetoric and work together toward a common goal, we can find areas of agreement and compromises on those areas of disagreement. The result is truly a win for the American people. I hope the spirit of cooperation, embodied in this Balanced Budget Act, will continue when we return from our August recess and as we sit down to tackle other critical issues such as campaign finance reform.

Specifically, H.R. 2015 includes much needed entitlement reforms which would balance the budget in the near term and lay the groundwork for long-term reforms as the baby-boomers approach retirement.

The majority of the savings in this package are designed to preserve and strengthen the Medicare Program by extending the solvency of the trust fund for at least 10 years. The bill will expand choices for Medicare beneficiaries and protect low-income beneficiaries from premium increases. The Balanced Budget Act also invests $4 billion in preventive benefits to fight breast cancer, diabetes, and colon cancer through annual tests and screenings.

Additionally, the bill implements tough new antifraud provisions, many of which are identical to those I introduced earlier this year in the Medicare Anti-Fraud Act, H.R. 1761. With recent revelations over the amount of fraud and abuse in the current system, I believe these initiatives, such as requiring certain providers to post a surety bond, are essential to restoring the integrity of the program.

Furthermore, with respect to Medicare, this bill will establish a bipartisan commission to make recommendations on a comprehensive approach to preserve Medicare as the baby-boomers approach retirement. Clearly, we must take steps to address the pending demographic changes in the program and I hope Congress will approach the recommendations of the commission, due in March 1999, with the same bipartisan cooperation that has prevailed throughout these budget negotiations.

In addition to protecting Medicare for our Nation's seniors, this agreement will expand health coverage to as many as 5 million of our Nation's uninsured children. This unprecedented investment in children's health care, the largest expansion of coverage since the enactment of Medicaid in 1965, will give States flexibility in determining how best to accomplish this important goal while guaranteeing that these moneys will be spent solely for this purpose.

On many issues, this conference agreement represents a great improvement over the House-passed version, which I supported but with numerous reservations. For example, I believe this final agreement offers adequate protections to workfare participants, guaranteeing that they will be treated fairly as workers. This conference agreement also restores protections for both disability and health benefits to 350,000 legal immigrants who would be denied these benefits as result of the welfare reform law of last year. All of these provisions ensure that as we move forward with our plan to balance the budget we are guaranteeing an element of basic fairness for all Americans.

Finally, amid all of the celebrations over what this bill will do, I would raise one word of caution. Just last week, this House rejected an attempt to include tough budget enforcement provisions which I supported that would ensure that we meet our deficit targets and reach the goal of balancing the budget by the year 2002. If we are not willing to enact such enforcement provisions, then we must be even more diligent in future years to ensure that the projections in this bill translate into reality. Only when the budget is certifiably balanced will we truly be able to celebrate.

Mr. Speaker, I again commend my colleagues on both sides of the aisle for their hard work throughout this process and urge all of my colleagues to support this historic legislation.

Mr. SHAYS. Mr. Speaker, I yield 1½ minutes to the gentleman from Ohio [Mr. PORTMAN], a member of the Committee on Ways and Means.

Mr. PORTMAN. Mr. Speaker, I think we need to step back a moment and think about what a victory this is for the American people. For the first time in more than a generation we are actually going to balance the budget. We are going to stop spending more than we take in every year, an immoral practice that leaves the bill for the next generation.

There has been a lot of discussion about how we got here. I think it really is a tribute to the persistence, to the energy of a lot of Members. One is the gentleman from Ohio [Mr. KASICH]. He brought his first balanced budget bill to the floor in 1989, before I got here. He got about 30 votes. The next year he got about 64 votes. The next year he got about 80 votes, then about 100 votes and so on. Today, this afternoon on this floor, I think we will have a bipartisan majority of about 250 votes.

I want to commend him and commend all the Members who have worked long and hard to get us to where we are today. It is not legislation that every Member here supports, and all of us would like to see it a little

different. But it is a significant step because we are, in fact, doing what we have just talked about for the past couple of decades and that is actually balancing the budget for the next generation. I want to pay tribute to them and to this House this afternoon.

Mr. SPRATT. Mr. Speaker, I yield 1 minute to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. Mr. Speaker, Justice Brandeis once said that the best disinfectant was sunshine. I guess my litmus test is how does this several-hundred-page bill treat children. Is it fair to children? As I go through the bill and read through how it treats children, I come out with a resounding yes, it shines on children.

We have moved from a $15 billion children's health initiative to now, finally, a $24 billion health initiative for 5 million children that were not previously covered. We have education spending at the highest level in 30 years since the Great Society. We now have disability SSI payments for children that were not eligible before, the most vulnerable children in our society. And we have the largest increase in the history of the Pell grant program to get parents who cannot afford to send their children to college into college and come out without a huge debt.

This is positive for small children, positive for small businesses and small farmers and positive for smaller, smarter government.

Mr. MCDERMOTT. Mr. Speaker, I yield 4 minutes to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Speaker, I wanted to vote for this bill, as I indicated earlier. There is much in it that I would like to support. I was one of the original sponsors of the child tax credit, for instance, with Vice President Gore some 5 years ago. I certainly supported the education tax credits. I support what we are trying to do for health care for kids. But there are a number of fundamental tests which this bill fails.

The most important test to me is whether or not it provides most of the tax relief to middle-income families. The fact is it does not. As this chart will show, the wealthiest 5 percent of people in this country, those who make over $112,000 a year, will get six times as much tax relief as the 60 percent of all Americans who make less than $36,000 a year. I do not describe that as being fair.

In fact, the wealthiest 1 percent, who make more than $250,000 a year, will get more in tax relief than the 80 percent of American people who make less than $60,000. That is simply not fair.

Secondly, if we take a look at what happens with the wealthiest 1 percent, the wealthiest 1 percent will get $16,000 on average for a tax cut. The poorest 20 percent who make on average $8,000 will actually have a tax increase of $39. That does not shrink the gap between the wealthy and the poor in this country. It makes it worse. I do not think this Congress should do that. I think it can do better.

Third, I do not think that we ought to fail the test of whether or not this package provides the needed investments that we need to make the economy grow over the next 10 or 15 years. The fact is, when Members of this House say that this is going to balance the budget, that promise is built upon the promise that we are going to cut Social Security Administration by some 25 percent. Does anybody really believe that we are going to extend the waiting time for getting the Social Security check from 3 months to a year? Is this Congress really going to do that?

This chart will demonstrate that it is built on the promise that we are going to cut health appropriations by 16 percent over the next 5 years. The bill which is scheduled to come to the floor next will raise the spending for the National Institutes of Health by 6 percent. Yet this Congress is going to pretend that we are going to cut that spending by 16 percent over the next 5 years. I do not think this Congress will and I do not think the American people would want us to.

Are we really going to cut veterans? Are we really going to cut veterans health care by 20 percent over the next 5 years? Just last week this House voted to restore money to the veterans health care budget. Are we really going to tell people we are going to balance the budget by cutting veterans health care 20 percent? Come on. We ought to know better than that. Are we really going to see a Congress cut agriculture programs by another 23 percent? Agriculture programs have already been cut more than any other part of the budget. I would like to see the Members from rural districts who vote for this budget today, who are going to vote to cut agriculture budgets by 23 percent over the next 5 years. It simply is not going to happen.

Last week on the House floor this House refused to cut the science budget by 3 percent, and yet it is promising in the budget before us today that we are going to cut science by 18 percent over the next 5 years. Who is kidding whom? Do Members really believe these are anything but false promises? I do not. I have seen this Congress since 1982 break its promises on deficit reduction. I do not want to see them break more. That is what we will be doing if we vote for this bill. I urge Members to vote "no."

Mr. SHAYS. Mr. Speaker, I yield 1¾ minutes to the gentleman from Ohio [Mr. HOBSON], a member of the Committee on the Budget and Committee on Appropriations and also a major participant in this historic agreement between the White House and Congress.

Mr. HOBSON. Mr. Speaker, today the House takes another step toward making budget history. As we consider the conference report on the Balanced Budget Act, we are closing in on the most significant legislative accomplishment this body has enacted in a generation and its benefits are going to be felt for many generations to come.

The Balanced Budget Act is an expression of the responsibility of this Congress feels to the American people, not only to those who are living today but to those Americans who will inherit our country tomorrow such as my grandchildren. This budget slows all the growth of Federal Government spending to just 3 percent for the next 5 years. That is a savings of $289 billion. In doing this, we are controlling the runaway growth that threatens to put our country further in debt.

The Balanced Budget Act also saves Medicare from bankruptcy and expands health care options for seniors. Millions of seniors have been spared crushing poverty with Medicare and I want this program to be there for my children and grandchildren as well. Out-of-control entitlement programs are being reined in and States are being given more freedom from Federal bureaucrats so they can generate their own innovative solutions to solving their citizens' problems.

□ 1445

In a separate bill that is part of the overall budget agreement, we are providing the first tax relief American families have seen since the mid 1980's. Families will get tax relief to help with the cost of raising kids and sending them to college; and small business owners, especially farmers like those in Ohio's 7th District, will get estate tax and capital gains relief.

This budget has been assembled by working together across the aisles. This spirit of cooperation demonstrates that Congress and the administration can work together, as they should, to solve the problems. That same spirit of agreement, of putting the American people first, will be seen again in this conference committee and I am proud to be a part of it.

I urge all Members to join me in balancing the budget, saving Medicare and continuing the extraordinary spirit of cooperation. Support the conference report, and congratulations to the gentleman from Connecticut [Mr. SHAYS] and all the members of the committee, and especially our chairman, the gentleman from Ohio [Mr. KASICH].

Mr. SPRATT. Mr. Speaker, I yield 1 minute to the gentleman from Maine [Mr. BALDACCI].

Mr. BALDACCI. Mr. Speaker, I thank the ranking member from South Carolina for yielding me this time.

This balanced budget agreement is an historic opportunity and the first time since 1969 that we will have an opportunity to do this. I would like to commend the administration, President

Clinton and Vice President GORE, and those in Congress that supported the agreement that enabled us to be at this particular point, that voted for a document in 1993 which took a deficit at $290 billion and brought it down to less than $10 billion today.

It was the work that was done by the Members of Congress and the administration that got us to this point. And the point that we are at today is an opportunity to make an investment. The document we are voting on today allows us to make an investment in education. Young people, 36,000 families in Maine, do not have the opportunity to go on to higher education because of the cost, the financial burden. That education presents the future to them. That is that bridge to the 21st century.

The 100,000 families that are on the earned income tax credits will get a tax break because we will reward work. We will not reward not working. And with small businesses, family businesses and agriculture, they are going to get a break, and this is what this represents today.

Mr. SHAYS. Mr. Speaker, I yield 1½ minutes to the gentleman from Minnesota [Mr. GUTKNECHT], who is a very important member of the Committee on the Budget and also on the Committee on Science.

Mr. GUTKNECHT. Mr. Speaker, I thank the gentleman for yielding me this time.

We talk about the balanced budget and this agreement and what it means in terms of dollars and cents and percentages and so forth, but in many respects this agreement is about generational fairness.

I represent an awful lot of farmers, and some of the greatest wisdom I have ever heard has come from some of my farm families. Back in farm country they know one of the great parts of the American dream is to pay off the mortgage and leave our kids the farm. But what we have been doing here in this government for the past 40 years is, in effect, we have been selling off the farm and leaving our kids the mortgage. We all know deep down in our bones that there is something morally wrong with that.

An old farmer told me a couple of years ago, and perhaps the best way I have ever heard it put, he said the problem is not that we are not sending enough money into Washington. He said the problem is that Congress spends it faster than we can send it in, and that has really been true. And every time we have raised taxes the deficit has actually gone up.

Balancing the budget, saving Medicare and allowing families to keep more of what they earn is not just some accounting exercise. Balancing the budget is about preserving the American dream for our kids. Saving Medicare is about keeping our commitment to our parents. And tax relief for families is about making it easier for those families to pay for their kids' education and save for their future.

This is a glorious day for America. It is an historic day, and I am glad to be a part of this Congress and this Committee on the Budget.

Mr. MCDERMOTT. Mr. Speaker, I yield 15 seconds to myself to point out to the last gentleman that every time we raise taxes the deficit does not go up. In 1993 we raised taxes and the deficit came down.

Mr. Speaker, I yield 2 minutes to the gentleman from California, [Mr. WAXMAN].

Mr. WAXMAN. Mr. Speaker, there are some very good things in this bill. The restoration of benefits for immigrants and the child health provisions are two of the most important.

But let us not forget we essentially are talking about a flawed bill that the administration tried to make better. Making a bad bill better doesn't make it good.

In the area of Medicare, and I want to talk about some points that I find most troubling. We have raised the premium as a result of this legislation. But we have not guaranteed help for low-income people. We have made some changes in the Medicare Programs, such as MSAs and a fee-for-service option and private contracts with doctors, which I think may undermine the Medicare program, which has a broad-based risk pool. We may well see healthier and wealthier seniors leave that risk pool and opt for private insurance coverage.

In Medicaid, we repeal the requirement to pay nursing homes and hospitals an amount adequate to meet their costs for decent quality care. Let me underscore that. We do not have to pay them what is adequate to provide decent quality care. And we have made cuts in the support for hospitals and health care centers which serve as the safety net for the poor.

Now, why are we making all of these cuts in areas where it really does not make sense from a policy point of view? We cannot divorce this bill from the tax bill. We are doing it so we can give tax breaks to many people in the upper income bracket. What I am afraid we will see, and I expect we will see as a result of these tax cuts, will be greater pressure on domestic social spending. Particularly greater pressure on the Medicare Program as the baby boom generation ages. I think that we are going to run the risk of going right back into the huge deficits we have seen in the past.

I congratulate the administration on doing as good a job as they could under the circumstances. For me, it is just not good enough.

Mr. SHAYS. Mr. Speaker, I yield 3½ minutes to the gentleman from Florida [Mr. SHAW], a senior member of the Committee on Ways and Means, the chairman of the Subcommittee on Human Resources, and the architect of the most important legislation to pass this Congress, the welfare reform bill.

Mr. SHAW. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise to engage the gentleman from Missouri in a colloquy. Members may be aware of the ongoing debate in this budget legislation over whether workfare participants are employees, but they might benefit by some background on this issue, including a clarification of the intent of last year's welfare reform law.

Mr. TALENT. Mr. Speaker, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from Missouri.

Mr. TALENT. Mr. Speaker, last year's welfare reform bill was about, in part, getting welfare recipients into work. One of the most effective ways to do that is through community service and community work experience programs which we generally know as workfare.

Since the 1960's Federal welfare laws have allowed States to place recipients in workfare which requires recipients to work in exchange for their welfare benefits. The workfare program created under the 1988 Family Support Act specified public and private sector workfare recipients' hours and compensation, and included specific health and safety, nondiscrimination and other protections for workfare participants, but did not treat the workfare participants as employees.

I would ask the chairman if that is his understanding, the chairman of the Subcommittee on Human Resources with jurisdiction over welfare reform.

Mr. SHAW. Mr. Speaker, reclaiming my time, the gentleman is absolutely correct. That is my understanding.

The 1996 welfare reform law specified that States can continue to operate effective workfare programs, and community service and work experience workfare are among the work activities States may count as work. Unlike prior law, that act did not spell out the compensation or other rules for workfare positions, because it was assumed that previous distinction in statutes and case law between workfare and employment would continue to be recognized.

However, in May of this year the Department of Labor issued an outrageous guide to "How Workplace Laws Affect Welfare Recipients" in which it indirectly claimed that most if not all participants in workfare programs under the welfare law would be considered employees under the law.

Mr. TALENT. Mr. Speaker, if the gentleman will continue to yield, I would ask the gentleman if it was the intention of the authors of the 1996 welfare reform law that workfare participants be considered employees, and thus covered under at least 25 labor

laws, including prevailing wages, unemployment compensation, and social security taxes and benefits, none of which previously applied to workfare?

Mr. SHAW. I say to the gentleman, absolutely not. In fact, section 417 of the 1996 welfare reform law specifically provides that, and I quote, "No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part." So the Department of Labor is usurping congressional authority.

Further, when proposals were put forth in Congress which attempted to treat workfare participants as employees, they were defeated. For example, an amendment offered by the gentleman from California [Mr. BECERRA] requiring that workfare participants be covered by labor laws was defeated right here in this Chamber.

The bottom line is that the legislative history is very clear. Congress did not intend for the Department of Labor to ruin the welfare reform law by outlawing work. The Clinton Administration has thrown down the gauntlet, first by issuing an outrageous ruling and then by refusing to go along with our efforts to correct this unwarranted attack on welfare reform. Congress will react in an appropriate fashion before this session is over to make sure that families can receive the training and experience they need to leave welfare for work and to support themselves.

Mr. SPRATT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. FAZIO].

Mr. FAZIO of California. Mr. Speaker, the same Republicans who said the only way this Congress could balance the budget was by amending the Constitution stand here today to take credit for something that they said could never be done without that.

The same Republicans who spent 5 years attacking our President as a taxer and spender have embraced his plan to balance the budget. That is the truth of the matter.

Democrats took this balanced budget bill and made it ours; and now, as the long-distance race to a balanced budget plan passes the grandstand, the Republicans want to join us for the last victory lap.

The President and congressional Democrats said their top priority was to put college within the grasp of working families, and here is what we got: A $1,500-a-year grant for the first 2 years of college, a lifelong learning tax credit, an increase in scholarships for low-income and middle-class families.

The President and congressional Democrats said that every kid in America deserves health care when they need it, not just when they can afford it. This bill does that.

The President and congressional Democrats said that Medicare should cover preventive health services, such as screening for prostate cancer and mammography. This bill does that.

The President and congressional Democrats said that a balanced budget and tax legislation should help those who need it most, not the richest of the rich. This bill does that.

We have scored a major victory for a balanced budget, for fair tax cuts, for our kids, for our future. The winners? Not Republicans and not Democrats. This time, the American people.

I urge my colleagues to put aside their concerns, both sides have many, and to follow through on the work we began in 1993, to honor our colleagues whose courage made it possible for the rest of us to be here today to take credit for finishing the job.

Mr. SHAYS. Mr. Speaker, I yield 2½ minutes to the gentleman from Virginia [Mr. BLILEY], one of the senior Members of Congress, the chairman of the very powerful Committee on Commerce.

Mr. BLILEY. Mr. Speaker, I thank the gentleman for yielding me this time.

Thirty years ago the Federal Government's budget was in balance. Thirty years ago families kept more of their hard-earned money. Thirty years ago Government programs were by and large helpful, not hopeless. How far we have fallen in three decades.

We now face nearly $6 trillion in debt, crushing tax burdens and uncontrolled spending. The programs we throw taxpayer dollars at often do not help the people they were supposed to help, and every day there are more rules and regulations to limit our freedom as Americans.

□ 1500

But today is different, because today we are saying enough is enough. Although we may not like certain parts of this package, it is the whole that counts. And the whole is the first balanced Federal budget in nearly three decades.

But this budget does more than achieve balance in 2002. Among the budget's many provisions are a number of notable achievements crafted by the Committee on Commerce. We preserve Medicare for the next generation of beneficiaries and give seniors more choices than ever before. We make long overdue reforms to the Medicaid program, making it more flexible for States and more effective for recipients.

We chart a new course in American health care away from Washington-knows-best control and toward greater innovation by establishing a block grant to provide coverage and services for poor, uninsured children. And we strengthen America's prohibition on the use of Federal funds for abortions, making clear that our efforts today are on behalf of all children, born and unborn. Most of all, this budget is an important step in our quest to make the Federal Government serve the American people and not the other way around.

After this budget is passed and signed into law, our work will not be finished. We have a duty to remain vigilant against wasteful Government spending. We need to reallocate existing resources to make sure the taxpayers get a dollar's worth of value for every dollar spent. And we need to prepare now for the budgetary needs of the baby-boom generation.

I am proud of the first steps we have taken in this balanced budget plan, and I look forward to building on this achievement in the months and years to come.

Mr. SPRATT. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, I am very pleased to rise in support of this budget agreement. The very first year I ran for Congress, I talked about the need to abolish our Federal deficits. Putting our Nation's fiscal house in order has been my highest priority throughout my career. At long last, it appears we are going to accomplish that goal.

The efforts of President Clinton and Congress have resulted in 5 consecutive years of declining deficits and the lowest deficit this year since the Carter administration. The agreement builds on this tremendous achievement and continues this glidepath to a balanced budget. While I will personally wait until the budget is balanced, in fact, instead of projections before I pop the champagne cork, this is a tremendous step for the future of our country.

Two years ago, those of us in the coalition set out to prove it is possible to balance the budget while protecting education, health care and other important priorities. This agreement is a vindication of that effort. This reconciliation bill reflects the influence of Blue Dog budgets in many areas. The savings levels and the policies for Medicare and Medicaid and other programs are quite close to the savings levels and policies proposed in our budget that have bipartisan support.

There are many important features of this reconciliation bill in addition to the promise of a balanced budget. The changes to payments to health care plans in underserved areas and the provisions allowing health care providers to form provider sponsored organizations will expand access to health care for seniors, particularly in rural areas. The formula for DSH payments to States is improved substantially over the bill originally passed by the House.

The education and children's health initiatives are important investments in our future. The funding for local programs to move welfare recipients to work will help make welfare reform a

success. Although the budget enforcement provisions fall far short of what I believe is necessary, there are some important improvements in the area of budget enforcement that closes some of the loopholes in the current budget process.

Mr. Speaker, I urge everyone to support this agreement.

Mr. SHAYS. Mr. Speaker, at this time, it is our pleasure to yield 2 minutes to the gentleman from Texas [Mr. DELAY], the House majority whip and a senior member of the Committee on Appropriations.

Mr. DELAY. Mr. Speaker, I thank the gentleman from Connecticut [Mr. SHAYS] for yielding me the time.

Mr. Speaker, I rise in support of this legislation that finally balances our Federal budget. It is about time. I have waited my entire adult life for it. Some Members of the Democrat minority just still do not get it. Indeed, if they were in charge, we would not be cutting taxes or cutting spending at all. If the Democrats still ran Congress, this deal would have contained more Government spending and tax increases instead of tax cuts.

We need to look at the big picture, and the big picture shows how we are moving toward smaller, smarter government and greater freedom for our citizens. We have to give President Clinton some credit. He has rejected the left wing of his own party and publicly embraced conservative commonsense values of lower taxes and smaller government.

But this budget is only a first step. We still have a lot of work to do. We need to come up with a long-term plan to fix entitlements. If we do not, our children's future might be miserable.

We still need to reform spending. The Federal Government today is not as small or as smart as it could be. We still have too many stupid, harmful, and counterproductive Federal regulations. The Federal bureaucracy is still too big and still spends too much money.

But this legislation is a very, very good start. It will balance the budget by the year 2002 or even sooner. It will slow the growth of spending for some entitlements and for some discretionary programs. But this is a compromise with the President, who wants to spend more money. He has consistently and persistently fought for more Federal spending programs.

This legislation reflects the President's desire to spend more money. We have tried our best, and for the moment our best is only good enough. But this budget is not the end of the line. It is simply another landmark on the road to fiscal responsibility. Next year is another budget and more tax cuts.

I urge my colleagues to vote for this legislation.

Mr. SPRATT. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia [Mr. SISISKY].

Mr. SISISKY. Mr. Speaker, this legislation is an important step toward improving the health of our Nation's senior citizens by providing Medicare coverage for colorectal cancer screening. For the first time, America's seniors will have access through Medicare to preventive screening for colorectal cancer, the second most deadly cancer disease next to lung cancer. Preventive screening has been proven to reduce mortality from colorectal cancer, yet, a large majority of America's senior population has never been screened.

I am very glad to see that this legislation establishes an expedited process to assure Medicare coverage for all colorectal cancer screening procedures that are currently available and can help reduce the incidence and mortality rate of this disease. The fecal occult blood test, sigmoidoscopy, and colonoscopy are covered by Medicare upon enactment of the legislation, and the barium examination will undergo an expedited review by the Department of Health and Human Services [HHS]. A determination regarding Medicare coverage for the barium examination will be made within 90 days.

Mr. Speaker, I strongly urge the HHS in conducting this review and determination to adopt the same approach to evaluating colorectal cancer screening procedures as the American Cancer Society [ACS]. The objective of the ACS was to maximize the number of people who get screened for colorectal cancer. In explaining its colorectal cancer screening guidelines, the ACS emphasized that four currently used colorectal cancer screening procedures are cost-effective alternatives for colorectal cancer screening, whose widespread use will result in fewer deaths from colorectal cancer. The barium examination was among the screening options recommended by the ACS.

The approach taken by the ACS clearly reflects the ultimate goal of colorectal cancer screening legislation—to provide a basis for as many Medicare patients as possible to be screened. It is appropriate, therefore, for HHS to adopt the same approach in evaluating Medicare coverage of the barium examination. I am confident that, on the basis of this review, HHS will determine that the barium examination is a highly effective colorectal cancer screening procedure, and that the addition of the barium examination to colorectal cancer screening under Medicare would increase screening, save lives, and save money.

Mr. SPRATT. Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore (Mr. SOLOMON). The Chair will make note of the time remaining. The gentleman from Connecticut [Mr. SHAYS] has 16 minutes remaining, the gentleman from South Carolina [Mr. SPRATT] has 11 minutes remaining, and the gentleman from Washington [MCDERMOTT] has 1¾ minutes remaining.

Mr. SHAYS. Mr. Speaker, I yield 1½ minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA], a 9-year member of the Committee on Banking and Financial Services and chairman of the Subcommittee on Financial Institutions.

Mrs. ROUKEMA. Mr. Speaker, I thank the gentleman from Connecticut [Mr. SHAYS] for yielding me the time.

Mr. Speaker, when I first heard of this Balanced Budget Act, I kind of drew a breath and said, this sounds too good to be true. But, in fact, it was true. Apparently, we can work together here in the Congress for the good of the people, without a lot of partisan bickering. And I am very grateful for that. I support it.

We must understand that, on the whole, this is a very good package. Not to say that we agree with everything, but we must understand that the Balanced Budget Act and the Tax Relief Act are joint efforts to put our fiscal house in order, and they must be linked together. We must remain mindful not to cut spending to the extent that we may endanger programs that are vital to our elderly and to children in order to provide for tax cuts. I do not believe we have done that here.

For years, I have been advocating a save-and-invest-in-America program, and I will vote on this bill today and the taxpayers bill tomorrow. However, we cannot ask American people to save and invest unless we force the Government to live within its own means.

However, I must say that this is a good bill, but some of the savings do concern me. The impact of these decisions on New Jersey and the outyears is particularly worrisome in connection with the Medicare payments. But I have been assured by the responsible members of the committee that we will continue to monitor the changes in the disproportionate share hospital payments on transfer payments to hospitals.

New Jersey is in a unique position, and I have been assured that we will be treated equitably in making those transfer payment arrangements.

Mr. Speaker, I rise today in support in H.R. 2015, the Balanced Budget Act of 1997. In fact, this sounds too good to be true. Apparently, we can work together for the good of the people without all the partisan sniping and bickering.

For the first time in a generation, we are on the verge of crafting a balanced budget. The Congress and the President have come together to agree on this long held goal to put our children's future on a strong fiscal footing.

On the whole, it is a good package. That is not to say that I agree with everything. We must understand that both the Balanced Budget Act and the Taxpayers Relief Act are joint efforts to put our fiscal house in order. Both must be linked together. We must remain mindful not to cut spending to the extent that we may endanger programs that are vital to our elderly and children in order to provide tax cuts.

For years, I have been advocating a save and invest in America program and the Taxpayers Relief Act, which I will vote for tomorrow, includes many key provisions. However, we cannot ask the American people to save and invest until we force this government to live within its own means.

We have a responsibility to our children and the future. Perpetual deficits threaten to straddle our children with crushing debt that could lead to low paying jobs, economic stagnation, and possibly a lower standard of living.

The need for a balanced budget has never been greater. The national debt is increasing by close to $9,500 per second. In 1996, Americans paid $900 in taxes per person to service interest on the debt. In fiscal year 1997 we will have spent $248 billion on interest on the debt, that is 15 percent of all Federal spending. That is money not spent on our children, on education, or health care. It is money that goes into the fiscal black hole created by our continued indebtedness.

Our Nation is on the verge of tremendous generational change. The baby-boom generation will, in the next decades, begin to retire. With this great influx, the next generation will be asked to carry on the responsibility of ensuring that their parents are cared for by a system that is fair and equitable. It is our responsibility, in this Congress, to ensure the viability of worthy Federal programs and to create a strong and vibrant economy in which our children and grandchildren can thrive, succeed, and enjoy the promise of what America has to offer. The Balanced Budget Act of 1997 is the first step in this process.

In order to avoid this calamity, the Balanced Budget Act will require everyone in the United States to share some of the sacrifice associated with reducing the size of the Federal Government and reforming spending. This act attempts to reduce spending in the most equitable manner possible.

Significant savings will come from Medicare and Medicaid. The Federal health care programs for the elderly and low-income respectively will be asked to spend over $128 billion less than current CBO projections.

Without question, this area of savings raises the most concern, and I must state my healthy skepticism about how much can, or should, be accomplished in the near-term.

Some of the aspects of this act will receive criticism for concerned groups. Clearly, strong action must be taken to ensure that our elderly will be able to receive necessary medical treatment through the Medicare Program, and that Medicare will be there for many hard-working families who will become eligible in the next 10 or 20 years.

The Balanced Budget Act will keep the Medicare trust fund solvent for at least the next 6 years. Most of these savings come from reducing payments to hospitals and health care providers. I applaud the establishment of a special commission to study how to make Medicare solvent well into the future and secure for when the baby-boom generation begins to retire. I have long supported a commission and believe that it will offer Congress intelligent and balanced information.

The provision in this act that greatly concerns me is the issue of medical savings accounts. The bill allows for a pilot program of 390,000 accounts to be set up. Mr. Chairman, medical savings accounts are a bad idea for America.

We must not let our drive to make Medicare solvent lead to us to destroy the best elements of that program by moving elderly Americans into dubious health plans like MSA's. We can not lose sight of the quality of care that Medicare provides. MSA's are riddled with problems. There exists the danger of fraud and abuse of poorly informed seniors. MSA's could result in a lowering of the quality of care of our elderly, an increase in Medicare premiums for the elderly, and an undermining of the system as a whole, because the healthy seniors will be removed from the system along with the more financially secure thereby eroding Medicare as an universal system.

I would like to highlight some of my concerns in this budget dealing with the hospitals of New Jersey. I have been concerned about the changes in the disproportionate share hospital [DSH] payments to hospitals in New Jersey.

I have been assured that no one State will take a much greater hit than any other State—that a formula has been worked out that takes an even approach in this formula calculation. We must work to ensure that New Jersey and other States do not shoulder an unfair amount of burden.

Also, I have been concerned over changes in the different hospital payments for a transfer versus a discharge. While I understand that a compromise has been reached where the new definition change will only apply in a limited capacity, I am further heartened that this will not be implemented until after October 1998, and that the Commerce Committee is open to holding hearings and looking further into this definition change. I pledge to work with the Commerce Committee to deal equitably with New Jersey's unique status.

One last issue of concern I had affecting our hospitals is over Medicare. I am glad we were able to work out a compromise which would phase in adjustments to the prospective payment system for the first 2 years. By allowing a phase in, the various hospitals affected would be able to adjust accordingly. We must continue to work with this Nation's hospitals so that all people receive the care they need.

In reforming the health care system, we must make sure that we maintain the quality of care to those who need it, maintain access to care, and that all changes are fair and equitable. We must ensure that those who have the least do not give up the most. As I have said, "let's not be a penny wise and a pound foolish."

The Balanced Budget Act should be applauded for other important reasons. This act expands health care coverage to millions of children across the Nation. This is possibly the best investment we have made in a generation.

I am very pleased about the increase in the cigarette tax and the use of that money to provide for the expansion of children's health care. This was one of my top legislative priorities this year and demonstrates the best in public policy.

I must compliment the conferees for including parity treatment of mental health coverage. Mental and physical health care for our children are inseparable. Healthy bodies means healthy minds and vice versa. Parity treatment of mental health coverage demonstrates our wisdom and compassion. Our children are the most important resource we have.

Indeed, if the truest judgment of a society is the way they treat their children, then we have taken a major step to secure that our generation believes that our children should be cared for in the most comprehensive and compassionate manner.

The Balanced Budget Act is the strongest statement this Congress can make on the direction we intend to take in the future. We must remember that this is the first time we will have balanced the budget in over a generation. It is important for us to stay focused on maintaining a balance and running surpluses.

We must avoid the temptation of declaring victory and leaving. We must continue to balance budgets in the future. We must reform the entitlement programs to prepare them for the retirement of the baby boom generation. We must be prepared to enforce our agreement in the future. There is much hard work and many tough decisions to make in the future.

The Balanced Budget Act sets forth our priorities. We still protect the programs that provide care for the elderly, the poor, and the young. We will create a new program to protect our children who currently have no health coverage. And we will balance the Federal budget and put our fiscal house in order for the future. It also demonstrates what this body can do when it agrees on a goal and is determined to reach an agreement. This Act shows us the result of bipartisan action. Let us use this as a lesson for future action.

Mr. SPRATT. Mr. Speaker, I yield 1 minute to the gentleman from North Carolina [Mr. PRICE].

Mr. PRICE of North Carolina. Mr. Speaker, this bill before us today is a truly bipartisan achievement, a vast improvement on the budget bill approved in this Chamber a month ago, one that we can vote for with great confidence. I want to applaud colleagues on both sides of the aisle who have brought us to this day.

This agreement includes $24 billion for our Nation's children. Five million American children who are not now covered will have health insurance protection because of this agreement.

The agreement also protects our veterans, ensuring that any shortfalls in medical care collections do not translate into less health care for those who have fought for our country.

Finally, this agreement protects the elderly of this country. It expands Medicare coverage for diagnostic and preventive health care services. It extends the life of the Medicare trust fund for another 10 years. And it establishes a commission to ensure the long-term solvency of the trust fund so our Nation's senior citizens are not continually put at the mercy of budget negotiators.

I want to thank my colleagues, whose tenacity enabled us to reach a solid bipartisan budget agreement, and I urge all my colleagues to support it.

Mr. SHAYS. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona [Mr. HAYWORTH], a new Member in the class of 1994, a sophomore now, and a member of the House Committee on Ways and Means.

Mr. HAYWORTH. Mr. Speaker, I thank my colleague from Connecticut, Mr. SHAYS, for yielding to me and thank my colleague from North Carolina, Mr. PRICE, for his thoughts on this bill.

Mr. Speaker, it is difficult at times for a career politician to go do this, but I would ask all of us to leave the spin cycle in the laundry room. The fact is historians and the American people will judge us on how we arrived at this important date with this important piece of legislation.

What we can truly say today, Mr. Speaker, is that this is not a victory of party. Quite the contrary, it is a victory for our country. Because we put aside some partisan differences, we tried to reach accommodation on some deeply held beliefs, and such is the essence of our Democratic lifestyle and the principles we embrace.

It is interesting for me personally, Mr. Speaker, as I reflect back to the summer of 1969, to the year of the miracle Mets and man on the Moon, the summer before the sixth grade for me, and the last time the American people had a balanced budget. How important it is that, in waiting a quarter century or more, an entire generation, in effect, we now have the chance to embrace a balanced budget. How important it is, too, that we have taken a new look at how we administer the different rules in Washington, DC, how we are now willing to transfer money, power, and influence out of the hands of Washington bureaucrats and back closer to home so that people on the front lines can make decisions, so that parents are free to save, spend, and invest for their children as they see fit.

And how pleased I am, Mr. Speaker, that we join in a bipartisan fashion to preserve and strengthen Medicare through the next decade. For my parents, who, so youthful in 1969, turned 65 this year; we owe it to my parents and other parents to make sure that Medicare is preserved. This budget agreement does just that. We can do no less and also establishing a framework for the future as the baby boomers begin to retire.

I thank my colleagues for joining together. I urge passage of this important legislation.

Mr. SHAYS. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. GUTKNECHT], a member of the Committee on Ways and Means.

Mr. GUTKNECHT. Mr. Speaker, I thank the gentleman from Connecticut [Mr. SHAYS] for yielding me the time. I also thank him for appointing me to the Committee on Ways and Means. I am actually on the Committee on the Budget and delighted to be so.

Let me talk just for a minute about some things because I know that, among the general public and amongst some of our colleagues, there is a certain amount of cynicism in terms of whether this budget agreement is real, whether we will actually balance the budget, whether we really will have the discipline to follow through to make the tough choices as we go forward.

I think those are legitimate questions. But I think Benjamin Franklin may have said it best when he said, "I know no lamp by which to see the future than that of the past."

I would like to remind Members of what we said just 2 years ago when we passed our budget resolution, the blueprint, our 7-year plan to balance the budget. We said in fiscal year 1997 we would spend no more than $1,624 billion in fiscal year 1997. That is the year we are in. Two years ago we said we would spend $1,624 billion. This year we actually are going to spend in fiscal year 1997 $1,621 billion.

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At a time revenues have increased by over $100 billion, we are spending less than we said we were going to spend just 2 years ago.

Mr. SPRATT. Mr. Speaker, I yield 4 minutes to the gentleman from Michigan [Mr. BONIOR], the minority whip.

Mr. BONIOR. I thank the gentleman from South Carolina for yielding me this time.

Mr. Speaker, this budget deal helps America's working families. It cuts their taxes, it gives health insurance to millions of children, it offers scholarships to students, and extends the life of the Medicare trust fund for another decade. So it is for these and other good provisions in this bill that I thank my colleagues, the gentleman from South Carolina [Mr. SPRATT] and the gentleman from New York [Mr. RANGEL], and my colleagues on this side of the aisle who worked on this bill.

This deal also promises to keep the budget in balance. I say keep the budget in balance because we already balanced it with our 1993 deficit reduction package. That plan dropped the deficit from nearly $300 billion then to roughly $40 billion deficit this year, and it is still falling.

So we made tough choices in 1993. Some of my Republican colleagues have criticized that plan as a tax increase. What they do not say is that the people whose taxes went up in 1993 were the richest 1 percent in America. What they do not say is that we cut spending. And what they do not say is that we gave a tax cut to 20 million working families. I think what galls them the most is that our plan back in 1993 has worked. The economy has boomed, the deficit has disappeared.

Today's budget deal builds on the great success of that plan. The Children's Defense Fund told the Washington Post that $24 billion for children's health insurance is an initiative that will do extraordinary good for millions of children. Families USA called it the most significant advance in health care coverage since Medicaid and Medicare programs were enacted 32 years ago.

This budget deal does other good things, too. It provides a $500-per-child tax credit to working families. It provides thousands of dollars in tax credits for students to pursue their education after high school. It protects wages, pensions, health care, and it gives tax relief to millions of American homeowners.

But let me caution here. While I support these measures for working families, my Republican colleagues have exacted a heavy, heavy price for them. In addition to rewarding the richest Americans with a huge cut in the capital gains tax rate, they are rolling back the corporate minimum tax. That is a $19 billion giveaway to America's richest corporations. It is an outrage, it has no place in this deal, and I and others will be fighting it in the future. Because we will be watching to make sure that the tax breaks now going to the wealthy do not end up costing working families in the future.

But as I vote for this budget deal, I think of its immediate impact on the lives of those working families. I think of that young police officer's family not scrimping so much thanks to the new child tax credit. I think of all the children who are going to get health insurance for the first time, 5 million of them, with the $24 billion program. I think of all the young students who will now be able to afford community college, acquiring the skills to land them jobs where they can support their families. And I think of those people who have lost their jobs, who will be able to go back to their community colleges to learn the skills to support their families.

When I vote yes on this budget deal, I am going to vote for them and I am going to vote for America's working families.

Mr. SPRATT. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. LEVIN].

Mr. LEVIN. Mr. Speaker, I heard the colloquy between the gentleman from Florida and the gentleman from Missouri, and I just want the record to be clear. They are attempting to write a bill through a colloquy and you cannot do that. The reference to 1988 is very mistaken. It was a very different bill. It was not a broad welfare-to-work bill as we are now implementing.

I worked hard on the 1993 legislation, and no one can get up here and simply give their gloss on it and expect that to become law. But most importantly, the effort in this House by the majority to exclude people who would be classified as employees under FLSA and other Federal laws from those protections was specifically rejected in the conference committee. It is not in this bill. No colloquy can erase that. People

who move from welfare to work have the dignity of the protection of Federal law if they are employees.

Mr. SHAYS. Mr. Speaker, I yield 1 minute to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. I thank the gentleman from Connecticut for yielding me this time.

Mr. Speaker, again we see where there are genuine differences honestly held and where there may be other measures that have yet to be taken to address problems that people on both sides of the aisle have. But again I come down to speak on behalf of this legislation because of the many positive effects we will see, not only, although goodness knows it is important enough to balance the budget for the first time in a generation, not only because we preserve and protect Medicare for the next decade and set up the framework with a bipartisan commission to look at the very serious questions that confront us when the baby boomers start to retire, but also because of the second part of this agreement which we will come to tomorrow, the first meaningful tax cuts for working Americans in 16 long years.

Again, it is part of the difference in philosophy, where we honestly believe that working Americans deserve the chance to hold onto more of their hard earned money and send less of it here to Washington, and these two measures fit together like hand in glove. Today we deal with spending, tomorrow with tax cuts. The bottom line is a better future for the American Nation.

Mr. SPRATT. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. MINGE].

Mr. MINGE. Mr. Speaker, as many of us have recognized, this agreement and this legislation have multifaceted advantages, and of course there is always a downside. I would like to emphasize one of what I think is the most positive attributes of the legislation, and that is its recognition of health care needs of Americans.

First and foremost, we are now attempting to assist States in providing coverage to children who do not have health care insurance. Second, we are addressing the imbalance that exists between rural health care financing and urban. Altogether too long, Mr. Speaker, the rural portions of our country have been denied the chance to participate in managed care because of highly discriminatory regional reimbursement rate structures.

Third, tomorrow we will take up legislation that addresses the tax deductibility of premiums for health insurance by self-employed individuals. These features together, I submit, are important reasons for supporting this legislation.

Mr. MCDERMOTT. Mr. Speaker, I yield myself such time as I may consume. I include for the RECORD an editorial from the Washington Post yesterday entitled "Budget Week," as follows:

BUDGET WEEK

As a country, we seem about to enter a week of self-congratulatory rhetoric in which the president and congressional Republicans will celebrate the balanced-budget agreement they appear to have reached and that Congress may finally pass as it leaves town for its summer vacation.

The president will say, not without cause, that he was successful in taking some of the rougher edges off the initial Republican proposal. He will argue that the final product balances the budget without doing violence to the values of the Democratic Party, finishes the job of deficit eradication that he began in drawing up in his first budget in 1993, provides a steady platform from which to head into the future and proves that, when there's a willingness to compromise, the political system can work.

The Republicans, for their part, will say that while they've had some tough times lately, and while they lost some battles to the president, they basically won the war. Glossing over the history of the 1980s, they will claim it is they who have always wanted a balanced budget. With greater cause, they will say it is they who have been the party of tax cuts and smaller government. If those are now both parties' goals, they win, even if the president, in coming their way on the issues, has partly shouldered them off center stage.

But in our view those are the wrong standards by which to judge this deal. They are mostly short-term and political, as is the deal itself. It will be no surprise to readers of this page that we apply a different lens.

(1) The balanced budget, assuming one is achieved, will owe as much to the continuing strength of the economy as to any policy changes Congress will vote this week. You could argue—we would—that the strong economy derives in part from some of the policy changes for which the president successfully fought in 1993. The fact is that this budget would actually undo some of the most important of those changes. In terms of fiscal discipline, it is less the advance its sponsors claim that a retreat from high ground that the president himself once occupied over Republican objections.

(2) The distinctive element in the deal remains the tax cut, for which the rest is mostly cover and a gloss. The long-term effect of the tax cut will be to add, regressively, to a deficit that the deal will at best only temporarily erase. The president played a double role in this, first agreeing to the cut, then working to make it a little more palatable around the edges. But the basic structure is still wrong. The children's credit, which will be the costliest provision in the early years, is mostly a political sop for which neither party has been able to think up a convincing economic justification. In the later years this will be overtaken by large, late-blooming tax cuts mainly for the highest-income households in the country. They will begin to drain the Treasury in earnest about the time the baby boomers retire. There is no economic or social justification for most of them either.

(3) Meanwhile, even though these are the most propitious of economic times and possibly political times as well in that the next president election is three years off, the plan, by mutual agreement, does next to nothing about the real fiscal problem—the one that will come with the boomers' retirement—that everyone acknowledges but wants to defer. Let the next folks do it. The tax cuts would compound this problem. The Senate proposed some first steps to cut longer-term Medicare costs, like asking higher-income beneficiaries to pay a slightly higher share of program costs. They dropped it from the final bill. This is a bill that, in the name of solving the nation's fiscal problem, systematically avoids and in some respects worsens that problem. The wrapping is great; the gift is dross.

The bill has some good features. Medicare will be a tidier program as a result of its passage. The number of children in the country lacking health insurance could be reduced (though that could end up an empty initiative, also). But most of the things that are good about the bill are good only in that the alternatives were worse. The legislation reverses some of the worst features of last year's welfare bill and of the original budget bill that the Republicans put forward this year. But the welfare bill should never have been signed, and likewise the first draft of this year's budget bill is a pretty poor standard on the strength of which to measure victories.

We assume that Congress will pass this package; the president and the Republican leadership are both invested in it. By now a lot of other people have larger or small investments in it as well. But this is a lost opportunity that, on balance and in the long run, will likely do a fairly large amount of harm—the tax cuts—for relatively little good.

Mr. Speaker, we hear people here talking about this whole issue as though it was a long-term fix, but in fact if my colleagues read this editorial, it says the strong economy derives in part from the policy changes which were made in 1993 by the Democrats, by the Budget Deficit Reduction Act that we passed.

But more important this editorial has a warning in it. It says the distinctive element in this deal remains the tax cut, for which the rest is mostly cover and a gloss. The long-term effect of the tax cut will be to add regressively to a deficit that the deal will at best only temporarily erase. The late-blooming tax cuts, mainly for the highest income households in the country, will begin to drain the Treasury in earnest about the time the baby boomers retire. There are no economic or social justifications for most of these cuts.

My concern is we are going to touch down with a balanced budget in 2002 like a 747 doing a touch-and-go landing in learning to fly the plane. The budget deficits will take off at precisely the time the budget will have to face the problems of baby boomers. People will be caught between their kids going to college and their parents in nursing homes, and there will be no money in the Treasury to deal with their problems because we are taking away the essence of the social safety net in this country.

That is why people ought to vote against this. It is making a long-term problem for ourselves for short-term political gains.

The SPEAKER pro tempore (Mr. SOLOMON). The time of the gentleman from

Washington [Mr. McDERMOTT] has expired.

Mr. SHAYS. Mr. Speaker, I yield 1½ minutes to the gentleman from Wisconsin [Mr. NEUMANN].

Mr. NEUMANN. Mr. Speaker, I rise to address some of the things that we have heard from our side of the aisle today and from both sides of the aisle, some of the concerns that somehow this is not real. I would like to just bring some of the facts to light here. I have heard, for example, that discretionary spending, the part of spending that we actually control out here, is going up under this plan. Let me give my colleagues the facts. Nondefense discretionary spending is going from $281 billion a year to $288 billion a year 5 years later. That is less than a one-half of 1 percent increase each year. If we take inflation into account, that is a decrease in nondefense discretionary spending by about 1.5 percent per year. Yes, this is real, yes, it does what it is supposed to do, putting our financial house back in order, yes, it restores this Nation so our children can have hope of living the American dream.

I want to give another number. Total discretionary spending, again the part of the budget that we have the most control over. Total discretionary spending is going from $549 billion this year to $561 billion 5 years later, again less than one-half of 1 percent spending increase.

How about the overall spending increase? Overall spending increase is going from $1,621 billion to $1,889 billion. That is an increase of about 3 percent a year, roughly the rate of inflation. Yes, this is real, yes, it does what it is supposed to do. Our seniors can count on Medicare, our working families can count on additional tax reductions, and our children can count on us for a change, the first time since 1969, to do the right thing for this great Nation that we live in.

Mr. SHAYS. Mr. Speaker, I yield 1 minute to the gentleman from Iowa [Mr. LATHAM], a member of the Committee on Appropriations.

Mr. LATHAM. Mr. Speaker, I wanted to obviously stand here in support of the Balanced Budget Act and the provisions as far as the taxes. But one thing that is very, very important to the State of Iowa and all rural parts of this country is the reimbursement changes that are made in Medicare. In my congressional district, our reimbursement averages about $311 per person per month. In some of the urban parts of the country, it is $750 per person per month. In those areas, seniors have the option in their health care for eyeglasses, hearing aids, prescription drugs, even memberships at health clubs. We have none of that available. In this act we finally address the inequity between rural and urban parts of this country with the base now going to $367. It is extremely positive. I want to thank the committee and all the people who worked so very hard on this to address this real problem.

Mr. Speaker, I am proud to support the Balanced Budget Act as it comes before this body for a vote. Although this bill includes some items that I support and others that I would have preferred to have been left out, we should all recognize the bill as a product of bipartisan compromise and achievement. I am especially proud of the work this House and the Senate have done to increase Medicare choices for seniors.

Bring equity to seniors from rural areas, like northwest Iowa, has been a priority of mine since I've been in Congress. I want to ensure that seniors in rural northwest Iowa are going to enjoy Medicare benefits not just in the next couple of years, but for the next generation and beyond.

The majority party of this Congress has repeatedly vowed to bring choices to seniors as part of Medicare reform. One of those choices that has been denied up until now has been managed care for rural seniors. However, fulfilling a commitment made in the budget resolution earlier this spring, this Balanced Budget Act makes substantial reforms of the way the Medicare Program pays managed care plans.

Iowa seniors have paid into the Medicare System and have every right to expect efficient health care coverage. Unfortunately, the current Medicare System has always comparatively overcompensated urban areas in regard to the Medicare reimbursement rate at the expense of rural States like Iowa. By efficiently utilizing our health services in the past, the current Medicare law punishes Iowa seniors through low reimbursement rates. Some urban areas receive 2½ times the reimbursement rate per person than rural areas like northwest Iowa do.

The budget agreement will immediately establish a payment floor of $367 per month per beneficiary, which represents a tremendous increase for some Iowa seniors who are currently allowed $250 per month. The Balanced Budget Act also includes a 50/50 local/national blended payment rate for health plans beyond 1998. This blend will gradually bring the reimbursement rate for rural areas more in line with the rate of increase in urban areas, a goal of fundamental fairness.

Bringing fairness and equity to the Medicare System has always been my agenda, along with Members from both sides of the aisle from rural parts of the country. Iowa Medicare beneficiaries deserve the same options and benefits as any other seniors in the country. I am proud to say that the Balanced Budget Act increases choices for Iowa seniors, and brings equity to the Medicare Reimbursement System.

Mr. SPRATT. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise to support this Balanced Budget Act because this bill does good things for children's health, welfare mothers, and for rebuilding our schools.

Mr. Speaker, I rise to express my wholehearted support for the bipartisan balanced budget agreement that the President and the Congress have agreed on implementing.

This historic agreement will result in the first balanced budget agreement in a generation, with a net savings of $900 billion over 10 years.

The President's economic plan has cut the deficit more than 75 percent from $290 billion in 1992 to $67 billion or lower by the close of this year. This agreement will finish the job by balancing the budget in 2002 and puts the budget in surplus at least through 2007.

This agreement will mean an unprecedented $24 billion for children's health care, a $500 per child tax credit for approximately 27 million families, a $1,500 HOPE Scholarship for the first 2 years of college and a 20 percent tuition tax credit for college juniors, seniors, graduate students, and working Americans pursuing lifelong learning.

As first balance budget since 1969, I know that the American public has waited long for a recognition that a budget that is not in balance hurts the economy, and robs our children of their future. More important than the agreement are the incentives to ensure that regardless of who has political control the agreement will be adhered to by both parties.

The important domestic priorities that we have agreed should be met are accomplished under this agreement. It allows people to move from welfare to work and treats legal immigrants fairly. There will be $3 billion to help States and local communities move people from welfare to work, along with $12 billion to restore both disability and health benefits for 350,000 legal immigrants in 2002 who are currently receiving assistance or become disabled.

This balanced budget agreement is a victory for middle-class parents trying to pay for their children's college and for working people trying to upgrade their skills.

We know the level of computer literacy and skills currently held by 20 percent of American workers, which is well below the 60 percent that will be required by the year 2000. Our Nation's workers will need opportunities to train for and acquire new skills to adapt to the new economic realities of the next century.

By crafting this agreement we will allow workers and their families to find greater freedom through job mobility and higher wages through acquisition of skills that are marketable.

Along with creating opportunity for current workers we must also maintain our support for youth summer jobs programs for future workers.

In 1997, Houston Works Summer Youth Program plans to serve 6,500 young people between the ages of 14 and 21, with a projected budget of $8.9 million. This funding would only allow 3 percent of those who would qualify to be included in the program. The potential number of applications for this important jobs program is 43,000 young people which reflects the total number of disadvantaged youth in the area served by Houston Works. Nationwide, there are 4 million youths who would qualify for this summer jobs program if funds were available.

Last year Houston Works provided 5,177 jobs to youth ages 14 through 21 years, with a budget of $6.5 million.

This program has made a significant difference in the lives and fortunes of Houston's young people who were fortunate enough to have their application accepted.

This balanced budget agreement will also aid the environment through a new tax cut plan to clean up and redevelop Brownfields. The 3-year Brownfield tax incentive will reduce the cost of cleaning up thousands of contaminated abandoned sites in economically distressed areas by permitting clean-up costs to be deducted immediately for tax purposes.

I along with many of my colleagues have worked hard to find solutions to this country's budget deficit and are pleased to see this type of bipartisan progress.

Mr. SPRATT. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY of Connecticut. Mr. Speaker, may I take this opportunity to thank the gentleman from South Carolina [Mr. SPRATT], my leader, for his good work in the conference, the conference report that as a Democrat I am proud to stand here today and support, although I agree with many of my colleagues that we should have had more time to study the language as written. But this legislation really contains many Democratic priorities. To begin with, it balances the budget without a constitutional amendment and continues the direction made and begun in 1993 by that very, very difficult budget vote.

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But that is only the beginning. The bill also includes the largest investment in our Nation's history since Medicaid, $24 billion. This funding will help States provide health coverage for millions of uninsured children, and I really hope I can believe what I heard, that this coverage will be as good as State and Federal workers have.

Furthermore, the legislation restores Federal aid for thousands of legal immigrants and provides $3 billion to help people make that transition so important from welfare to work.

These and other changes make good on the pledge that many of us made, led by the President, to fix the problems in the recent welfare bill, and I thank the gentleman from Florida [Mr. SHAW] for his hard work in this area.

And, finally, the bill will enhance Medicare's coverage for preventive care including, annual mammograms. The legislation also does spend $1.5 billion to help more low income Medicare beneficiaries pay for that all important part B premium.

I also want to applaud the majority for agreeing with Democrats to drop earlier provisions on reducing employment protections for welfare workers and on reducing State supplemented SSI payments for 2.8 million elderly.

Mr. Speaker, the bill balances the budget while protecting democratic principles. This is a goal that many of us have been fighting for for a long time. I urge support for this conference report.

Mr. SHAYS. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, a long battle began in 1989 when a fairly young Member of this House, the gentleman from Ohio [Mr. KASICH], offered an amendment to balance the Federal budget to get our country's financial house in order. There were 30 Members who supported him in that long march. In 1990, 106 Members supported him. In 1991, 114 Members supported him. He did not offer an amendment in 1992, but in 1993, 135 Members supported JOHN KASICH in his effort to get our country's financial house in order. In 1994, 165 Members supported him in his effort to get our country's financial house in order, and then with the election of 1994 we had the dynamic class of 73 Republican freshmen who came in and helped this man and helped this Congress get our country's financial house in order. In 1995, 235 Members voted to get our country's financial house in order, and the President vetoed that effort. In 1996, 216 voted for that, and the President vetoed it.

Today we are at a historic point. We are at a point where this Democrat President and this Republican Congress have come together to get our country's financial house in order and balance the Federal budget.

The President wanted more spending in certain areas, and this Republican Congress wanted tax cuts and changes to entitlements to slow the runaway costs of entitlements. This has been an effort of both sides, and this is an effort that needs to be supported.

CALL OF THE HOUSE

Mr. SHAYS. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 344]

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Armey
Bachus
Baesler
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berman
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Borski
Boswell
Boyd
Brady
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Cardin
Carson
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clay
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Conyers
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dellums
Deutsch
Dickey
Dicks
Dingell
Dixon
Doggett
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fattah
Fazio
Filner
Flake
Foglietta
Foley
Ford
Fowler
Fox
Franks (NJ)
Frelinghuysen
Furse
Gallegly
Ganske
Gejdenson
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Hefner
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McDermott
McGovern
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Molinari
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paul
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Schumer
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Spence
Spratt
Stabenow
Stearns
Stenholm
Stokes
Strickland

Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thompson
Thornberry
Thune
Thurman
Tiahrt
Torres
Towns
Traficant
Turner
Upton
Velázquez
Vento
Visclosky
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield
Wicker
Wise
Wolf
Woolsey
Wynn
Yates
Young (FL)

□ 1555

The SPEAKER. On this rollcall, 410 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call are dispensed with.

CONFERENCE REPORT ON H.R. 2015, BALANCED BUDGET ACT OF 1997

The SPEAKER. The Chair recognizes the gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. STEARNS], a member of the Committee on Veterans' Affairs, for the purposes of a bipartisan colloquy with the gentlewoman from Michigan [Ms. RIVERS].

Mr. STEARNS. I thank my colleague for yielding time to me, Mr. Speaker.

Ms. RIVERS. Mr. Speaker, will the gentleman yield?

Mr. STEARNS. I yield to the gentlewoman from Michigan.

Ms. RIVERS. Mr. Speaker, in today's House Action Report analysis of the bill before us relative to the Veterans Administration, that publication says that there is going to be a $2.7 billion cut in veterans' programs over the next 5 years.

Unfortunately, this analysis makes no reference to third-party insurers or to this body's agreement to keep the Veterans Administration whole relative to third-party insurer dollars. This has caused a lot of concern here in the House, as well as out in the community.

Can the gentleman speak to this?

Mr. STEARNS. Mr. Speaker, I want to thank my colleague from Michigan for this question. I think it is very important.

As a member of the Committee on Veterans' Affairs and chairman of the House Subcommittee on Health, let me answer by saying we in the Committee on Veterans' Affairs have agreed with the proposal to allow the VA to retain $600 million per year, or over a 5-year period it is $3 billion, in collections from third parties.

But we are also aware of the uncertainty among veterans this policy creates. We in the Committee on Veterans' Affairs have addressed these fears by developing language in the bill that would authorize an automatic supplemental appropriations if collections fall short by more than $25 million.

Ms. RIVERS. Mr. Speaker, I thank the gentleman from Florida.

Mr. SPRATT. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, today for the first time in the 15 years that I have served in the House, we stand within reach of a balanced budget. The question before us is will we finish the job. We stand here within reach of a balanced budget because we stand on the shoulders of those who went before us, Democrats in 1993, who leaned into this problem at great political cost. We paid for it at the ballot box. The deficit was ratcheted then at $190 billion and rising. We voted to do something about it.

To frame the context of what we are doing, I pulled from my office shelf this afternoon the Economic Report of the President filed by George Bush on January 13, 1993, 1 week before Bill Clinton came to office. If Members turn to page 69 of that economic report, they will see that the Bush administration projected that the deficit for fiscal 1993 would be $332 billion. The next year, 1994, they said it would be $297, the next year $265, the next year $241, and this year, $266 billion.

□ 1600

They had another track. They assumed that possibly we could rise to a better result if we had higher growth in the economy. And in that case they assumed the deficit this year would be $207 billion. Members know the results. As Yogi Berra says, you can look it up. It is a matter of record.

We passed that bill with one vote in the House and the skin of its teeth in the Senate. Guess what? The deficit came down in fiscal year 1993 to $255 billion. The next year when we closed the books on fiscal 1994, it was $203 billion. In 1995, when we closed the books on that year, it was $164 billion. And last September 30, 1996, the deficit was $107.8 billion. Phenomenal. We cannot deny it.

We are now looking and confidently expecting a deficit which will be this year below $50 billion, probably below $40 billion.

The question is, will we complete the job? Will we finish what we started in 1993 and claim the victory to which we are entitled?

I address now my side of the aisle. This is our legacy, and today we should lay claim to it by voting this bill up and by finishing the job.

When we started this year, it was not clear at all that we would be able to muster the effort, mount the bipartisan kind of cooperation that would be necessary to bring together a bipartisan agreement and finish the job.

I want to give credit again to President Clinton because as in 1993, again this year he leaned into the problem. He issued a call for us to come together, those of us who are on the Committee on the Budget, to sit and talk, then to negotiate and finally to hammer out the terms of a bipartisan budget agreement.

And I give full credit to the Republican leadership of the committee and of the House, because they responded in earnest and in good faith to that call for talks and for negotiations, and they stood firmly with the process to the very end. The talks were hard fought, no doubt about it. We can sit here and believe that the product that lies before us was hammered out, hard wrought. But throughout those negotiations, there was civility and cordiality from the beginning to the very end. That is why we come here with an agreement that I think we can call a bipartisan agreement.

I noted earlier that when we brought that bipartisan agreement to the floor of the House in the form of a budget resolution, in the form that we had negotiated it, 133 Democrats, nearly two-to-one, voted in favor of it. When the Committee on the Budget then put the resolution out to the committees of jurisdiction, nine all together, it picked up a lot of extra baggage. From my side that baggage contained some bitter pills. It was hard to swallow. We lost more than half of our support for this bill.

I voted for the reconciliation bill, notwithstanding all of those contentious provisions that were bitter to swallow for my side of the aisle. And when I did it, I said, I am betting on the come. I have seen the bipartisan cooperation that we have had in the negotiations so far. If it prevails in the conference, I think we can clean out the bitterness in this bill and bring back to the House a reconciliation bill that a large majority on my side can and should support, because a large majority of the things in this will be things that were our ideas, our initiatives, things for working families who are our constituents and our supporters.

I stand before my colleagues today to say I think we have reached that result. I am not completely pleased with this legislation, of course not. But I have rarely had the occasion to vote for the perfect bill in the 15 years that I have been in the House. And I think that this conference, in this conference we have had far more successes than setbacks. We have a bill that is as close to the budget resolution as we could possibly make it.

This is called a deficit reduction bill. Most of the focus has been on balancing the budget. But in truth, this is more than just a balanced budget, more than just a deficit reduction plan. As I have said before and I think it bears saying again, we did not get so fixated on the deficit that we forgot that other problems exist in this country. Working families need relief. They

need help, and we have tried to reach out and help them provide health insurance, ensure that they have got an educational opportunity, an opportunity for higher education.

We have taken Medicare and dealt with Medicare because it is the biggest spike in the budget, fast growing, high spending, we have to deal with it. We cannot ignore it. We have reduced the cost by a net of $115 billion.

But we protected the beneficiaries, and Democrats can be proud of that because we fought hard for that. We saw that that had to be in this final package. We have not only protected beneficiaries, we have added $4 billion in preventive care coverage to this final package, which is something, too, that we can be proud of.

There are lots of victories in here. I say to my colleagues on my side of the aisle in particular, count the victories. Count the wins that we have got in this package. Count the ideas that are our ideas, that we should lay ownership to and take credit for in the passage of this package.

I think this bill achieves far more than we as Democrats in the minority could ever have hoped to achieve acting by ourselves alone, even with the help of the administration. I am pleased with the outcome. I am going to vote for it. I urge all of my colleagues to do the same.

Mr. SHAYS. Mr. Speaker, on behalf of the Republican Conference, I very proudly yield the balance of my time to the gentleman from Ohio [Mr. KASICH], chairman of the House Committee on the Budget.

Mr. KASICH. Mr. Speaker, you wonder about Ronald Reagan and his wife Nancy in California. This is his legacy, to balance the budget and cut taxes.

The effort to do this, to shake us out of the status quo, has been driven by the energy of a great Republican President like Teddy Roosevelt.

Let me say that there are many, many Members here who are winners. It could not have been done without the gentleman from South Carolina [Mr. SPRATT], working very hard, in a bipartisan way, to sell this package. The Blue Dogs and my great friend, the gentleman from California [Mr. CONDIT], who came to the floor on a very tough amendment and gave us the votes we needed to keep the package together.

The Republican leadership, I look over at the gentleman from Illinois [Mr. HASTERT] and the gentleman from Texas [Mr. DELAY] and the gentleman from Texas [Mr. ARMEY] who came to this Congress to get this done, to balance the budget and cut taxes. Our Speaker, NEWT GINGRICH, who had the will at times to lead when it was difficult. The gentleman from Texas [Mr. ARCHER] who has been here for almost all of his adult life trying to balance the budget and cut taxes and cut capital gains. And there are just so many Members, the members of the Committee on the Budget, starting in 1993, Rick May, my staff director, who worked day and night, along with the rest of the Committee on the Budget staff. They all deserve credit.

But let me, in a nutshell say to everyone here, starting in the period of the Great Depression, my dad was on the WPA. Roosevelt decided we needed a lot of solutions. And the American people said, we are willing to send some of our power and some of our money and some of our influence to the central government. Over the course of the last 40 or 50 years, when we add up Medicare and Medicaid and civil rights and education, so many wonderful things happened over the course of that time.

But let me tell my colleagues where we are today, because everything in life really is a balance. Everything in life is really a pendulum. What this bill represents today, a balanced budget that is real, the savings start today, what this really represents, along with tax cuts that give people power, it really represents the dawning of a new era. It is an era where we recognize the limits of government, and we begin to one more time count on the strength, the innovation, the creativity and the pure energy of the American people, all of us, every single boy and girl, mom and dad, grandma and grandfather, to begin to heal our country. Because what Americans have been saying is, government did a good job to get us over a lot of the hurdles and government still has a job, but what Americans are saying today is, let me get up to the plate, put the bat in my hand, let me heal my family, let me heal my neighborhood, let me heal my schoolhouse, let me heal my community and let me, working with my neighbors, begin to heal my country on the basis of my individual strength, innovation and ingenuity.

This is not the end of the day, obviously. We face a generational war that must be avoided. It is the passing of the baton in a great relay race from one generation to another. We, as the baby boomers, and we, as those who are nearing the time when we will retire, have a responsibility to our children and our grandchildren.

We have to make sure that we can pass that baton and that is work that lies ahead of us. But what is clear in this bill is that we are now committing to limiting the power of government and enhancing the power of the individual.

It is a start. It started by giving our senior citizens more choice. It is happening by giving our Governors more flexibility to design programs to help people that fit their model and their communities. It is a program that enhances the power of individuals through medical savings accounts. It is a program that puts power in people's pockets by reducing the size of Government and letting people keep more of what they earn so they can help their family and their community. That is what this bill represents.

The fact is, Mr. Speaker, I say this to Members on both sides of the aisle, the third millennium will not be a time period where we will talk about the power of regulators or regulations or lawmakers. The third millennium is going to be about the power of the individual, the spirit that created this country and drives this country.

I want to make one final observation to my colleagues. There are many of you on both sides of the aisle that have a burning coal deep inside of your souls, whether it is in regard to children or whether it is in regard to national security or whether it is in regard to helping our senior citizens to prosper or standing up for the best education for a tool for everybody that breathes inside this country or for America to continue to be a bright shining light to the world.

I have one message for you: Do not ever let your colleagues tell you you cannot get there. Do not ever let your staff say, it cannot be done, the mountain is too high. If you will maintain integrity, if you will build a team, if you will be inclusive, if you will stay honest to yourself, I do not care what your dream is, you can get it done through this House. The message here today is that people working together with a great goal in mind, they can be successful and that this House works.

Let us support this bill and let us send a strong message across this country that we are going to win the future and ignite our country to do even better.

God bless you.

Mr. BLUMENAUER. Mr. Speaker, it would be easy to join the administration and friends on both sides of the aisle in their acclaim for their tax and budget agreements, unfortunately, I don't believe a "yes" vote is in the best long term interest of our country.

To be sure, the proposals are better than when the process started. They are more fair and do less long term damage. In fact, there are some elements I strongly favor: the adjustment of capital gains on the sale of residential property, certain adjustment inheritance tax on farms and small business, spending more money for education and the repair of obvious flaws in the welfare legislation passed last year. These are all worthy goals that I support.

In the final analysis there are still three basic problems.

First, the tax changes are premature. We have not done any of the hard work on balancing the budget. The tax changes are scattered and political rather than focused and economically driven.

Second, people most in need, students and working families, don't get enough and that which they do receive is not efficiently delivered. For example, students around America are clear that there are far better ways to provide assistance to make sure that young people get the college education they need. The

tuition credit for tax deduction is an expensive indirect way to help them.

Third and most fundamentally, the long term structural problems remain unaddressed. Our challenges may be harder because we lose several years of potential progress while the long term problem gets worse. It continues the illusion that budget cuts and entitlement reform can be done effortlessly and without pain.

While acknowledging the good intentions of the crafters of these proposals and the progress they have made, they are still at their core a short term political adjustment when we need long term fundamental change. I will continue my efforts in supporting any reasonable efforts to achieve that basic goal.

Ms. FURSE. Mr. Speaker and my colleagues, I rise today in support of H.R. 2015, the Balanced Budget Act. I am pleased that the conference report before the House includes important expanded preventive benefits in the Medicare Program, including improved coverage of diabetes education and supplies. This is a long-overdue change, one that I have worked on for 4 years.

My daughter Amanda has diabetes. As a family, we know that diabetes is the only disease that is managed on a daily basis by the patient. If a person with diabetes lacks the education and/or the proper supplies to manage their disease, they'll do a poor job. When people do a poor job of managing diabetes they end up in the hospital, go blind, suffer heart attacks and strokes. Currently, Medicare won't pay for adequate coverage of self-management training and the necessary tools to manage diabetes, but it will pay for all the avoidable, preventable, costly complications of this disease. This legislation makes these important changes in Medicare and will improve the quality of life for people with diabetes. It is a remarkable achievement.

My colleague, Mr. NETHERCUTT of Washington State, also has a daughter with diabetes. Earlier this year, Mr. NETHERCUTT and I introduced H.R. 58 to improve Medicare coverage of self-management training and blood testing strips. H.R. 58, which has the support of over 282 members of the House, corrects two critical gaps in Medicare coverage which result in thousands more emergency room visits, increased hospitalizations, and cases of blindness, amputation and stroke. I am pleased to report that the conference report includes improved coverage of self-management training and blood-testing strips, as well as blood glucose monitors. This is a dramatic achievement that will save billions of dollars and improve the quality of life for the 16 million Americans with diabetes.

Numerous studies have clearly demonstrated how improving coverage of diabetes education and supplies saves money, and many private sector companies are implementing diabetes programs to save precious health care dollars. In many ways, the bill before the House today modernizes the Medicare Program and brings it in line with changes occurring in the private sector.

I want to thank my colleague on the Commerce Committee, Mr. BILIRAKIS, as well as Mr. BROWN and Mr. THOMAS for their support of making this change. I also want to again thank my colleague from the Pacific Northwest, Mr. NETHERCUTT, who cofounded the Congressional Diabetes Caucus with me. Together, as parents of children with diabetes, we have proven that there is no place for partisanship in tackling this devastating disease. This is a landmark achievement in the Medicare Program and I urge all my colleagues to support passage of this conference report today.

Mr. VENTO. Mr. Speaker, I rise today in support of the spending reconciliation bill, which builds upon the past success of deficit reduction agreements made by Congress, and outlines a plan to lead to a balanced budget by the year 2002. Each of us could and would change the priorities and adjust the way we arrange the tax expenditures which we will be considering tomorrow, but this agreement includes many compromises needed to find common ground.

Mr. Speaker, it's been a long hard path back from President Reagan's 1981 river boat gamble, slashing revenues and lavish Pentagon spending. Those dark years of annual deficits punctuated by rhetoric and finger pointing and constitutional amendments are no substitute for a good congressional constitution for the membership. This year the deficit is estimated to be less than $40 billion through September 30, 1997, the lowest annual deficit since the late 1960's. While a strong economy has helped budget numbers, the lower deficit is in large part finally the result of major work done by the Democratic majority in Congress in 1993 working with President Clinton. Ironically, that year we passed a deficit reduction package with close to $500 billion in deficit reduction, more than double the amount we are talking about today. Not one Republican voted for that package, but the improved budget numbers we are working with now in 1997 are principally a result of those tough choices some made in 1993. The current budget resolution builds upon solid framework and stands on the shoulders of the 1993 budget action. Most importantly, none of the 1993 measure is being repealed or greatly modified in the agreement being offered as a solution today. That speaks volumes concerning the validity of that 1993 budget achievement.

We have made positive progress in the annual deficit, and we must continue to make progress without extreme actions. Today's budget agreement, hammered out by President Clinton and the Congress, demonstrates that we can pursue fiscal balance without creating social imbalance. It extends the Medicare trust fund, even while adding several preventative benefits such as annual mammograms; protects the Medicaid Program; enacts the most significant expansion of health care in three decades, and reinstates fair benefits for legal immigrants lost in the name of reform in 1996. Without the need of a majority vote, each of us no doubt would change this budget. But we must examine and judge this budget based on what is possible politically and practically today, against the backdrop of 1995–96, when polarization and the shutdown of the Federal Government were employed to achieve the ends that the Republican majority in Congress sought, those goals were wrong. The public, the President, and political system rejected the Republican agenda. Today we are acting on an agenda that the public, President, and political system will accept, good for our economy and a sound fiscal policy path to a balanced budget.

Certainly one of the most important achievements of this budget agreement is the significant expansion of health care coverage for children. I have been a longtime advocate of efforts to expand access to health insurance for American families. This measure takes a step forward by expanding coverage for 5 million of the 10 million uninsured children in this Nation. This is the largest expansion of health care for children since the enactment of Medicaid in 1965. In fact, the bill before us today actually goes beyond the original budget agreement by providing an additional $8 billion over a 5-year period from a new tobacco tax to assure that the child health care insurance is accomplished.

However, while I am pleased that Congress is acting to secure health insurance for children nationwide, I do not believe that the bill includes an equitable formula for distributing the funds to States. Minnesota has made pioneering efforts in providing health care coverage for children, so that it currently has the lowest rate of uninsured children in the Nation. However, because the bill's formula is based on the number of uninsured children in each State, Minnesota is being penalized because it has already worked to expand children's health care. Several of my colleagues and I attempted to change the bill so that the formula would be based on the number of children in poverty, but the budget agreement only allows for partial consideration of the poverty rate beginning in the year 2001.

While the Republicans did not sufficiently change the children's health formula, they have withdrawn several other negative policy proposals which were included in this bill when it originally passed the House. The pea and shell game that was put forth concerning protections for legal immigrants has been corrected; they are now conforming to the important commitment of the original budget agreement to assist low-income seniors with the Medicare part B premiums; they have dropped their proposal to exempt some health plans from State solvency requirements and consumer protections; they have deleted changes to medical liability laws to cap malpractice damages; and they have backtracked on several antiworker provisions, including a provision which would have undermined basic employment protections for people on welfare.

The devil of any budget is in the details and President Clinton working with our Democrat budget leaders excised most of the devils which would have derailed this agreement. The numbers and policy recommendations in today's reconciliation bill reflect the fact that our country does not need to renege on basic commitments to the American family and our constituents in order to reduce the deficit and balance the annual budgets. We do not need to create a human deficit in the name of deficit reduction. We can invest in our nation's future through health care, education, infrastructure, and the environment, and still achieve a sound budget. In fact my view is that a human deficit would soon lead to a fiscal deficit especially in today's global economy.

This budget agreement serves as a fair outline for an economic agenda over the next five

years while not perfect. Overall, this budget agreement is a very positive step, the product of compromise, which is necessary in today's political climate and tomorrow's. The budget builds on our past successes in deficit reduction, finishing the job in a reasonable, if not an ideal manner. No doubt some adjustments and modification will be made as we correct for economic realities and attempt to reprioritize in the years ahead. It will be important for us to protect an re-examine the priorities important to the American people as we work to craft the bills to implement the budget agreement over the long term, but I believe this is a worthy product putting in place. The public policy knowledge at our disposal with the political symmetry of our national government into positive action for today, for the benefit of the American families we represent.

Mrs. FOWLER. Mr. Speaker, 3 years ago, when we gained control of the House of Representatives, Republicans made a commitment to cut taxes, balance the budget, and save Medicare.

The spending and tax relief bills we take up this week represent the fulfillment of those promises. The Balanced Budget Act we are considering today is essential to balancing the Federal budget for the first time since 1969.

Of special interest to my constituents who are senior citizens are the provisions relating to Medicare. The Balanced Budget Act will restore solvency to Medicare by saving $115 billion over the next 5 years and implementing structural reforms. These reforms include giving new health care choices to seniors, including provider-sponsored networks; a demonstration program for medical savings accounts, which would permit 390,000 MSA plans; and new benefits, including mammograms and Pap smears, screening for prostate and colorectal cancer, and a program to help with diabetes management.

Mr. Chairman, this is the kind of news that really means something to people. I am pleased and proud that I can go home during the August recess and tell my constituents that their elected Representatives have taken responsibility for the fiscal health of this Nation—and for the future of their children and grandchildren—by preserving Medicare, giving them back more of the hard-earned money, and balancing the budget.

Mr. DINGELL. Mr. Speaker, the spending reconciliation bill before us has a number of important and commendable provisions. At the same time, like many compromises, it includes some provisions which I consider quite objectionable.

On the positive side, the bill represents the first major expansion of health care in many years by establishing a $24 billion program to insure our Nation's children. Extending health care to as many as 10 million uninsured children has been one of my most important goals, and this bill takes the first step in that direction.

The bill also makes useful and important reforms of the Medicare Program that will extend solvency of the Medicare trust fund, while expanding new preventative services and adding consumer protections. Similarly, new consumer protections have been added to the Medicaid Program.

Unfortunately, despite these commendable provisions, we should not delude ourselves that this bill will likely provide a balanced budget, in part because it uses $24 billion in phony revenues from sale of the public spectrum. These telecommunications provisions will give away the public spectrum for pennies on the dollar, and tamper with the public's Universal Service Fund that provides affordable telephone service to all areas of the country.

In addition, I have serious problems with some of the Medicare provisions, such as medical savings accounts and private fee-for-service plans, that threaten the long-term viability of Medicare.

I also have strong objections to the provisions in this bill that make unnecessary cuts in our veterans' health programs by as much as 20 percent. This is undoubtedly the worst place we could choose to balance the budget.

Any bill that is so comprehensive and filled with compromise is bound to have both very good and very bad provisions, but as a Member of Congress we must choose either yes or no. In this case, Mr. Speaker, I believe there are too many important provisions in this bill, particularly in improved health care, to turn it down.

Therefore, I intend to vote yes to this conference report.

CHILDREN'S HEALTH

The most significant achievement in this budget, which I have fought hard to achieve, is a $24 billion in new spending for a new health insurance program for at least half of the 10 million uninsured children in this country.

These children in the families of working Americans will now have a real chance at access to vital health services, such as the prescriptions they need when they have an earache or a sore throat, and eyeglasses so they can read the blackboard in school.

There is no better investment that this Congress can make than helping children get a jump start on life by giving them access to health insurance to give them the opportunity to grow strong and happy.

SPECTRUM

The telecommunications provisions contained in this conference report have merely two flaws: They will gut vital telecommunications policy goals that have enjoyed bipartisan support for decades. And they will do nothing to achieve a balanced budget.

The Budget Committee and the leadership of this body have made it clear that getting a good score from CBO is more important than good policy. But this is not the congressional baseball game. That was played last night.

Today we are not playing a game where good score is the only objective—we are trying to do what is best for the American people.

One only needs to examine a few of the telecommunications provisions to answer that question: The bill forces the Government to liquidate a valuable natural resource—the public radio spectrum—for pennies on the dollar. It requires the auction of frequencies used by the Government that experts say will put our country's military operations at risk.

It takes the unprecedented step of tampering with the Nation's universal service fund—a dangerous move that will hold affordable telephone service hostage to the budget process from this day forward.

MEDICARE

This bill includes many positive changes for Medicare—tough new fraud and abuse provisions; substantial consumer protections for Medicare-managed care; and excellent changes in Medigap.

I also noted that, thanks to efforts by Chairman BLILEY and BILIRAKIS, the bill includes a number of proposals offered by my Democratic colleagues during Commerce Committee markup. However, the bill unfortunately includes several proposals that I fear will prove dangerous to Medicare.

Specifically, medical savings accounts and private contracts between physicians and certain Medicare beneficiaries, for health services outside of Medicare, are dangerous proposals. While this bill includes commendable limits on both approaches, I continue to believe they are inherent menances to Medicare.

Also, the conference report includes a remnant of a very misguided Senate proposal for so-called private fee-for-service health plans. Even with the limits on beneficiary copayments and balance billing wisely included in the conference report, this is a perilous idea which chips into the foundation of Medicare and could lead to the crumbling of that critical foundation, brick by brick.

MEDICAID

The conference report includes several vital improvements in the Medicaid Program: It provides individuals with a choice of managed care programs; it establishes a prudent layperson definition of medical emergencies, so that people experiencing chest pains cannot be denied payment for emergency room services; it requires Medicaid plans to have grievance procedures for people who have been denied services; and it provides consumer information on managed care plans.

I am pleased that payments to community health centers have been preserved over the next 6 years. I intend to keep a close watch over these payments, so that we do not put these important health centers at risk.

I am concerned, however, by the repeal of the requirement of adequate payment to nursing homes, which I believe will threaten important protections of seniors.

Finally, while there was much in this reconciliation process which precluded a careful debate on these issues, I do want to express appreciation to my colleague and chairman of the committee, TOM BLILEY and his excellent and hard-working staff for their willingness to work with members of the minority and our staff, to hear our concerns, and include our staff in important drafting sessions. I commend the committee staff for their professionalism and their cooperation. I also want to thank the hard efforts of our Democratic staff on this bill, and for their many hours of work on this bill.

Mr. THORNBERRY. Mr. Speaker, I rise today in support of the Balanced Budget Act of 1997. Achieving a balanced budget has been a major priority of mine since I first ran for Congress. I am very pleased that today we will vote on a measure that will balance the budget for the first time in 28 years.

In addition to balancing the budget, important headway is made with this legislation in several areas. The Medicare Trust Fund is preserved to the year 2007. The package contains structural reforms and expands choices

for seniors. The bill includes preventive care benefits for mammographies, pap smears, diabetes, prostate, and colorectal cancer screening, vaccines and others. Tough, new anti-fraud measures will increase accountability through stiff penalties for those in violation of the law. Medical Savings Accounts [MSA's] will allow tax-free annual contributions to an individually controlled account and can be used to pay for qualified medical expenses. The project will cover 390,000 seniors and would be combined with a high-deductible insurance policy to provide protection against catastrophic injuries or illnesses.

This bill also increases the freedom and options available to beneficiaries. Patients will finally be allowed to privately pay for services not offered by Medicare. Additionally, Medicare can no longer restrict providers' advice to beneficiaries about medical care or treatment. Beneficiaries will also be given a voice via a new toll-free number to report fraud and billing irregularities directly to the inspector general of Health and Human Services.

While I am in support of the provisions that will preserve Medicare to the year 2007, I also understand the need for continued reform. With this legislation, a National Bipartisan Commission on the Future of Medicare will address Medicare's long-term solvency crisis and make recommendations to Congress on how to preserve the Medicare Program.

In addition to the Medicare provisions, the Medicaid portion of the bill projects savings of $13 billion over 5 years and increases State flexibility, allowing States to provide more cost-effective medical coverage for low-income persons. The legislation also reforms the disproportionate share hospital [DSH] payments through a revised formula designed to protect States from excessive reductions.

There are many positive provisions in this bill in addition to the ones I have mentioned. However, there are also a variety of provisions that I do not support. For example, I do not support increasing taxes and do not believe this increase is the appropriate forum to deal with the question of tobacco. I also have concerns about the children's health provisions. While I definitely want to see every child receive necessary medical attention, I do not believe that the Federal Government can or should replace parents in caring for children. I am also disappointed States like Texas will not be permitted to use nongovernmental personnel in the determination of eligibility for certain benefits. As this Congress strives to achieve a fiscally responsible government, programs like the Texas Integrated Enrollment System need to be given every opportunity to run as efficiently and effectively as possible.

In this bill, there is good and bad legislation. Ultimately, the good outweighs the bad. For the first time in 28 years, Congress will bring some fiscal responsibility to the Federal budget. Additionally, preserving the Medicare Trust Fund is critical to seniors and action is necessary immediately. For these primary reasons, I support the Balanced Budget Act of 1997.

Mr. RUSH. Mr. Speaker, I rise today to oppose the balanced budget agreement. This deal is praised as a bipartisan victory—that we have balanced the budget and increased spending for some social programs. Nothing is further from the truth.

This balanced budget deal was achieved primarily by drastic cuts—$115 billion from Medicare—the major health program for the elderly, and $13 billion in savings from Medicaid—the major Federal program providing health care for poor people. The budget gets balanced by cutting Medicare payments to doctors, hospitals, and other health care providers. The budget deal freezes Medicare payments to hospitals at the fiscal year 1997 level—even though we all know that the demand and costs are rising. And this deal reduces Medicare and Medicaid payments for hospitals that serve a disproportionate number of low-income patients—the very poor—the uninsured. These include public hospitals like Cook County Hospital in Chicago and the University of Chicago Hospital in the First Congressional District. And the cuts also hurt those whose very breath depends on home oxygen. The budget cuts payments for oxygen and oxygen equipment. This budget deal was paid for with another deal—generous tax cuts that favor those who are better off. Only a quarter of these cuts go to people making less than $100,000 a year. Thirty-six percent of these cuts go to the top 1 percent of income earners.

With due respect to the President, and my colleagues on both sides of the aisle—this budget does contain some hard-won provisions—but let's not forget they were fought for and won—by poor people, working people, and advocates for children and immigrants. This bill does include expanded health insurance for poor children. The bill restores benefits to legal immigrants who become disabled and it guarantees minimum wage and workplace protections to workfare participants. But 5 million children who need health insurance will not be covered. Legal immigrants will not receive food stamps. And our Nation's schools that need serious rebuilding so they can move our children into the 21st century and get connected to the information superhighway do not have the funds they need.

Last spring, I cast my vote for the Congressional Black Caucus [CBC] Budget. I was proud to vote for that budget. That budget both balanced and fully funded vital safety net programs like WIC and Head Start. The CBC budget protected the constituents of the First Congressional District. I represent a district where 20 percent of my constituents live in poverty. Thirty-six percent of the children under 18 in my district live in poverty. How could I vote for a budget deal like this when mothers in my district like Grand Boulevard watch their babies die at three times the national average?

My decision to vote "no" on this budget agreement is not a close call. I believe it is a disgrace. It is a betrayal of our basic democratic ideals.

Mr. DOYLE. I rise today to support this spending package, H.R. 2015. This proposal, combined with the tax package we will consider tomorrow, establishes a framework where, for the first time since 1969, our Nation will achieve a balanced budget by the year 2002.

Past efforts in Washington to achieve this type of fiscal balance have been met by partisan gridlock and an unwillingness to compromise. This left the American people with a budget problem and no solutions, with a budget deficit growing larger each year.

During this most recent effort, however, Members of Congress and the President not only listened to our constituents and other affected parties, we also listened to each other. The result of this effort is the balanced budget proposal we are considering this week.

H.R. 2015 represents the spending portion of this bipartisan budget package, which outlines an intelligent solution to not only bring the budget into financial balance, but also to implement other initiatives that improve the lives and health of our most vulnerable citizens.

It is never easy reforming a program, such as Medicare, that so many people depend on for essential services. However, if left untouched, by the year 2001, the Medicare Program would no longer be able to pay for the services it provides to eligible beneficiaries. It is because of this financial instability that Congress took action to develop a proposal that extends the solvency of the Medicare Program.

The majority of the reforms included in the bill primarily affect health care providers by making changes to reimbursement rates or the method Medicare uses to reimburse these providers. This bill also expands coverage of preventive care for senior citizens, including services related to diabetes, osteoporosis, and certain types of cancer, and it includes provisions to further reduce fraud and abuse in the program. Additionally, to respond to an increasing use of managed care entities in the health care system, the bill institutes important consumer protections for Medicare beneficiaries, ensuring that seniors who enroll in managed care plans are provided adequate medical services.

This legislation will not only ensure continued access to health care services for Pennsylvania's seniors, but it also protects the Commonwealth's youngest residents by setting aside $24 billion over 5 years to provide health coverage for uninsured children. This important initiative would provide essential health coverage to as many as 5 million children who are currently living without health benefits.

These initiatives will help secure a healthier future for our Nation, and, at the same time, ensure that our Nation's financial health improves as well. I am pleased to support H.R. 2015, which will balance the Federal budget in a manner that is fair and equitable to all Americans.

Mr. SNOWBARGER. Mr. Speaker, I strongly support the main intent of this bill, namely to restrain entitlement growth and balance the Federal budget. That is why I voted for the budget resolution in May as well as for this bill when it was approved by the House earlier this month. Since that time, however, so much has been added in the form of increased spending and increased taxes that I cannot vote for passage of the conference committee report.

As I have said many times, I did not come to Washington to raise taxes, whatever the source may be. I know that tobacco companies are an inviting target for those who are constantly seeking additional sources for governmental revenue. But the issue is not where

the money comes from. I am no fan of the tobacco industry. In fact, I have voted in the Kansas Legislature for increases in the State tobacco tax and, since coming to Congress, I have voted against subsidies for the tobacco industry. Moreover, I have never accepted a dime of tobacco money in my seven campaigns for public office. The issue here is whether the Congress should raise taxes with one hand even while it reduces them with the other.

To put it simply, the Federal Government already has too much money. It does not need more. Although this tax is ostensibly to fund increased health care availability for kids, the House earlier this month passed, with my support, a far more responsible version of this bill, fully funding the program at the level requested by the President without a tax increase.

Furthermore, the increase in the tobacco tax runs the risk of robbing States of Medicaid reimbursement from the tobacco industry. I am told that this tax on the tobacco companies is credited against the obligations under their agreement with the States' attorneys general. I have repeatedly inquired whether the tobacco companies may be able to avoid some portion of their obligations under the agreement to compensate the States for Medicaid payments. Because no one has been able to assure me this is not the case, I am reluctant to risk taking this hard-won money away from State Medicaid programs.

This bill also contains unacceptable increases in Federal spending. While purporting to reduce and reform entitlements, it actually creates a new entitlement for children's health care, costing $24 billion over 5 years, a full $8 billion more than even President Clinton requested.

Finally, the bill reverses the welfare reform approved by Congress just 2 years ago. It significantly increases food stamps and other welfare spending, sets up yet another Federal jobs program costing $3 billion over 4 years, and extends SSI and Medicaid eligibility to non-citizens even while benefits for American citizens are being curtailed.

There are, of course, many laudable provisions in this bill. Reforming of some entitlements and slowing the growth of government spending are crucial elements to balancing the budget. But my support for these positive elements does not require that I accept every destructive provision inserted at the demand of the other body or the White House. Unfortunately, what was a good bill when it left the House has simply been loaded up with unnecessary taxes and spending. It stands in stark contrast to the conference report on the tax portion of this balanced budget, which to a great extent remained faithful to our pledge of less government and lower taxes. When the House considers the conference committee report on the tax bill, I will proudly support it.

Mr. POSHARD. Mr. Speaker, I rise today in support of the conference report on the balanced budget agreement. I would also like to offer my praise and congratulations to all of the House and Senate members, as well as President Clinton and his administration, who worked so hard to reach this momentous agreement. Throughout my tenure in the House of Representatives, I have championed balancing the federal budget, and I am proud that this often elusive goal has finally been achieved. Although this agreement is not exactly as I would have drafted it, nor is it likely to precisely mirror the priorities of any one member of Congress, it is nonetheless a good budget which will provide significant benefits to every American. In addition, I applaud the remarkable spirit of bipartisanship which has generally characterized the long and complicated path that led us to this point.

Of particular importance to myself and my constituents are the provisions of this budget regarding health care and education. I am pleased that more meaningful education tax credits than ever before will be available to American parents struggling to send their children to college. In addition, the increase in Pell Grant funding will enable more students to receive critical financial assistance as they pursue their education. Congress has demonstrated through this agreement its dedication to educating the youth of this nation, and I hope this will prove to be the beginning of a lasting bipartisan effort to help families of every income level afford higher education for their children.

I also believe that this budget agreement represents a victory for rural health care. As a member of the Rural Health Care Coalition and its co-chair for the last three years, one of my foremost priorities has been to restore equity to the AAPCC, which determines how Medicare reimburses health plans. This bill enacts an adequate minimum floor and, most importantly, a 50/50 blend over six years, which will provide rural seniors with increased health care options. In addition, this agreement establishes a limited-service hospital model that will allow rural hospitals to remain financially viable. We have also taken steps in regard to rural referral centers, including permitting them to be reclassified for the purposes of disproportionate share hospital payments. All of these provisions were included in H.R. 1189, the Rural Health Care Improvement Act of 1997, which I co-authored. These, combined with numerous other valuable provisions, represent a significant step forward for our rural residents.

Again, Mr. Speaker, I am proud that this Congress will have the honor of reaching an agreement to balance the federal budget for the first time in decades, and I urge my colleagues to vote in support of it. It is a victory for our children and grandchildren and a monumental achievement for us all.

Mr. BORSKI. Mr. Speaker, I rise today in opposition to H.R. 2015, the Budget Reconciliation Spending Act Conference Report.

I am no stranger to the tough, courageous decisions that must be made to balance our budget. In 1993, when faced with a record $290 billion deficit, Democrats, including myself, stood tall and—without a single Republican vote—passed the original "Balanced Budget Plan," which has reduced the deficit almost 90 percent. As a result of the 1993 budget, the deficit has been reduced every year for five years in a row for the first time since Harry Truman was in the White House. In fact, many economists project that the 1993 Budget Plan will balance the budget next year if no other plan is passed.

While the Majority Leader prefers to credit the free-spending economic policy of President Reagan, the Congressional Budget Office projects that—without the 1993 Budget Plan—we would be facing a deficit of $319 billion right now, and a whopping $519 billion by the year 2002.

Instead, today our deficit stands at $30 billion—it's lowest point in three decades, and we are on the threshold of balancing the budget. All that remains is to take the final step. Unfortunately, this plan is a step in the wrong direction.

Mr. Speaker, this spending plan would achieve most of its saving through deep cuts to two programs—Medicare and Medicaid. In fact, the $115 billion being stripped from Medicare is, by far, the single largest cut in the plan.

Unlike many, I am not consoled by the fact that other, more devastating provisions have been eliminated from the plan. Until recently, this budget included proposals to means-test Medicare, raise the eligibility age, and set a dangerous precedent by requiring copayments from seniors for benefits that have always been fully paid for by Medicare. While these plans may have been tabled for now, H.R. 2015 would create a commission that will undoubtedly revisit these issues again in the coming years.

Dropping a few irresponsible, misguided attacks on the Medicare Program has not blinded me to the fact that this budget raises seniors Part B premiums $275 a year by 2002. Abandoning plans to raise the Medicare eligibility age does not hide the fact that this scheme attempts to privatize Medicare.

It is ironic that on the 32d anniversary of the creation of Medicare, we are considering legislation that would dismantle the program. Simply put, Medicare works. It is one of the most successful programs in American history, guaranteeing health care coverage for every American in their golden years. And it works for one very simple reason—everyone pays into Medicare, and everyone enjoys the benefits, regardless of income.

Instead, provisions in this budget will destroy the universality of Medicare by allowing some Americans to opt out of the program. These provisions create Medical Savings Accounts (MSAs) and private fee-for-service plans that will give the healthiest and wealthiest beneficiaries the option to abandon the traditional Medicare system, leaving behind low-income and chronically ill seniors. Once the healthy and wealthy seniors have left the system, health care costs will skyrocket, quality of care will deteriorate, and Medicare will—as Speaker Gingrich predicted—"wither on the vine."

Other spending cuts that will undermine Social Security and Medicare are much more direct. This budget cuts 61 percent of the total administrative funding from Social Security, Veterans Benefits, and Medicare, crippling their ability to run these vital and important programs. I am told it currently takes between six months to a year to process a Social Security claim. These cuts would bring that already slow pace to a virtual stand-still, inconveniencing thousands of beneficiaries who rely these services for their sole source of income, and emergency health care needs. Clearly, this budget is not concerned about the health and welfare of America's veterans and senior citizens.

But seniors and vets aren't the only ones who bear the brunt of these spending cuts—hospitals that serve the neediest children and families will also take an enormous hit. The $13.6 billion in Medicaid cuts that this budget calls for would come primarily from disproportionate share hospital payments (DSH). These cuts would hurt only those hospitals that serve the sickest and neediest among us. In addition, the multi-level cuts contained in this bill make it impossible for struggling, nonprofit hospitals to shift the burden of the cuts and will eventually force them to close their doors. Those hospitals that are able to remain open would face the same burdensome cuts in funding, while being expected to absorb the patients formerly served by the closed hospitals.

The obvious result of this plan would be a sharp decline in the quality of care, inevitable job losses, and the closing of many hospitals in my district. Since nearly 15 percent of my region's economy depends directly on providing health care, these cuts would have a ripple effect that would be felt in every sector of the local economy.

Mr. Speaker, the Third District of Pennsylvania is home to over 101,000 senior citizens, making it the 20th oldest district in America. Well over half of all hospital admissions in my district are dependent entirely on either Medicare or Medicaid. Clearly, substantial cuts to these important programs would have a profound impact on the hospitals' ability to provide quality care to my constituents.

Few, if any, districts in the nation will be hit as hard as mine by these devastating cuts to Medicare and Medicaid. The absence of ill-considered provisions into Medicare that would completely gut these important programs does nothing to soften the crushing blow this budget will deliver to the sick, the needy, and the elderly in my district.

Mr. Speaker, I cannot, in good conscience, vote for a budget that takes money from the pockets of senior citizens, turns its back on the uninsured, and threatens to undermine the integrity of the Medicare Program. For that reason, I must oppose this budget.

Mr. BALLENGER. Mr. Speaker, I rise in opposition to the conference report on this legislation to balance the federal budget by 2002. Let me stress that I am committed to balancing the federal budget, but I cannot vote for this compromise budget package.

I believe my ten-year voting record speaks to my commitment to balance the budget. In fact, last week I was one of 81 members who voted for the Budget Enforcement Act. Clearly, this was not a very popular vote, but it demonstrated my dedication to balancing the budget. Similarly, I have cosponsored and voted for Constitutional amendments designed to impose a balanced federal budget. I understand the benefits to the economy, my constituents and their families' futures of a balanced federal budget and debt reduction. I believe we need to balance the budget as soon as possible, and I disagree with too many elements of this compromise to be able to support it today.

In my opinion, there are several major shortcomings in the budget deal just finalized by Congressional leaders and the White House. Specifically the deal allows spending increases for existing non-defense discretionary programs—and the creation of new programs—which were required to ensure President Clinton's support and signature. These spending increases will lead to an expansion of the federal bureaucracy and an expected increase in the deficit until 2001, when it finally will begin to drop. While the spending increases are promised in the short run, the spending cuts that are required to bring the budget into balance are what we call "back loaded," meaning that they will not be made until near the final years of the agreement.

Finally, the new tobacco taxes are unacceptable to the overwhelming majority of my constituents. Under this agreement, tobacco will be hit with a complicated new tax scheme which among other things will mandate an additional 10 cents per pack tax in 2000 and another 5 cent one in 2002. As you can see, an additional 15 cents a pack will be levied by this budget deal. I believe that this is an unfair attack on a legal product, one that would hurt nearly 45,000 tobacco farmers in North Carolina (including over 4,000 in the 10th district alone), and more than 31,000 workers in related industries in my district and the state. Moreover, this excise tax is regressive, hitting hardest those who can least afford this tax increase.

In sum, although I could not vote for the compromise balanced budget package, I will continue to work to balance the federal budget. However, we can and must do so without all the unnecessary spending, unfair taxes and budget tricks included in this particular package. In fact, estimates show that we could balance the federal budget in just a few short years if we hold down spending. Why wait until 2002, if we don't have to?

□ 1615

The SPEAKER. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

Mr. SHAYS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 346, noes 85, not voting 4, as follows:

[Roll No. 345]

AYES—346

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Archer
Armey
Bachus
Baker
Baldacci
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Bass
Bateman
Becerra
Bentsen
Bereuter
Berman
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Boehlert
Boehner
Bonior
Bono
Boswell
Boyd
Brady
Brown (CA)
Brown (FL)
Brown (OH)
Bunning
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Cardin
Carson
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clayton
Clement
Clyburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeGette
DeLauro
DeLay
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Flake
Foglietta
Foley
Ford
Fowler
Fox
Franks (NJ)
Frelinghuysen
Frost
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Goodlatte
Goodling
Gordon
Goss
Granger
Green
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Herger
Hill
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Kanjorski
Kasich
Kelly
Kennelly
Kildee
Kim
Kind (WI)
King (NY)
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lampson
Lantos
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McKeon
McKinney
Meehan
Meek
Menendez
Metcalf
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Molinari
Moran (VA)
Morella
Murtha
Myrick
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Olver
Ortiz
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paxon
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Ramstad
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Sabo
Sanchez
Sandlin
Sawyer
Saxton
Schaefer, Dan
Schaffer, Bob
Schumer
Scott
Sensenbrenner
Sessions
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (NC)
Thomas
Thompson
Thornberry
Thune
Thurman
Tierney
Torres
Traficant
Turner
Upton
Vento
Visclosky
Walsh
Wamp
Watkins
Watts (OK)
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield

Wicker
Wise
Wolf
Woolsey
Wynn
Young (FL)

NOES—85

Baesler
Ballenger
Barton
Berry
Blumenauer
Blunt
Bonilla
Borski
Boucher
Bryant
Burr
Clay
Coble
Coburn
Conyers
Davis (IL)
DeFazio
Delahunt
Dellums
Dickey
Doolittle
Engel
Etheridge
Filner
Frank (MA)
Gephardt
Goode
Graham
Gutierrez
Hastings (FL)
Hilleary
Hilliard
Istook
Jackson (IL)
Jones
Kaptur
Kennedy (MA)
Kennedy (RI)
Kilpatrick
Kingston
Kucinich
Largent
Markey
McDermott
McGovern
McIntosh
McIntyre
McNulty
Mica
Mink
Moakley
Mollohan
Moran (KS)
Nadler
Oberstar
Obey
Owens
Paul
Payne
Pombo
Rahall
Rangel
Rohrabacher
Royce
Rush
Ryun
Salmon
Sanders
Sanford
Scarborough
Serrano
Shadegg
Smith, Linda
Snowbarger
Stark
Stokes
Taylor (MS)
Tiahrt
Towns
Velázquez
Waters
Watt (NC)
Waxman
Weldon (FL)
Yates

NOT VOTING—4

Forbes
Gonzalez
Schiff
Young (AK)

□ 1643

Mr. CUMMINGS changed his vote from "no" to "aye."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SHAYS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

EXPRESSING SENSE OF CONGRESS REGARDING TERRORIST BOMBING IN JERUSALEM

Mr. GILMAN. Mr. Speaker, I ask unanimous consent that the Committee on International Relations be discharged from further consideration of the concurrent resolution (H. Con. Res. 133) expressing the sense of the Congress regarding the terrorist bombing in the Jerusalem market on July 30, 1997, and I ask for its immediate consideration in the House.

The Clerk read the title of the concurrent resolution.

The SPEAKER. Is there objection to the request of the gentleman from New York?

Mr. LANTOS. Mr. Speaker, reserving the right to object, and I do not intend to object, I would merely like to ask the gentleman from New York to explain the resolution before us.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. LANTOS. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman for yielding. Mr. Speaker, this concurrent resolution expresses the sense of Congress regarding the terrorist bombing in a Jerusalem market on July 30, 1997. The terrorist attack on a Jerusalem marketplace that killed 14 people and injured more than 150 is a devastating blow to the peace process.

The gentleman from California [Mr. LANTOS] and I have worked together in introducing House Concurrent Resolution 133 expressing the sense of Congress regarding these heinous explosions which were claimed by Hamas terrorists who want Palestinian terrorists, including Sheikh Ahmed Yassin, released from Israeli jails.

Mr. Arafat and the Palestinian Authority are doing too little to root out terrorism. Arafat must systematically arrest suspected terrorists and those who incite violence if the peace process is to survive. He has not done so to date and his commitment and credibility are being questioned.

The legislation before us today underscores the urgent need for Mr. Arafat to immediately undertake unequivocal action against terrorists and eliminate all illegal weapons and explosives.

Mr. LANTOS. Mr. Speaker, further reserving the right to object, I yield to the distinguished gentleman from Georgia [Mr. GINGRICH], our Speaker.

Mr. GINGRICH. Mr. Speaker, let me first thank both gentlemen for bringing this resolution to the floor and for doing so in such a timely manner. Let me say that my only regret is that this is not even stronger. I think every American needs to look at this two-sided game that is being played.

First we see in the media that the Palestinian Liberation Organization has suffered some diplomatic slight and we are told that Israel should make more concessions. Then Israelis die, but no one is responsible. Then we are told in the media that the Palestinian Liberation Organization has suffered some slight and Israel should make concessions. Then Israelis die but no one is responsible.

Let it be very clear. For at least 7 months, Yasser Arafat and the Palestinian Liberation Authority have consistently failed to pursue and lock up terrorists, they have released convicted terrorists, they have put back on the street people guilty of murder, they have turned their eye, and in fact their justice minister and their head of security have been engaged in actions which are terrorism, although so far the only recorded acts are terrorist against Palestinians who did something as bad as sell land to Israelis.

Let us be clear. Yasser Arafat and the Palestinian Authority has an absolute obligation as a function of its existence to join in the fight against terrorism, and the United States Government should insist unequivocally that we will hold the Palestinian Authority responsible for any failure to lock up terrorists and to abide by its half of the agreement. There can be no security and no peace when innocent people are killed by terrorist bombings and, frankly, Mr. Arafat and his Authority are failing in their obligation to keep up their half of this relationship.

Mr. LANTOS. Mr. Speaker, further reserving the right to object, I yield further to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. I thank the Speaker for his supportive remarks.

Mr. Speaker, without security cooperation by the Palestinian Authority, there is no peace process. Israel's participation and commitment to the Oslo accords are predicated on this. But it has been clear that since March the Palestinian Authority has drastically curtailed its security cooperation with Israel. That is evident by the lack of a compliance report by the State Department certifying that the PLO is in compliance with its commitments. We have no report. And we will have no certification because the State Department knows it cannot certify Mr. Arafat and the PLO as being in compliance with their commitments voluntarily undertaken to fight terrorism at its core.

Today's explosion magnifies those concerns among the American people and heightens the lack of trust. Mr. Arafat must make a 180-degree turn against terrorism, incitement to violence and releasing dangerous suspects. The Government of Israel warned repeatedly that terrorist attacks were brewing because of the lack of Palestinian commitment to fighting terrorism and the green light Arafat was giving to Hamas.

Accordingly, Mr. Speaker, I condemn the actions taken today against innocent individuals in Israel. I extend my deepest sympathy to the families of the dead and injured, reiterate my support for the Government and people of Israel for peace, and urge our colleagues to support the Lantos-Gilman measure that is now before us.

Mr. LANTOS. Mr. Speaker, further reserving the right to object, I would like to express the condolences of the Congress of the United States and the American people to the families of the victims and to the people of Israel for the loss of life and the 172 serious injuries that have been suffered in this preposterous and outrageous terrorist bombing in a Jerusalem market. I wish to express the solidarity of the American people with the people of Israel in the face of this tragic, senseless, brutal, bloody act. I would like to reaffirm

the determination of the Congress, Mr. Speaker, to join with the Government of the State of Israel in fighting international terrorism. I want to urge Yasser Arafat to undertake immediately and unequivocally action to bring to justice the leaders of all the terrorist organizations and extremist groups currently residing in territory under his control, to confiscate their weapons and their explosives, and to keep convicted criminals and terrorists in prison and not to release them.

I wish to reaffirm, Mr. Speaker, the commitment of the Congress of the United States to the peace process in the Middle East. I want to urge all parties to work together to bring lasting peace and security without violence and terrorism in this region.

I also want to urge President Clinton and our Department of State and other executive agencies to provide all appropriate assistance to the Government of Israel, to provide medical and other assistance to the victims of this terrorist act, and to bring to justice the terrorist leaders behind this and similar acts of violence and to work to prevent future such terrorist acts.

Mr. Speaker, I also want to identify myself fully with the words of the gentleman from Georgia [Mr. GINGRICH] our distinguished Speaker. He made it clear that there is an asymmetry in the Middle East peace process; that from time to time outrageous terrorist events occur, dozens of innocent Israeli men, women and children are massacred, and then there is some diplomatic move which presumably calls for evenhanded action.

I think the time is long past due for Yasser Arafat to live up to his obligation, to use his vast police apparatus to ferret out the terrorist nests and to put an end to this nightmare. It is unacceptable for a civilized society to have to live with constant terrorist threats.

At Oklahoma City we learned what it means to have a terrorist act take place on the territory of our own Nation. We are a Nation of 260 million people, and in the last few years we had two terrorist acts of significant proportions, the one at the World Trade Center, and the one at Oklahoma City. The people of Israel suffer from such terrorist acts on a regular basis. A country of a few million people, every one of these incidents hits every single family because they have a sense of community and commitment and belonging.

It is long overdue, Mr. Speaker, that the United Nations also show some balance in recognizing the threat under which Israel lives day in and day out: the Islamic Jihad, the Hamas and the other terrorist organizations, hellbent on destroying the attempt to create peace in the region that millions of decent Israelis and Arabs so desperately crave.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. LANTOS. Further reserving the right to object, I yield to the distinguished gentleman from Illinois.

Mr. YATES. Mr. Speaker, I should like to associate myself with the very eloquent remarks of the gentleman from California in support of the resolution which is now pending. It was a most despicable act that took place today and certainly our Government must make clear to the PLO that our Government will not tolerate such actions. I thank the gentleman for yielding.

Mr. LANTOS. I thank the gentleman for his contribution.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. ENGEL].

Mr. ENGEL. Mr. Speaker, I thank the gentleman from California for putting forth this resolution with the gentleman from New York [Mr. GILMAN]. All people of goodwill are outraged at the terrorist bombings that happened today in Jerusalem. All people of goodwill throughout the world cannot and will not tolerate acts of terrorism.

Mr. Arafat and the Palestinian authorities have to understand that there is a limit to people's patience, that the United States supports and helps facilitate the peace process, but if all sides are not actively working towards peace, there unfortunately can be no peace.

I think it is not a coincidence, Mr. Speaker, that as the peace process has seemed in the last few days to perhaps get back on track, American envoy Dennis Ross is going to the Middle East, it is not a coincidence that these bombings happened because the people that are doing this want to disrupt the peace process, they want to disrupt peace. They do not want to see peace happening. We cannot allow them to succeed. However, Mr. Arafat has to stop talking out of 16 sides of his mouth. He has to stop mouthing certain words and saying he supports peace while at the same time he and some of his ministers and some of the people in the highest ranks of the Palestinian Authority are fanning the fires of terrorism by winking, or looking the other way, or keeping the rhetoric going and showing that they are dissatisfied, and when the terrorist attack inevitably happens, they say, "Well, it wasn't me. My hands are clean. It wasn't me."

But what has Mr. Arafat done to prevent it? What has he done to try to stop terrorism from occurring? The Palestinians arrest people who they know are terrorists and then they release them. It is a revolving door system of justice. This has gone on and on and on for months and even years. So until the Palestinian Authority and Mr. Arafat and his people are serious about combating terrorism, terrorism will never be eradicated.

The Prime Minister of Israel, Mr. Netanyahu, said many, many times that the people of Israel do not expect 100 percent results in combating terrorism, but they certainly expect 100 percent effort. We in the Congress, we in the United States feel the same way.

□ 1700

If the effort is not made, then terrorism will not be eradicated, and Mr. Arafat cannot have it both ways. We in the U.S. Congress provide a lot of funding. In MEPFA we provide money to keep the peace process going. I support the peace process very, very much, but I must say that our patience is wearing thin. We cannot keep saying and making excuses and saying, "Well, OK, we're going to keep providing money, let's overlook this incident because it really wasn't Arafat's fault, and let's overlook that incident because it really wasn't his fault." How many times can we overlook it until we say enough is enough?

So I would personally like to serve notice on Mr. Arafat and the PLO, and I think by this resolution we are serving notice, that our American patience is wearing thin and money will not continue to flow unless there is an absolute commitment to eradicating terrorism. Again, a 100-percent commitment, a 100-percent effort, not necessarily a 100-percent results, but if they have a 100-percent effort, they will approach a 100-percent results. But if they are not making the effort, they will never have the results.

And so I think that we have to ensure that Arafat and his people go after the terrorists, stop the revolving door of justice. Enough is enough. Too many innocent people have been killed, men, women and children. Terrorism is never an acceptable vehicle for negotiations, and that is what the Palestinians are doing. They are using the spectrum of terrorism to kind of hold it over everybody's head and say that if we do not like what is happening, we are going to use rhetoric to say, "Well, you know terrorism might happen because we don't like what the Israeli government is doing." That is what the Palestinians are saying. Well, terrorism is not acceptable, it never will be acceptable, we in the Congress will not accept it, and by passing this resolution we are sending word to Mr. Arafat enough is enough, our patience is wearing thin.

My heart goes out to all those massacred today, to all those maimed today and to the Israeli people. The United States of America will stand by Israel and the fight against terrorism.

Mr. LANTOS. Mr. Speaker, under my reservation of objection, I yield to the distinguished gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Speaker, I would like to begin just my short, very brief remarks by just saying I would like to associate myself with the remarks of the gentleman from New York [Mr.

ENGEL] and the others who have spoken and to say that as terrible, as terrible as today's event was in Jerusalem, where there were at least 18 people killed and up to 200 apparently injured by 2 suicide bombers, today's event unfortunately was not unique. It was not unique because when people are killed in a cafe in Tel Aviv or a fruit and vegetable market in Jerusalem or any of the other in a long series of events like this, civilized people in a civilized society cannot tolerate it, and obviously those of us who are here who feel as deeply as the gentleman from New York [Mr. ENGEL] obviously does and others do as well, that we have got to take steps which are left to our devices to see to it that those events stop.

And without going into further explanation, I would just say that either later tonight or tomorrow or the next time we consider the continuation of the foreign ops bill that we are going to start momentarily, I have filed an amendment which will do that. It makes a very strong and substantive statement on direct aid, I underline the words "direct aid," to the Palestinian Authority and puts very strong and certain conditions which must be met by the Palestinian Authority and Mr. Arafat before any further funds are released directly to the PA.

So I hope that when we get to that bill we can find unanimous agreement in this House that this is the proper course at this time, given the string of events which were capped by the event in Jerusalem today.

Mr. LANTOS. Mr. Speaker, I want to thank my friend for his comments, and under my reservation of objection I yield to the distinguished gentleman from California [Mr. SHERMAN].

Mr. SHERMAN. Mr. Speaker, I thank the distinguished gentleman from California [Mr. LANTOS], who time and time again tirelessly has brought to the attention of this Chamber the misery and the death that have occurred, brought to our attention the victims of terrorism in the Middle East, and we ought to take a minute, as several of the other speakers have indicated, to reflect on the 18 or more who died today.

We ought to remember how the Palestinian Authority came to control territory in the West Bank in Gaza. That territory came under Israeli administration because Israel defended itself in a war of aggression.

Mr. Speaker, how often does a country seize territory in a defensive war and then voluntarily give that territory up? But the territory was put under Arafat's control, initially the Gaza Strip, and then additional areas, land for peace. Where is the peace? Instead, we see pieces of men and women whose lives and bodies have been shattered by explosives in a market in Jerusalem.

We can do something positive today. We cannot only mourn the dead, but we can do something positive. The State Department could announce today that we are moving our embassy to Jerusalem, that we are acknowledging Jerusalem as the indivisible permanent capital of the State of Israel.

Congress has called upon the State Department to do this again and again. It would have the positive effect, the positive impact, of telling all the terrorists in the Middle East that they cannot fight for Jerusalem with terror, that this issue is off the table and that America stands behind Israel's decision long ago to make all of Jerusalem its indivisible and indisputable capital.

So perhaps today can be the last time when terrorists believe that the way to negotiate over the status of Jerusalem is through terrorism. I want to thank the gentleman from California [Mr. LANTOS] for yielding.

Mr. LANTOS. Mr. Speaker, I thank the gentleman from California for his comments, and under my reservation of objection I yield to the gentleman from Pennsylvania [Mr. FOX].

Mr. FOX of Pennsylvania. Mr. Speaker, today's bombings represent yet another failure by the Palestinian Authority to clamp down on terrorism as well as their failure to work with Israel to prevent such attacks. By failing to fulfill its commitments with Israel, the Palestinian Authority has sent a very clear and strong signal to the enemies of peace that it is just a step in obtaining its ultimate goal, the destruction of Israel. The failure again, Mr. Speaker, of the Palestinian Authority to contain terror and to work with Israeli authorities to maintain security for Israeli citizens is written in blood again of 13 bodies of today's attack. The use of terrorism as a tool to win concessions from the Israeli Government is unacceptable and it must be stopped.

Mr. Speaker, we call on the Palestinian community to condemn this horrific attack and continued use of terrorism in the strongest terms. Palestinian Authority Chairman Yassir Arafat in his condolence call to Prime Minister Netanyahu is meaningless if it is not accompanied by a serious effort to assure that future acts of violence against Israeli citizens do not occur.

Our hearts go out to those killed and wounded in today's attack and to their families. It is our deepest hope that the people of Israel will soon be able to live in true peace and security, and I urge my colleagues to support House Concurrent Resolution 133, and I thank the gentleman from California [Mr. LANTOS] and the gentleman from New York [Mr. GILMAN], the chairman, for their leadership on this issue and for ever being strong and making sure we defend the rights of those who are peace loving, and also thank the gentleman from California [Mr. BERMAN] and the gentleman from New Jersey [Mr. SAXTON] and the gentleman from New York [Mr. ENGEL] for their support of the Lantos and Gilman legislation.

Mr. LANTOS. Mr. Speaker, I want to thank the gentleman from Pennsylvania, and under my reservation of objection I yield to the gentleman from Virginia [Mr. MORAN].

Mr. MORAN of Virginia. Mr. Speaker, the suicide attacks today in Jerusalem's open air market are cause for deep sadness on everyone's part. First and foremost, the sympathies of all people of conscience go to the victims and their families. The loss of life and limb in such circumstances is painful beyond words. Our heart goes out to those who have suffered from this callous act of terrorism. These were innocent people who did not deserve to die, who did not deserve to have their bodies mangled for life.

Beyond the individual tragedy is the impact this crime will have upon the peace process. The risks which any government is willing to take for peace are limited by its concerns for the security of its citizens. The limits of trust between negotiating parties are defined by the integrity of each in resolutely safeguarding the security of the other.

Both sides have been disappointed. Israel has been repeatedly disappointed in its request from the Palestinian Authority for a return to previous cooperation in preventing attacks on civilians and bringing perpetrators to justice. It is not likely that there will be concessions of autonomy and territory if the result is going to be terrorism. Without mutual cooperation, the cycle of hostility will continue delaying, perhaps destroying, the peace which Israelis and Palestinians alike desire.

Mr. Speaker, I condemn entirely the terrorist act in Mahane Yehudah and the terrorists who perpetrated and who strategized it. They must be brought to justice, and there must be no gain for them from this crime. I urge all the parties involved to find constructive responses which preserve the ability of citizens to live peaceful lives and prevent the extremists from achieving their goal of derailing the peace process.

Mr. Speaker, this was a clearly calculated effort to destroy progress toward peace between Arabs and Jews. Let us resolve not to let it succeed.

Mr. LANTOS. Mr. Speaker, I thank the gentleman from Virginia for that eloquent statement and, further reserving the right to object, I want to emphasize in concluding, Mr. Speaker, that this House is united in denouncing this outrageous and brutal act of terrorism.

Mr. FORBES. Mr. Speaker and my colleagues in the House, once again bombs have exploded in the streets of Israel killing at least 13 and wounding more than 150. Living with this kind of senseless violence is unbearable

for all in the region and my deepest condolences go out to the families, friends, and neighbors who lost a loved one in the explosion. Every time an innocent life is taken through violence, especially a child's it is a tragedy. It chips away at the fabric that binds us together as a human race. More than lives were killed in its explosion—the explosion struck a deadly blow to the peace process. The attackers, Hamas claimed responsibility in a leaflet, whose overall aim has been to scuttle the peace process achieved a short-term goal: President Clinton postponed a new peace initiative by U.S. envoy Dennis Ross, who was to arrive in the region on July 31, 1997. No new date for the trip was set.

This latest example of violence leads me to ask the question—what kind of peace is this? Since the signing of the Oslo Accords in 1993, the world has witnessed rioting and bombs exploding in the streets of Israel, buses exploding, and Prime Ministers assassinated. I do not want to see the Israelis and Palestinians retreat from the principle of peace but peace they don't have. The time is at hand, and has been, for the U.S. To demand compliance under the Oslo accords. Tangible and measurable results are possible and we need to stick to the task of requiring compliance as a condition of sending U.S. aid to the region. Unfortunately, the Administration and many in Congress are willing to turn a blind eye to evidence of Palestinian violations and misconduct in the name of the peace process. Again, I ask what peace is there? As a result of Congressional inaction, $100 million annually in U.S. assistance is available to the Palestinians.

Since the signing of the Oslo Accords, the Palestinian Authority has engaged in blatant violations of the agreement in addition to disregarding international norms and practices. With the Fiscal Year 1998 Foreign Operations Appropriations bill, Congress has an opportunity to press the Palestinian Authority to comply with its agreements by suspending aid for 3 months to the Palestinian Authority until the President can report and certify that various aspects of the Oslo accords and other human rights conditions are met. Suspending aid to the Palestinians for 3 months is an important demonstration of the American determination to hold both Israelis and Palestinians equally accountable for their actions in the peace process. Until we can be confident that the Palestinians have closed the spigot of violence, we should not be squandering taxpayer dollars on the Arafat regime.

Mr. PAUL. Mr. Speaker, I rise in opposition to House Concurrent Resolution 133 expressing the sense of Congress with regard to the terrorist bombing in the Jerusalem marketplace.

Certainly, I can agree with the language in the resolution that this attack is a violent, vicious, and reprehensible assault upon the individual citizens in Israel. For the victims and the victims' families I have the utmost sympathy. However, while expressing my sincerest personal condolences to these families and victims, I, at the same time, take very seriously my oath to uphold the U.S. Constitution.

Insofar as H. Con Res. 133 "[u]ges the President and appropriate Executive agencies to provide all appropriate assistance to the government of Israel . . . [and] . . . bring to justice the terrorist leaders . . . [and] . . . prevent such terrorist acts in the future," I am unable to vote in favor of this Resolution. Constitutionally, it is not within the enumerated powers of the National Government to police the world. At the same time we are asked to support this resolution to urge intervention by the United States Government to "prevent such terrorist acts in the future" in Israel, would we be so receptive to allowing foreign entities to, for example, intervene to bring to justice the individual who initiated the bombing in Atlanta, GA, during the recent Olympic games.

It is not the responsibility of foreign governments to police the United States and constitutionally, it is not the responsibility of the United States to police the world. Mr. Speaker, for these reasons and with the deepest regrets for the victims and families of this act of brutality in Jerusalem, I oppose passage of H. Con. Res. 133.

Mr. LANTOS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. SOLOMON). Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 133

Whereas on July 30, 1997, two terrorist bombs exploded almost simultaneously in the open market in Jerusalem killing at least 13 people and wounding more than 150 others, and

Whereas this attack is a violent and vicious assault against the peace process and against citizens of Israel: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) Expresses the deep condolences of the Congress and the American people to the families of the victims and to the people of Israel for the loss of life and the serious injuries that have been suffered in the terrorist bombing in the Jerusalem market and expresses the solidarity of the American people with the people of Israel in the face of this tragic and senseless act;

(2) Reaffirms the determination of the Congress to join with the government of Israel in fighting against international terrorism;

(3) Urges Yassir Arafat and officials of the Palestinian Authority to undertake immediately unequivocal action to bring to justice leaders of terrorist organizations and extremist groups and to eliminate all weapons and explosives in the hands of such groups;

(4) Reaffirms the commitment of the Congress of the United States to the peace process in the Middle East and urges all parties to work together to bring lasting peace and security without violence and terrorism to that region; and

(5) Urges the President and appropriate Executive agencies to provide all appropriate assistance to the government of Israel to provide medical and other assistance to the victims of this terrorist act, to bring to justice the terrorist leaders behind this and similar acts of violence, and to work to prevent such terrorist acts in the future.

The SPEAKER pro tempore. The question is on the concurrent resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LANTOS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, further proceedings on this question will be postponed.

GENERAL LEAVE

Mr. CALLAHAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill (H.R. 2159) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1998, and for other purposes, and that I may include tabular and extraneous materials.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1998

The SPEAKER pro tempore. Pursuant to the order of the House of Thursday, July 24, 1997 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2159.

□ 1712

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2159) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1998, and for other purposes, with Mr. Thornberry in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the order of the House of Thursday, July 24, 1997, the bill is considered read for the first time.

The gentleman from Alabama [Mr. CALLAHAN] and the gentlewoman from California [Ms. PELOSI] each will control 30 minutes.

The Chair recognizes the gentleman from Alabama [Mr. CALLAHAN].

Mr. CALLAHAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it is my privilege today to summarize the work of the Subcommittee on Foreign Operations as well as the full Committee on Appropriations in developing the fiscal 1998 Foreign Operations, Export Financing and Related Agencies appropriation bill.

First, I want to publicly express my appreciation for the cooperation extended by my colleague the gentlewoman from California [Ms. PELOSI], San Francisco to be specific, and her staff for their help in crafting this bill. Like the gentleman from Louisiana [Mr. LIVINGSTON] and the gentleman from Wisconsin [Mr. OBEY] before us, the ranking minority member and chairman do not agree with every detail of this bill, but we jointly recommend this bill to the House.

Again, this year the committee recommends a bill that is less than in previous years. We as well as our counterparts in the Senate fully recognize that foreign programs are not entitlements and must be subjected to the same scrutiny as domestic programs.

This year less than 5 percent of the money in this bill goes to the headline countries, such as Bosnia and Cambodia and Haiti. Another 43 percent supports the Middle East peace process, and that amount will not increase. But most of the money goes elsewhere to places where diplomats are seldom seen. What is it used for? It helps children, it protects victims of disasters and war, it promotes responsible economic growth in poor countries, it creates jobs at home through trade and investment, and that is why the $12.267 billion is needed to fund this appropriations bill.

□ 1715

Let me move on to some of the specifics in this bill, beginning with the possible impact of the Congressional Budget Resolution.

At $12.267 billion in discretionary budget authority, this bill is now $233 million under our 602(b) allocation, it is $4.6 billion less than the President's request, and $4.5 billion less than the Senate bill. It is also $87,000 below last year's appropriation bill. Let me once again reemphasize that this year, once again, in voting for the final passage of this bill, Members will be cutting foreign aid as we have done for the last 2 years.

Not every dollar level nor every policy in this bill will find its way into the final conference report in September. The President has no objection to the House passage of this bill, but his advisers signal that he is unlikely to sign a bill at this appropriation level. The House conferees will do our best to hold the line, but the final outcome will be different from what we recommend today, I am sure.

Let me move on to some of the policy issues we have addressed this year, and then to some of the major programs funded through this measure.

The committee again directs through the report language that Israel and Egypt receive the traditional amount of economic and support funds and military assistance. However, leaders of Israel and Egypt have publicly indicated their intention to gradually reduce the burden of economic support by American taxpayers. Our efforts are complicated by the urgent needs of Jordan, Israel's principal peace partner today.

With regard to the South Caucasus and Black Sea-Aegean region, the committee has worked hard to develop a balanced approach. The bill language directs the administration to provide humanitarian assistance to conflictive zones throughout the South Caucasus, including Karabagh for the first time.

We also provide for democracy training in Azerbaijan, and a cap of $40 million in ESF for Turkey, half of which is to be in the form of projects for specific purposes, as directed by section 571. Finally, the committee has reiterated current law with regard to trade and export agencies in the region.

Our chairman, the gentleman from Louisiana [Mr. LIVINGSTON], and the gentleman from Illinois [Mr. PORTER] and the gentleman from Michigan [Mr. KNOLLENBERG] have worked hard on the provisions I have just discussed.

They and the managers oppose all amendments that would disadvantage the United States' efforts to mediate conflict in the Caucasus and Aegean regions.

There are several policy regions involving spending in our own hemisphere. Many of our Members favor tighter control over training at the School of the Americas. We have included language in the bill this year which I believe will address most of the concerns. Before taking a position on any amendment to ban IMET funding for the School of the Americas, I ask all Members to take time to read the committee's bill language on page 29.

Guatemala, Haiti, and Panama are three other countries that have drawn attention from many Members. The committee welcomes and supports the peace settlement in Guatemala. Several Members had the opportunity to witness this first hand in April of this year.

The stagnation in the Government of Haiti makes it difficult for the committee to recommend types of long-term development assistance that cannot be implemented by the weak government there. We encourage USAID to focus on humanitarian assistance, including food aid, as long as former President Aristide blocks progress in rule of law and privatization.

Finally, the committee is disturbed by the situation in Panama. Critical port facilities have been leased to Chinese companies in a less than transparent manner. These leases are also a potential threat to United States national security.

As it has for many years, this bill includes language in two places prohibiting the use of funds to pay for abortions or involuntary sterilization. The underlying law, the Foreign Assistance Act of 1961, also explicitly prohibits the use of funds in this bill for abortion. I repeat, none of the funds in this bill can be used for abortion.

Like a majority of the House, I voted two times earlier this year for the Mexico City policy legislation. That legislation is in conference in the Senate as part of the U.N. reform legislation. Our Mexico City policy champion, the gentleman from New Jersey [Mr. SMITH] is a senior conferee. I wish him luck in working out this issue with the President and with the Senate.

Our new child survival and disease programs fund is retained, and incidentally, we received more correspondence from Members of this body requesting that we continue the funding of the child support program than any other single issue in our entire bill. We have increased this funding this year to $650 million, with the increase aimed at the alarming increase in the incidence of infectious diseases. Again this year we recommend at least $100 million to UNICEF, and that it be provided from the child survival fund.

For export and investment assistance programs the committee recommends a gross total of $753 million, which is partially offset by collections of $251 million. The subsidy appropriations for the Eximbank is $632 million, the same as the request. At a later point in the process the committee will consider increasing this amount if a further request is received from the bank's new President and the director of OMB. Although the committee has deferred acting on the request of $60 million for subsidy appropriations for the OPIC, it fully supports $32 million needed for its administrative expenses.

As an extension of OPIC's statutory sunset operating statute is expected to be reported by the Committee on International Relations within a few days, I will oppose any amendment to kneecap OPIC by slashing its operating expenses. With bipartisan support for an expanded OPIC role in moving Africa from aid dependence to global trading presence, this is no time for us to cripple OPIC.

Other AID development assistance programs as well as disaster assistance are amply provided for. Our report directs that an additional $10 million be provided for the microenterprise grants so many Members have also endorsed. It also directs an additional $20 million for Latin America and the Caribbean, and it recommends a full request for Africa be funded in the child survival and disease programs fund and the development assistance fund. In all of these cases the emphasis is on alleviating poverty through economic growth.

Mr. Chairman, I am going to abbreviate the rest of my remarks, but let me again emphasize to Members in the House that this is once again a cut in foreign aid. We recognize it is far below

the President's request, some $4 billion below what President Clinton has requested.

We at the same time want to express our appreciation for the talent of Secretary Madeleine Albright. She is a remarkable and delightful diplomat, and we want to do everything we can to provide her the necessary tools that she needs to continue her quest for world peace, and to continue the diplomacy that she so professionally has performed in her tenure as Secretary of State.

Once again, we are facing cuts. We are facing a time in this country when the American people want us to cut back on government spending, and they did not send us to Washington to cut everything but foreign aid. So Members can proudly, as Members of this House, go home and tell their constituents that they did the responsible thing: gave the administration an acceptable level of funding, but at the same time, recognizing the austerity program that we are in, we are respectfully cutting the President's request by $4 billion.

Mr. Chairman, I include for the RECORD a letter dated 16 July 1997 from Carol Bellamy, Executive Director, UNICEF,

UNICEF,
New York, NY, July 16, 1997.

Hon. SONNY CALLAHAN,
Chairman, Subcommittee on Foreign Operations, Export Financing, and Related Programs, Capitol Building, Washington, DC.

DEAR MR. CHAIRMAN: As you may be aware, the Secretary-General has today unveiled before the UN General Assembly an ambitious UN reform proposal. For your information, I have today welcomed the proposal and expressed gratitude to the Secretary-General for taking into consideration UNICEF's unique identity, mandate and relationship with its partners in the field. I personally look forward to working with the Secretary-General, his senior staff, and our sister UN agencies over the months ahead to work out the details associated with these reforms. I know that together, and with your support, we can indeed improve the effectiveness and efficiency of the United Nations funds and programs.

I want to take this opportunity as well to thank you again for responding so quickly to UNICEF's concerns about earlier versions of the UN reform proposals that failed to appreciate the unique public/private nature of UNICEF, its relationship with national governments, and its role as the sole UN agency focussing on the survival, development and protection of the whole child. Your letters and report language have ensured that the highest levels of the United Nations, which are truly committed to effective reform, understand that we can move forward with reform without damaging UNICEF.

We will be fully engaged in the UN reform process over the next several months and look forward to keeping you informed of our progress.

Sincerely,

CAROL BELLAMY,
Executive Director.

Mr. Chairman, I include for the RECORD the following tabular material:

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS BILL (H.R. 2159)

	FY 1997 Enacted	FY 1998 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
TITLE I - EXPORT AND INVESTMENT ASSISTANCE					
EXPORT-IMPORT BANK OF THE UNITED STATES					
Limitation on Program Activity:					
Subsidy appropriation	726,000,000	632,000,000	632,000,000	-94,000,000	
(Direct loan authorization)	(1,270,000)	(1,330,000,000)	(1,330,000,000)	(+1,328,730,000)	
(Guaranteed loan authorization)	(11,050,000,000)	(11,300,000,000)	(11,300,000,000)	(+250,000,000)	
Administrative expenses	46,614,000	48,614,000	48,614,000	+2,000,000	
Negative subsidy	-58,000,000	-51,000,000	-51,000,000	+7,000,000	
Total, Export-Import Bank of the United States	714,614,000	629,614,000	629,614,000	-85,000,000	
OVERSEAS PRIVATE INVESTMENT CORPORATION					
Noncredit account:					
Administrative expenses	32,000,000	32,000,000	32,000,000		
Insurance fees and other offsetting collections	-224,000,000	-251,000,000	-251,000,000	-27,000,000	
Direct loans:					
Loan subsidy	4,000,000	4,000,000		-4,000,000	-4,000,000
(Loan authorization)	(80,000,000)	(133,000,000)		(-80,000,000)	(-133,000,000)
Guaranteed loans:					
Loan subsidy	68,000,000	56,000,000		-68,000,000	-56,000,000
(Loan authorization)	(1,360,000,000)	(1,800,000,000)		(-1,360,000,000)	(-1,800,000,000)
Total, Overseas Private Investment Corporation	-120,000,000	-159,000,000	-219,000,000	-99,000,000	-60,000,000
FUNDS APPROPRIATED TO THE PRESIDENT					
Trade and Development Agency					
Trade and development agency	40,000,000	43,000,000	40,000,000		-3,000,000
(By transfer)	(5,000,000)			(-5,000,000)	
Total, title I, Export and investment assistance	634,614,000	513,614,000	450,614,000	-184,000,000	-63,000,000
(Loan authorizations)	(12,491,270,000)	(14,563,000,000)	(12,630,000,000)	(+138,730,000)	(-1,933,000,000)
TITLE II - BILATERAL ECONOMIC ASSISTANCE					
FUNDS APPROPRIATED TO THE PRESIDENT					
Agency for International Development					
Child survival and disease programs fund	600,000,000		650,000,000	+50,000,000	+650,000,000
Development assistance	1,181,500,000	998,000,000	1,167,000,000	-14,500,000	+169,000,000
Development Fund for Africa		700,000,000			-700,000,000
International disaster assistance	190,000,000	190,000,000	190,000,000		
Debt restructuring	27,000,000	34,000,000	27,000,000		-7,000,000
Micro & Small Enterprise Development program account:					
Subsidy appropriations	1,500,000	1,500,000	1,500,000		
(Direct loan authorization)	(1,000,000)	(1,000,000)	(1,000,000)		
(Guaranteed loan authorization)	(39,000,000)	(48,000,000)	(48,000,000)	(+9,000,000)	
Administrative expenses	500,000	500,000	500,000		
Urban and environmental credit program account:					
Subsidy appropriations	3,500,000	3,000,000	3,000,000	-500,000	
(Guaranteed loan authorization)	(29,400,000)	(46,000,000)	(46,000,000)	(+16,600,000)	
Administrative expenses	6,000,000	6,000,000	6,000,000		
Subtotal, development assistance	2,010,000,000	1,933,000,000	2,045,000,000	+35,000,000	+112,000,000
Payment to the Foreign Service Retirement and Disability Fund	43,826,000	44,208,000	44,208,000	+382,000	
Operating expenses of the Agency for International Development	470,750,000	473,000,000	468,750,000	-2,000,000	-4,250,000
Operating expenses of the Agency for International Development Office of Inspector General	30,000,000	29,047,000	29,047,000	-953,000	
Subtotal, Agency for International Development	2,554,576,000	2,479,255,000	2,587,005,000	+32,429,000	+107,750,000
Other Bilateral Economic Assistance					
Economic support fund:					
Camp David countries	2,015,000,000	2,015,000,000	2,015,000,000		
Other	328,000,000	482,600,000	385,000,000	+57,000,000	-97,600,000
Subtotal, Economic support fund	2,343,000,000	2,497,600,000	2,400,000,000	+57,000,000	-97,600,000
International fund for Ireland	19,600,000		19,600,000		+19,600,000
Assistance for Eastern Europe and the Baltic States	475,000,000	492,000,000	470,000,000	-5,000,000	-22,000,000
Assistance for the New Independent States of the former Soviet Union	625,000,000	900,000,000	625,000,000		-275,000,000
U.S. Russian Investment Fund (by transfer)		(50,000,000)			(-50,000,000)
Subtotal, Other Bilateral Economic Assistance	3,462,600,000	3,889,600,000	3,514,600,000	+52,000,000	-375,000,000
Total, Agency for International Development	6,017,176,000	6,368,855,000	6,101,605,000	+84,429,000	-267,250,000

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS BILL (H.R. 2159)—Continued

	FY 1997 Enacted	FY 1998 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
INDEPENDENT AGENCIES					
Inter-American Foundation					
Appropriations		22,000,000	20,000,000	+20,000,000	-2,000,000
African Development Foundation					
Appropriations		14,000,000	11,500,000	+11,500,000	-2,500,000
Peace Corps					
Appropriations	208,000,000	222,000,000	222,000,000	+14,000,000	
(By transfer)	(12,000,000)			(-12,000,000)	
Department of State					
International narcotics control	213,000,000	230,000,000	230,000,000	+17,000,000	
Migration and refugee assistance	650,000,000	650,000,000	650,000,000		
Refugee resettlement assistance	5,000,000		5,000,000		+5,000,000
United States Emergency Refugee and Migration Assistance Fund	50,000,000	50,000,000	50,000,000		
Anti-terrorism assistance		19,000,000			-19,000,000
Nonproliferation and Disarmament Fund		15,000,000			-15,000,000
Nonproliferation, anti-terrorism, demining and related programs	151,000,000		118,000,000	-33,000,000	+118,000,000
Total, Department of State	1,069,000,000	964,000,000	1,053,000,000	-16,000,000	+89,000,000
Total, title II, Bilateral economic assistance	7,294,176,000	7,590,855,000	7,408,105,000	+113,929,000	-182,750,000
(By transfer)	(12,000,000)	(50,000,000)	(4,500,000)	(-7,500,000)	(-45,500,000)
(Loan authorizations)	(69,400,000)	(95,000,000)	(95,000,000)	(+25,600,000)	
TITLE III - MILITARY ASSISTANCE					
FUNDS APPROPRIATED TO THE PRESIDENT					
International Military Education and Training	43,475,000	50,000,000	50,000,000	+6,525,000	
Foreign Military Financing Program:					
Grants:					
Camp David countries	3,100,000,000	3,100,000,000	3,100,000,000		
Other	124,000,000	174,250,000	159,250,000	+35,250,000	-15,000,000
Subtotal, grants	3,224,000,000	3,274,250,000	3,259,250,000	+35,250,000	-15,000,000
(Limitation on administrative expenses)	(23,250,000)	(23,250,000)	(23,250,000)		
Direct concessional loans:					
Subsidy appropriation	60,000,000	66,000,000	60,000,000		-6,000,000
(Loan authorization)	(540,000,000)	(699,500,000)	(657,000,000)	(+117,000,000)	(-42,500,000)
FMF program level	(3,764,000,000)	(3,973,750,000)	(3,916,250,000)	(+152,250,000)	(-57,500,000)
Total, Foreign military assistance	3,284,000,000	3,340,250,000	3,319,250,000	+35,250,000	-21,000,000
Special Defense Acquisition Fund:					
Offsetting collections	-166,000,000	-106,000,000	-106,000,000	+60,000,000	
Peacekeeping operations	65,000,000	90,000,000	77,500,000	+12,500,000	-12,500,000
Total, title III, Military assistance	3,226,475,000	3,374,250,000	3,340,750,000	+114,275,000	-33,500,000
(Limitation on administrative expenses)	(23,250,000)	(23,250,000)	(23,250,000)		
(Loan authorization)	(540,000,000)	(699,500,000)	(657,000,000)	(+117,000,000)	(-42,500,000)
TITLE IV - MULTILATERAL ECONOMIC ASSISTANCE					
FUNDS APPROPRIATED TO THE PRESIDENT					
International Financial Institutions					
World Bank Group					
Contribution to the International Bank for Reconstruction and Development:					
Contribution to the International Finance Corporation	6,656,000			-6,656,000	
Contribution to the Global Environment Facility	35,000,000	100,000,000	35,000,000		-65,000,000
Contribution to the International Development Association	700,000,000	1,034,504,000	606,000,000	-94,000,000	-428,504,000
Total, World Bank Group	741,656,000	1,134,504,000	641,000,000	-100,656,000	-493,504,000
Contribution to the Inter-American Development Bank:					
Paid-in capital	25,610,667	25,610,667	25,610,667		
(Limitation on callable capital subscriptions)	(1,503,718,910)	(1,503,718,910)	(1,503,718,910)		
Fund for special operations	10,000,000	20,835,000	20,835,000	+10,835,000	
Contribution to the Enterprise for the Americas Multilateral Investment Fund	27,500,000	30,000,000		-27,500,000	-30,000,000
Total, contribution to the Inter-American Development Bank	63,110,667	76,445,667	46,445,667	-16,665,000	-30,000,000

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS BILL (H.R. 2159)—Continued

	FY 1997 Enacted	FY 1998 Estimate	Bill	Bill compared with Enacted	Bill compared with Estimate
Contribution to the Asian Development Bank:					
Paid-in capital	13,221,596	13,221,596	13,221,596		
(Limitation on callable capital subscriptions)	(647,858,204)	(647,858,204)	(647,858,204)		
Contribution to the Asian Development fund	100,000,000	150,000,000	100,000,000		-50,000,000
Total, contribution to the Asian Development Bank	113,221,596	163,221,596	113,221,596		-50,000,000
Contribution to the African Development Fund		50,000,000	25,000,000	+25,000,000	-25,000,000
Contribution to the European Bank for Reconstruction and Development:					
Paid-in capital	11,916,447	35,778,717	35,778,717	+23,862,270	
(Limitation on callable capital subscriptions)	(27,805,043)	(123,237,803)	(123,237,803)	(+95,432,760)	
North American Development Bank:					
Paid-in capital	56,000,000	56,500,000	56,500,000	+500,000	
(Limitation on callable capital subscriptions)	(318,750,000)	(318,750,000)	(318,750,000)		
Contribution to the Bank for Economic Cooperation and Development in the Middle East and North Africa:					
(By transfer)		(52,500,000)			(-52,500,000)
(Limitation on callable capital subscriptions)		(157,500,500)			(-157,500,500)
International Monetary Fund					
Contribution to the enhanced structural adjustment facility		7,000,000			-7,000,000
Loans to International Monetary Fund		3,521,000,000			-3,521,000,000
Total, International Financial Institutions	985,904,710	5,044,449,980	917,945,980	-67,958,730	-4,126,504,000
(Limitation on callable capital subscript)	(2,498,132,157)	(2,751,065,417)	(2,593,564,917)	(+95,432,760)	(-157,500,500)
International Organizations and Programs					
International organizations and programs	169,950,000	365,000,000	194,000,000	+24,050,000	-171,000,000
(By transfer)	(17,500,000)			(-17,500,000)	
Total, title IV, Multilateral economic assistance	1,155,854,710	5,409,449,980	1,111,945,980	-43,908,730	-4,297,504,000
(By transfer)	(17,500,000)	(52,500,000)		(-17,500,000)	(-52,500,000)
(Limitation on callable capital subscript)	(2,498,132,157)	(2,751,065,417)	(2,593,564,917)	(+95,432,760)	(-157,500,500)
Grand total	12,311,119,710	16,888,168,980	12,311,414,980	+295,270	-4,576,754,000
(By transfer)	(34,500,000)	(102,500,000)	(4,500,000)	(-30,000,000)	(-98,000,000)
(Limitation on administrative expenses)	(23,250,000)	(23,250,000)	(23,250,000)		
(Limitation on callable capital)	(2,498,132,157)	(2,751,065,417)	(2,593,564,917)	(+95,432,760)	(-157,500,500)
(Loan authorizations)	(13,100,670,000)	(15,357,500,000)	(13,382,000,000)	(+281,330,000)	(-1,975,500,000)
Total mandatory and discretionary	12,311,119,710	16,888,168,980	12,311,414,980	+295,270	-4,576,754,000
Mandatory	43,826,000	44,208,000	44,208,000	+382,000	
Discretionary	12,267,293,710	16,843,960,980	12,267,206,980	-86,730	-4,576,754,000

Mr. CALLAHAN. Mr. Chairman, I reserve the balance of my time.

Ms. PELOSI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the foreign operations export, finance, and related programs legislation, and in doing so, commend our chairman, the gentleman from Alabama [Mr. CALLAHAN], for his exceptional leadership in forging the bipartisan bill to the floor today. Although we may not agree on all of the issues in the bill, we come with a unified message.

Hopefully the amendments that have been introduced on the floor will not do damage to the bipartisanship that the gentleman from Alabama [Mr. CALLAHAN] imposed upon us, that he nurtured as we went along. He indeed is the gentleman from Alabama. I am grateful to him for his accessibility in terms of hearing our case and putting some of our priorities into the legislation.

I also want to join him in commending our chairman of the full committee, the gentleman from Louisiana [Mr. LIVINGSTON], for his participation in the bipartisan spirit to bring this bill to the floor, and the gentleman from Wisconsin [Mr. OBEY], our ranking member of the full committee, a longtime chair of the Subcommittee on Foreign Operations, Export Financing and Related Programs of the Committee on Appropriations for his great wisdom and spirit of bipartisanship.

Before I begin, Mr. Speaker, I want to acknowledge the hard work of the majority and minority staff, Charlie Flickner, Bill Inglee, John Shank, Nancy Tippens, Lori Maes, Mark Murray, and Carolyn Bartholomew, and thank them for their very, very hard work, not only in bringing the legislation to the floor, but for the hearing process and all that went into developing this piece of legislation today.

Before I proceed on the substance of the bill, Mr. Chairman, I want to join our colleagues, the gentleman from New York [Mr. GILMAN] and the gentleman from California [Mr. LANTOS], in the resolution that preceded our bringing the foreign operations bill to the floor.

I, too, want to extend my condolences to the people of Israel for their suffering because of the tragic terrorist act. It is appropriate that this resolution preceded our bill, because our bill has made a very, very strong commitment to peace in the Middle East. These senseless terrorist acts are not in furtherance of that peace. I wanted to add my voice of sympathy to those of our colleagues who spoke on the resolution.

Mr. Chairman, this legislation addresses foreign operations, export financing, and related programs, as its title describes. As the world's sole remaining superpower and as the beacon of hope and opportunity for people

around the world, it is within our ability and indeed it is vital to our national interest to provide the necessary resources to meet our collective foreign policy goals.

We have and will continue to have disagreements in this body about the framework of our foreign policy goals and just what constitutes our national security interest. The fact of the matter is, however, that the overwhelming majority of funds in this bill go to an agenda on which we can all agree.

These include alleviating poverty, fighting illness and eradicating disease worldwide, educating the poor, caring for refugees and displaced persons, teaching women about their choices, saving the lives of starving children, facilitating the transition to free markets and to democratic society, addressing environmental degradation, helping American companies enhance their export opportunities, providing small loans to those who need help to start businesses in the microenterprise arena that the First Lady and the administration has taken such leadership in, and promoting basic human rights and democratic freedoms.

These goals, as I say, are those which we can all agree upon. They are important and they should be funded adequately.

We are all familiar with President Kennedy's inaugural address when he said, and Americans of a certain age and generation all know what he said in the inaugural address, "To those peoples in the huts and villages of half the globe, struggling to break the bonds of mass misery, we pledge our best efforts to help them help themselves, for whatever period is required, not because the Communists may be doing it, not because we seek their votes, but because it is right. If a free society cannot help the many who are poor, it cannot save the few who are richer."

Many things have changed since that day in 1961, but many things have not. Our foreign policy is no longer based on containing communism, but there are many more people in the world struggling to break the bonds of mass misery today than there were in 1961. We are in fact providing those people with vital assistance.

Thus, we have an even greater challenge before us today than we had in 1961, and should not be bound by artificial limits on what we are spending to meet our basic responsibility as the world's only remaining superpower to make the world healthier and more secure for all of us.

We as Members of this body have a challenge before us with respect to demonstrating to the American people that their lives are indeed affected by what happens in today's world. The fact is that an overwhelming majority of people in this country support providing needed humanitarian assistance and helping poor women and children better their lot in life throughout the world.

□ 1730

Secretary Albright, and I wish to associate myself with the remarks of our distinguished chairman, the gentleman from Alabama [Mr. CALLAHAN], in his praise of our distinguished Secretary of State, Secretary Albright, has said that 1 percent of our budget may determine 50 percent of the history that is written about our era; and it will affect the lives of 100 percent of the American people. We have a challenge before us, and that is to convince the American people that, as I mentioned before, that their lives are affected by what happens inside our borders and that we can effectively respond to those needs. But their lives are also affected by what happens outside our borders.

We on a more practical note also have to demonstrate that the funds we do provide make a difference. I for one intend to respond to this challenge by speaking out and working for higher funding level than what is currently in this bill. With all due respect to my distinguished chairman, this is one area where we have disagreement and that is on the funding level.

The total funding level in this bill is simply too low to meet these challenges that I mentioned above. The total of $12.3 billion is $1 billion below the administration's request level of $13.3 billion, if we are just counting what is appropriated in this bill. We have not provided enough to even meet our annual contribution level for the International Development Association, known as IDA, much less pay the over $200 million in past due payments. These funds enable the World Bank lending to the poorest countries in the world. Underfunding of this account has led to the imposition of procurement restrictions against American companies, and this funding level means that these restrictions may continue to be in effect.

The bill provides little or no funding for the new Partnership for Freedom initiative for the new independent states. Indeed, there is funding in here for the Partnership for Peace but not for the new initiative. These new republics are making strides toward democracy and the establishment of free market economies, with our help and against overwhelming internal obstacles.

It is now time to refocus our aid programs, having learned what works and what does not. There should be absolutely no question that we need to remain engaged with an enlightened and robust aid program in these newly independent states and more funding is needed to accomplish this.

Again, I want to compliment my distinguished chairman, the gentleman from Alabama [Mr. CALLAHAN], because of some of the items in the bill that it does fund adequately. The bill contains funding for many vital programs such as the child survival account which is a special one for our chairman, development assistance programs, refugee assistance, export assistance, anti-terrorism, nonproliferation, demining and the Peace Corps, to name a few. Given these funding levels and the cooperation shown by the gentleman from Alabama [Mr. CALLAHAN] and the leadership shown by the gentleman from Alabama [Mr. CALLAHAN] in putting this bill together, I would like to support the bill and fully intend to. As I said, I hope that the amendments on the floor do not do violence to our spirit and the peace that the gentleman from Alabama [Mr. CALLAHAN] has created around this bill.

The committee has acted responsibly in putting together a bill which reflects bipartisanship and compromise. While its funding level is too low in some areas, as I have previously stated, it has many aspects worthy of support.

In closing Mr. Chairman, I want to again quote President Kennedy. As I said earlier, many Americans are familiar with President Kennedy's inaugural address in which he said, "ask not what your country can do for you but what you can do for your country." But how many Americans know the line that follows, and that line is, "my fellow citizens of the world, ask not what America will do for you but what together we can do for the freedom of men."

President Kennedy laid down a challenge to the American people to act to improve their own country and to act to work with the peoples of other nations to work for freedom and alleviation of poverty. We must respond to this challenge by meeting our responsibilities in the spirit of humanity and generosity and in the national interest of our great country.

With that, Mr. Chairman, I reserve the balance of my time.

Mr. CALLAHAN. Mr. Chairman, I yield 5 minutes to the gentleman from Michigan [Mr. KNOLLENBERG], a member of the appropriations subcommittee.

Mr. KNOLLENBERG. Mr. Chairman, I rise in strong support of H.R. 2159, the 1998 appropriations bill for foreign operations. As a member of this subcommittee, I want to commend my friend, the chairman of the committee, the gentleman from Alabama [Mr. CALLAHAN], who has been, I think, outstanding in his ability to work with all sides. Shepherding this bill is no different than any other, of course, but it is difficult when it is an appropriations bill and he has done it, I think, with grace, with diligence and with impartiality.

I want to thank also the gentlewoman from California [Ms. PELOSI] for her work with the chairman and the

committee. The entire subcommittee staff should also be thanked for all the work that they have done to bring about this bill. Each member of the subcommittee has worked in a bipartisan way to craft this bill so that it reflects the Nation's international priorities while maintaining a goal of fiscal responsibility and a balanced budget.

The bill again holds the line on foreign aid spending. At the same time, the bill maintains funding for our most important foreign aid priorities. I want to especially thank the chairman for working with myself and others to include increased funding for the microenterprise program. This helpful program provides small loans to the poorest individuals of the less developed countries in an effort to create self-reliance. That program has been very successful.

I applaud the bill's continued commitment to the Middle East peace process. In addition to maintaining the funding levels at the same level for both Egypt and Israel, the bill requires now a detailed report of the progress toward compliance with the Oslo peace accords.

The bill contains our strong commitment to democracy building in Russia while addressing our concerns about Russian exports of nuclear and ballistic missile technology. With Russia and the United States already at odds over the Russian sale of nuclear reactors to Iran, Russia now plans to aid Cuba in revitalizing a dangerous Chernobyl style nuclear reactor just 90 miles off our coast. This must not be allowed to happen. This grave situation is addressed in the bill by stipulating that aid to Russia is contingent upon stopping the development of any nuclear program or ballistic missile capacity. We are sending a powerful signal to Russia that its interaction with dangerous rogue states like Iran is unacceptable.

Finally, I want to highlight the provisions of this bill that deal with the ongoing conflict in the Caucasus. Many people do not even know about the history of this small troubled region of the former Soviet Union. But this conflict will continue to have an impact upon America, on our interests because of the neighboring countries that surround that community.

I am glad and proud to have worked with the chairman and with members of this subcommittee to craft what I consider a productive, positive proposal that will facilitate peace in the region and reinforce the U.S. role as an unbiased mediator in the peace process. Whether you know it or not, each of us has a vested interest in the outcome of the Caucasus. U.S. interest can best be served through a swift and meaningful resolution to conflicts plaguing this troubled region.

This proposal also removes obstacles to the delivery of humanitarian relief to needy people throughout the Caucasus. It clarifies section 907 of the Freedom Support Act and allows democracy building and electoral reform activities in Azerbaijan. Section 907 should not preclude programs designed to create a more democratic Azerbaijan because democratic nations are inherently more peaceful.

The bill contains the $95 million package of assistance to Armenia meeting the pressing humanitarian and development needs there and hopefully hasten its progress toward stability, peace and prosperity.

With our support we may finally see this region free of bloodshed and conflict and rich with prosperity and opportunity.

The subject of foreign aid often sparks heated debate on the floor. We all have strong opinions about of course how we feel about things and about a number of programs that are close to us. I asked my colleagues not to let these heated discussions keep us away from coming to closure to resolution on the business at hand which is to pass this bill, a fair bill. We need them to unite behind it.

I want to again thank the chairman, the gentleman from Alabama [Mr. CALLAHAN] for all of his work and his leadership in bringing the influence, his influence into this to bring about, I believe, a very, very outstanding bill.

I ask Members to support the bill and I want to in closing thank the chairman for yielding this time to me.

Ms. PELOSI. Mr. Chairman, I yield 1½ minutes to the gentleman from Virginia [Mr. MORAN], distinguished member of the Committee on Appropriations.

Mr. MORAN of Virginia. Mr. Chairman, first of all, I hope this bill passes because I doubt that there are any two Members of this body that are any more well liked and respected than the gentlewoman from California [Ms. PELOSI] and the gentleman from Alabama [Mr. CALLAHAN]. But I would like to enter into a colloquy with the chairman if I could.

Mr. Chairman, I want to thank you and the gentlewoman from California [Ms. PELOSI] and the members of the subcommittee for the attention and the funding that you have given to demining activities in this bill. I know that you and the gentlewoman from California [Ms. PELOSI] are well aware of the challenge that land mines pose to humanitarian development, refugee resettlement and rehabilitation throughout the developing world. Many of these efforts cannot even begin or must be suspended or terminated until the land mines are marked or removed. These areas, mine awareness, education and demining activities, must go hand in hand with humanitarian relief and development programs.

A number of our private voluntary organizations, nongovernmental organizations are trying to initiate and implement these sorts of antiland mine programs. However, we have learned that these demining funds have not been made available to them. It is my understanding that private voluntary organizations and nongovernmental organizations may apply for these demining funds and that these funds may be used for mine awareness and education programs, mapping and marking and the training of deminers as well as the removal of mines. Can the chairman confirm my interpretation?

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I yield to the gentleman from Alabama.

Mr. CALLAHAN. Mr. Chairman, the gentleman is correct. It is the understanding of the committee that the nongovernmental agencies that you are talking about can apply for these funds for the activities the gentleman mentioned.

Mr. MORAN of Virginia. Mr. Chairman, I thank the gentleman very much for this confirmation and his strong leadership in this area. I thank my friend and the ranking member of the subcommittee, the gentlewoman from California [Ms. PELOSI], as well. I hope the bill passes.

Mr. CALLAHAN. Mr. Chairman, I yield 4 minutes to the gentleman from California [Mr. PACKARD], who is also a member of the appropriations subcommittee.

Mr. PACKARD. Mr. Chairman, I wanted to take a moment to compliment the chairman of this subcommittee and the ranking Democrat, the gentlewoman from California [Ms. PELOSI], for their very fine leadership in crafting this bill. I am proud to rise in support of the bill that has been brought to the floor today. I especially rise in the hopes that all the Members will recognize the strong leadership of the gentleman from Alabama [Mr. CALLAHAN] and also the gentlewoman from California [Ms. PELOSI] in crafting this financially prudent and yet socially and morally responsible bill.

As the gentleman from Alabama [Mr. CALLAHAN] likes to point out, there are not many people in his district in Alabama who even know much about foreign operations and fewer that would probably care about it. Yet he as chairman has taken the time to become extremely familiar with the issues and expert in management of the bill. And so I certainly want to compliment him.

There is no greater testament than the example set in creating, recreating, and increasing funding for the child survival account in this bill. The administration chose not to include this account in their budget submission and I cannot imagine them leaving this important area out of their budget submittal. This administration chose not to include an account which provides

child survival and disease eradication throughout the world. What is worse, they chose not to include it. When they chose not to include it, they would have provided less money for it while increasing funding for Russia.

I am proud to say that the chairman and ranking member of the committee and members of the subcommittee not only corrected this situation but increased the funding for child survival and the basic functioning of our foreign operations funding.

I certainly recommend this bill to all Members of the House. I hope that it will pass. I hope that we will be able to keep unwanted and undesirable amendments from cluttering the bill. We would like to send this bill to the President in a form that he can sign.

I again want to compliment the leadership of this committee. It is a pleasure for me to serve with them. I am very proud of this bill. I think that we have done a lot of good things. We have fenced some of the money, particularly to Russia, and also another one of our independent states where a serious problem with corruption takes place. We fenced the money with the requirement that they make improvements on corruption in these countries before the money would be able to be released.

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Also, I was pleased to see us fence some of the money as it relates to going to Russia and tying it to religious freedom in Russia.

All in all, I am very proud of the bill, very proud to sign on to it and recommend its vote.

Ms. PELOSI. Mr. Chairman, I yield 4 minutes to the gentleman from Illinois [Mr. YATES], the distinguished gentleman who is the ranking member of the Interior Subcommittee; more importantly for this bill, he has been a Member of this House since the inception of the Marshall plan.

Mr. YATES. I thank the gentlewoman very much. She can always introduce me. I thank her very, very much for that very gracious introduction.

The gentlewoman from California is correct, when the Secretary of State testified before the Subcommittee on Foreign Operations, Export Financing and Related Programs of the Committee on Appropriations earlier this year, we spoke about foreign aid, and foreign aid stemming from the time of Thomas Jefferson. And although my tenure on the committee does not quite go back that far, I did begin my association at the time of Harry Truman.

At that time the Marshall plan had just been inaugurated. I was lucky enough as a freshman to become a member of the Marshall Plan Committee. And during the almost 50 years that I have served in this House, I have been on the subcommittee on foreign aid. I have seen a major transition in both the political situation in the world and how foreign assistance and export programs can address these changes.

I believe that the Committee on Appropriations has been at the forefront in initiating reform and guiding the new direction of foreign assistance following the ending of the cold war. This bill continues that tradition, because this bill is essentially the product of two of the ablest Members of the House, and I refer of course to the chairman and the ranking member, the gentleman from Alabama [Mr. CALLAHAN] and the gentlewoman from California [Ms. PELOSI].

I have worked with every chairman and every ranking member of this subcommittee for almost the last 50 years, and I would say that the two that have drafted this bill are essentially the most able that I have witnessed in all that time. This bill does reflect the touch that they have given to us.

The ironic truth about foreign aid is that it is much cheaper than Americans think it is, and it does things that most Americans do not realize that it does do. Like defense, it helps preserve our national security. And as stated in USA Today, "This is no time to be penny-wise and pound-foolish." Our foreign assistance program helps finance the building blocks of a new international structure that is more peaceful and more stable than the one we left behind.

I can say that now after working on this committee for so many years. I have seen how it has helped rebuild Europe under the Marshall plan and I have seen how it has helped bring underdeveloped countries to a much more developed state. I believe this bill is a worthy one and I believe that it deserves our support. Certainly I look forward to supporting it as it goes through the House.

Mr. CALLAHAN. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Chairman, I rise today in strong support of the bill. I want to begin by commending my friend, the chairman of the subcommittee, the gentleman from Alabama [Mr. CALLAHAN], for the bipartisan and consensus promoting manner in which he has brought the bill to the floor of the House. I think he has reflected very well the concerns of the members of the subcommittee in crafting the bill and he has done just an outstanding job of bringing us together in support of it.

I would also like to say that we have had the wise counsel and support of the gentleman from Louisiana, Mr. BOB LIVINGSTON, and I appreciate especially his flexibility and thoughtfulness in dealing with me and with my colleague the gentleman from Michigan, Mr. Joe Knollenberg, who I have worked very closely with on the very difficult issues of the Caucasus and Turkey.

I also want to commend the gentlewoman from California [Ms. PELOSI] in her first year as ranking member of the subcommittee. She has done an excellent job of working to improve the lives of people around the world, and it is always a delight and a pleasure to work with her.

I believe, Mr. Chairman, that this is a good bill and one which all the Members of the body should support. I am pleased that we have been able to move forward in funding initiatives that reflect our commitment to the values of democracy, freedom, economic opportunity, the rule of law, and respect for human rights.

An example of this cooperation is involved with United States involvement and relations with Armenia, Azerbaijan, Nagorno-Karabakh, and Turkey. In the past, these issues have always been a stumbling block in this bill, which led to angry floor debate which allowed Members, including myself, to achieve perhaps moral victories but may not have been the most productive manner to advance the ideals and goals we have for this region.

This year we have taken a different tack by attempting to work out a balanced and fair approach to the region before the bill reached the floor in an effort to avoid that ugly floor fight that neither advanced our cause nor inspired trust among the other countries in the region.

I am pleased with the committee's overall funding level for development assistance and their support for the United Nations' development program and the World Conservation Union.

My dedicated colleague and friend, JOE KNOLLENBERG, approached me earlier this year about bringing together a package of legislative and report language ideas which could address the concerns that many Members have about these issues. Joe and I, with the help of our chairmen, our staff, and the subcommittee staff, took a great step forward through cooperation and consensus and I am very proud of the work that we did on this bill. Joe, congratulations on your fine work on this bill and your leadership on this issue in general.

Many of my colleagues have asked me about the provisions in this regard and what they will mean for the United States' policy there. We have included in the bill an exception to section 907 which allows for the first time for democracy building assistance to go to Azerbaijan. President Aliyev of Azerbaijan is in town this week to meet with President Clinton and Members of Congress, and I hope that the members of the subcommittee were able to speak with him this afternoon about the provisions of the bill.

As in all the former Soviet republics, the development of democracy in Azerbaijan has been uneven. We are confident that by making it possible for the NED and similar institutions to begin working in Azerbaijan, we are

taking an important step towards improving the lives of the average Azeri citizen.

Moreover, we have provided legislative direction for the State Department to give assistance to all needy persons in the Caucasus. This would include refugees in Azerbaijan, needy people in Nagorno-Karabakh and internally displaced persons in Georgia.

I am hopeful that this provision will remove the artificial barriers to assistance which our State Department has set up once and for all so that the people who desperately need our help can get it. Other than these important exceptions, however, we have left section 907 intact.

With regard to Turkey, Mr. Speaker, this bill showcases a new approach that we are cautiously optimistic about. One-half of the economic support funds for Turkey will be directed to projects run by NGO's, private voluntary organizations and others to promote democracy, encourage economic development of areas that have been affected by internal conflicts, and other purposes that we have been encouraging the Turkish Government to undertake for years.

This new approach has taken a leap of faith by those of us with strong feelings on both sides of this issue. These have been difficult times for Turkey, and the dramatic shifts in the situation there have caused all of us to reexamine our approach to that important ally. Concerns about the future of democracy and the spread of Islamic fundamentalism have lead us to look for new ways to support Turkey on the path that is not only in Turkey's best interest but in our own as well.

It would be easy to come to the floor, as I have in the past, to talk about the serious problems that Turkey has, but these problems have not gone away and in many ways they have worsened in the past year. But I believe that if we want to truly help the Turkish people, we must bring about reforms from within the country and promote an atmosphere where democracy is secure enough to take bold steps, such as ending the armed conflict in the southeast. I believe that what we are doing in this bill will quietly and profoundly have that effect.

In addition to creating the climate in which we could make these steps forward on the caucasus, I want to thank the chairman for including funding and language concerning important initiatives in Burma, China, Northern Iraq, Tibet, Cyprus, and other areas which are of great concern to me. I wish that all Members could have the privilege of having such a cooperative Chairman.

While I am very proud of the efforts we have made in this bill and appreciative of Chairman CALLAHAN's work, I must again express my disappointment that this House continues to cut overall levels of foreign assistance. I believe that this is the era of American leadership, and we are squandering a golden opportunity to bring an ever-expanding circle of countries into our sphere of influence. I hope that we can begin to realize this opportunity and that the Republican Party, which for so long led the way in international affairs, can return to engagement in this vital area of our national policy.

The reduced appropriation for the multilateral financial institutions from the requested amount is of particular concern to me. These institutions have received significant reductions in past years, resulting in vast arrears. The administration has negotiated an agreement to pay off these arrears and I believe that the subcommittee should work to honor this agreement.

I am also concerned that the so-called Leahy provision, which is intended to keep U.S. counter-narcotics assistance out of the hands of human rights abusers, was stricken from the bill on a point of order due to the objection of my friend from New York, Mr. GILMAN, and my friend from Illinois, Mr. HASTERT. I hope that we can work together to deal with their concerns about the administration's implementation of this policy, and resolve this issue prior to the conference on the House and Senate bills.

I would also like to address an issue—the situation in Cambodia—that was brewing as we drafted the bill earlier this year but has exploded in violence and bloodshed in recent weeks. In January, several of my colleagues and I visited Cambodia. We met with human rights activists and others who had so much hope for the future of Cambodia. These individuals had dedicated their lives to bringing a better life to the people of Cambodia, to cementing the gains of democracy and freedom in Cambodia, and to securing a stable society for their children. We also met with Prime Ministers Ranariddh and Hun Sen. The meeting with Mr. Hun Sen was ominous, looking back on it, for he did not have the same hopefulness as the people of his country. I am devastated by what has happened in Cambodia, and I support the effort by Congressman ROHRABACHER to mover our policy to take a strong stand against the lawless acts of Hun Sen and a strong stand with the people of Cambodia. I hope that Chairman CALLAHAN will also support this amendment when it comes to the floor.

Finally, I would like to take this opportunity to express my condolences to the families of those who lost their lives in the horrible terrorist attack in Israel today. I am outraged by this act of cowardice and I am angry at the failure of those who could have prevented this heinous act. I am hopeful that the House can be a force to end this pattern of hatred and violence, and I urge all parties to continue to move forward on the path to peace in spite of the actions of extremists.

Mr. Chairman, this bill, I think, is in excellent condition. Sure, there are places where I disagree with it, but I think the chairman has done an outstanding job of bringing both sides of the aisle together, people with divergent interests, and crafting a bill that we can all be proud of, and I urge the support of all Members.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana [Mr. VISCLOSKY], a member of the Committee on Appropriations.

Mr. VISCLOSKY. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, I would like to commend the work of the chairman, the gentleman from Alabama [Mr. CALLAHAN], as well as the ranking member, the gentlewoman from California [Ms. PELOSI]. I recognize the committee faced a number of very difficult issues, and I believe that they have done the very best job possible.

While I support the general thrust of the bill, I am very concerned about the specific issue of the current United States relationship with several countries located in the Caucasus, specifically Turkey, Greece, and Armenia.

The committee has decided to provide assistance to all three countries and has conditioned some of the aid. This conditioned aid is a reasonable response by the United States to a difficult situation. However, I am concerned about the very unreasonable attitude Turkey has displayed with respect to the conditions that we are placing on our assistance.

I would like to remind the House that last year this Chamber cut economic support fund assistance to Turkey on two separate votes. This year, the gentleman from Florida [Mr. BILIRAKIS], others and I will not be offering an amendment to cut United States assistance to Turkey. That decision, at least for myself, is based only on the firm understanding that Turkey will act responsibly during the next 12 months.

Mr. Chairman, I want to make it clear that I do support the consensus policies on the Caucasus and Turkey developed by the committee. However, it is important for Turkey to understand that the assistance we are providing this year is not a blank check. The situation in Turkey must improve or next year I do not believe the House will be as accommodating as it has been this year.

Mr. CALLAHAN. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. FRELINGHUYSEN] a member of the subcommittee.

Mr. FRELINGHUYSEN. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in strong support of this bill. First, I want to thank our chairman, the gentleman from Alabama [Mr. CALLAHAN], and our ranking member, the gentlewoman from California [Ms. PELOSI], for their leadership of our subcommittee and our excellent staffs.

As the chairman has stated, the subcommittee has again done more with less, as have the agencies that carry out U.S. foreign policy objectives. For less than $12.3 billion, slightly less than last year's bill, we continue to provide the essential tools to promote

and protect America's leadership and interests around the globe.

With this bill we maintain our strong commitment to Israel and the Middle East peace process. We provide critical funding for child survival programs, and we continue America's longstanding support of development assistance for the poorest of the poor. We provide support for the new democracies of Eastern Europe and place increased emphasis on important priorities in our own hemisphere.

Further, we have provided resources to help American companies enter new markets, to provide global environmental resources, and to combat the threat of international narcotics and terrorism from reaching our shores. And these investments are made for less than 1 percent of the overall budget and within the framework of our balanced budget plan.

Despite this, most Americans remain skeptical about foreign aid. They either believe that we spend far more on it than we do in reality or they simply are not convinced of its value. I believe that it is imperative that we explain to the taxpayers the return on our investment in these programs.

Earlier this year I invited AID Administrator Atwood to my district to explain to my constituents the value of our investment in AID programs. He showed how a small New Jersey company in Morris Plains, with the help of AID, developed a product to keep polio vaccines safe for use around the world.

Success stories like that are a direct result of our foreign aid programs. This new product is helping our efforts to eradicate polio throughout the world and has created economic growth and opportunity in New Jersey.

Again, the amount for all these programs, from building democracy and feeding hungry children to fighting the war against drugs and opening new markets for America's goods and services, equals less than 1 percent of the budget.

Lastly and most importantly, Mr. Chairman, I believe now is an especially critical time for the President, President Clinton, to exercise his leadership in making a stronger case for this investment to the American people.

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I urge my colleagues to support this bill and reject proposals for further reductions.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2 minutes to the gentlewoman from New York [Mrs. LOWEY], a member of the subcommittee.

Mrs. LOWEY. Mr. Chairman, I rise in support of H.R. 2159.

I want to thank our distinguished chairman, the gentleman from Alabama [Mr. CALLAHAN], and the gentlewoman from California [Ms. PELOSI], our outstanding ranking member, who have worked so very hard in a bipartisan way to report out a bill that strikes a delicate balance on a number of very difficult issues.

Mr. Chairman, this bill is far from perfect. The overall funding in the bill is substantially lower than what I would have liked, and several specific accounts are also too low. But this bill does represent a very serious bipartisan compromise. And again, I want to thank the chairman and our ranking member.

The bill also includes the full $3 billion in aid package for Israel and the critical $80 million for refugee resettlement assistance. With the tragic bombings today in Jerusalem, we have seen once again how very important it is for the United States to express its strong support for Israel and the Israeli people.

Although the development assistance account is lower than the administration requested, an issue I would like to see corrected in conference, it does include a critical $10 million increase for international microcredit programs, which I think are absolutely critical to help raise the level of prosperity around the world.

Mr. Chairman, I remain concerned about the item in the bill for International Development Association, which is unacceptably low. The $606 million included in the bill is only slightly more than half of what the administration has requested for IDA, and I would call on the chairman to work with me and my colleagues to increase this amount in conference, as well.

Mr. Chairman, the bill does have some compromises which we worked very hard to support. The bill preserves current law, prohibiting the U.S. funds for the performance of abortions or to lobby for or against abortion. It also prohibits the funds from being used to support any biomedical research that relates to the performance of abortions.

Mr. Chairman, I offer my very strong support for this bipartisan bill.

In the past, we have spent many hours debating amendment after amendment on the floor regarding Greece, Turkey, and the Caucasus region. This year, we have reported out a bill that addresses most of our concerns in this area. Now there are some provisions I would have written differently, and I'm sure some of my colleagues feel the same way, but what is in the bill represents a good balance on this issue. And I want to thank the chairman and Ms. PELOSI, and also Mr. KNOLLENBERG and Mr. PORTER for all of their hard work on this issue. Microcredit is a critical tool in the fight to eradicate poverty worldwide and enjoys wide bipartisan support in the Congress and the administration.

Providing these small, low interest loans to the millions of low-income entrepreneurs around the world would be a major step toward the eradication of poverty. This is especially true among women, who are very often the heads of households, and benefit tremendously from microcredit programs. This is a critical time for microcredit. We have come a long way this year alone, but we must do more. The increase for microcredit in this bill will allow us to help thousands of people pull themselves out of poverty.

IDA makes critical investments in the development of the world's poorest countries. It provides assistance in health care, education, and other areas of human capital, creating the climate needed for sustainable growth and helping to turn these nations from aid recipients to trading partners.

This bill also strikes a balance in the area of international family planning assistance, one of the most important forms of aid that we provide to other countries. No one can deny that the need for family planning services in developing countries is urgent and the aid we provide is both valuable and worthwhile.

Nearly 600,000 women die each year of causes related to pregnancy and childbirth—most live in developing countries.

Each year, 250,000 women die from unsafe abortions. Most of these disabilities and deaths could be prevented.

Only 20 to 35 percent of women in Africa and Asia receive prenatal care.

Five hundred million married women want contraceptives but cannot obtain them.

This bill preserves current law prohibiting the use of U.S. funds for the performance of abortions or to lobby for or against abortion. It also prohibits the funds from being used to support any biomedical research that relates to the performance of abortions as a method of family planning.

These restrictions represent a compromise in this area and I hope that we will pass this bill without upsetting this compromise. Unfortunately, some of my colleagues see this matter differently and are planning to offer an amendment that, if passed, could hold the entire foreign aid bill hostage for the third year in a row. I strongly urge my colleagues to oppose these efforts to disrupt our bipartisan compromise.

Mr. Chairman, as I have stated, I do have some very serious reservations about specific provisions in this bill. But on the whole, it represents a good compromise between Chairman CALLAHAN, Ranking Member PELOSI, and all of the members of the subcommittee. I urge passage of this bill.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2 minutes to my colleague, the gentleman from California [Mr. TORRES], a distinguished member of the subcommittee.

Mr. TORRES. Mr. Chairman, I thank the chairman, and I thank my ranking member for that kind introduction.

I rise, of course, to commend both the gentleman from Alabama [Mr. CALLAHAN], the chairman, and the gentlewoman from California [Ms. PELOSI], the ranking member, for their diligent work in crafting this year's foreign assistance package. I also want to commend the majority and minority staff for their tireless efforts to produce this very fine bill.

However, I must note that the bill falls short in certain areas. While I respectively acknowledge the willingness

of the gentleman from Alabama [Mr. CALLAHAN] to work with me and members of the subcommittee in addressing concerns that we all have about the School of the Americas, I am not convinced that we should continue to spend one more dime on this facility.

And that is why I intend to offer an amendment, together with my colleagues, the gentleman from Illinois [Mr. YATES] and the gentleman from Pennsylvania [Mr. FOGLIETTA], to prohibit any of the bill's funds from being used at the school.

I am also deeply troubled that there may be a move to strike from the bill a critical counternarcotics assistance accountability provision, specifically referred to as the Leahy amendment. This provision, which I supported in last year's bill, prohibits U.S. counternarcotics aid from going to human rights violators in certain foreign countries. It prevents U.S. aid from going to specific military units where there is credible evidence they have been involved in violations.

The Colombian armed forces and their paramilitary allies are implicated in hundreds of murders a year. Colombian military units responsible for some of the worst human rights atrocities in recent years were also those that received U.S. assistance. We should be doing everything possible to ensure that U.S. aid is used for counternarcotics efforts and not for murdering civilians.

The human right provisions is the very minimum standard we should utilize before releasing millions of dollars in military aid to combat narco-trafficking. Rather than striking it from the bill, I believe we should be expanding the provision to include all forms of counternarcotics assistance. Regrettably, the rule does not permit this important provision from a point of order.

Mr. Chairman, I rise today in support of H.R. 2159, the fiscal year 1998 Foreign Operations appropriations bill as reported out of the full committee. I want to commend Chairman CALLAHAN and the distinguished ranking member, Ms. PELOSI, for their diligent work in crafting this year's foreign assistance package. I also want to commend both the majority and minority staff for their tireless efforts to produce this bill.

However, I must vote that the bill falls short in several areas. While I respectfully acknowledge Chairman CALLAHAN'S willingness to work with me and others on the subcommittee in addressing concerns we all have about the U.S. Army School of the Americas, I am not convinced that we should continue to spend one more dime on this facility. That is why I intend to offer an amendment, together with my colleagues Mr. YATES and Mr. FOGLIETTA, to prohibit any of the bill's funds from being used at the school.

I am also deeply troubled that there may be a move to strike from the bill a critical counternarcotics assistance accountability provision, specifically referred to as the Leahy amendment. This provision, which I supported in last year's bill, prohibits U.S. counternarcotics aid from going to human rights violators in foreign countries.

It prevents U.S. aid from going to specific military units where there is credible evidence they've been involved in violations. The Colombian Armed Forces and their paramilitary allies are implicated in hundreds of murders a year. Colombian military units responsible for some of the worst human rights atrocities in recent years were also those that received U.S. assistance.

We should be doing everything possible to ensure that U.S. aid is used for counternarcotics efforts and not for murdering civilians. The human rights provision is the very minimum standard we should utilize before releasing millions of dollars in military aid to combat narco trafficking. Rather than striking it from the bill, I believe we should be expanding the provision to include all forms of counternarcotics assistance. Regretfully, the rule does not protect this important provision from a point of order.

I am, however, pleased that this bill provides full funding for the fund for special operations, the concessional lending arm of the Inter-American Development Bank. The FSO extends loans to the poorest countries in Latin America and the Caribbean for programs designed to alleviate poverty. FSO programs benefit those most in need, especially women and children and microentrepreneurs who have little access to credit through regular financial sources.

The U.S. contribution to the Fund for Special Operations is an effective investment in the development of our poorest neighbors in the Western Hemisphere. The fully funded level of $20.83 million for the FSO is critical in leveraging funds from other donor nations around the world and I am pleased that this bill provides the administration's request.

I am also pleased that the bill directs an increase of $20 million for programs in the Latin America and Caribbean region. U.S. assistance to Latin America has been scaled back dramatically in recent years. Despite bill and report language in last year's bill, aid to Latin America has continued to be slighted. The relatively modest sums directed toward sustainable development in Latin America are a worthwhile long-term investment in the economic and political stability of our closest neighbors.

Further, the United States has made certain commitments to the region, such as contributions to consolidating peace in Central American nations, which should be honored.

I also want to note that the bill provides the fourth and final tranche to complete the capitalization of the North American Development Bank, or NADBANK. This funding is critical for the Bank to realize its potential to clean up the border region and address the domestic needs of displaced workers and businesses.

Again, my thanks to Chairman CALLAHAN for his cooperation in working with all members of this subcommittee to craft this bill in a bipartisan manner.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2½ minutes to the distinguished gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Chairman, I rise in support of the foreign operations appropriations bill. The bill makes a significant effort to realize the balanced policy in the Caucasus region. And I am urging my colleagues in the bipartisan Armenian caucus to support the consensus position on the Caucasus, which was so painstakingly worked out by the subcommittee members.

I urge those who will participate in the House-Senate conference to do everything possible to retain the House position in conference. The House bill maintains the economic sanctions on Azerbaijan which were enacted into law under section 907 of the Freedom Support Act in response to that country's continuing blockade to Armenia and Nagorno Karabagh. Unlike the Senate bill, the House bill does not allow for funds to go to Azerbaijan from the Export-Import Bank, the Overseas Private Investment Corporation, or the Trade and Development Agency. The House bill maintains the integrity of section 907, while the exceptions in the Senate bill render the prohibition on aid to Azerbaijan virtually meaningless.

One of the truly honorable provisions in this bill is the language making funds available for humanitarian assistance through nongovernmental organizations in conflict zones throughout the Transcaucasus, including Nagorno Karabagh.

And finally, the bill provides a $95 million soft earmark for Armenia. Given the challenges facing Armenia, with blockades imposed by neighbors on their east and west, and in light of the strides that Armenia is making in terms of establishing democracy and a market economy, I believe this earmark is fully justified.

Mr. Chairman, I would also like to stress our policy with regard to India. I believe we should remain consistent with the longstanding American goal of promoting greater cooperation with countries like India that promote democracy, free markets, and stability.

I understand that we will be asked to consider an amendment to cut development aid to India. I urge Members not to support this unjustified proposal. Last year, India held nationwide elections in which more than 400 million people voted for free and fair elections. And this year, in the Indian state of Punjab, some 60 percent of the voters turned out for free elections, which resulted in the election of a Sikh dominated government. India has taken concrete steps to address human rights issues with the establishment of a national human rights commission that has won international praise for its independence and effectiveness.

Finally, Mr. Chairman, I am extremely concerned about a provision in the Senate foreign ops bill which would relax current United States sanctions on Pakistan. Under the Glenn-Symington provision, certain key United

States trade and export promotion programs have been withheld from Pakistan in the past because of Pakistani involvement in nuclear proliferation. In recent years, Pakistan has moved forward with an aggressive program of acquiring nuclear technology and weapons.

I urge the Members not to recede to the Senate on this ill-advised provision in conference.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Maryland [Mr. HOYER], a distinguished member of the Committee on Appropriations.

Mr. HOYER. Mr. Chairman, I thank the gentlewoman from California [Ms. PELOSI] for yielding me the time.

Mr. Speaker, U.N.- and NATO-led forces were involved in the recent apprehension of two individuals and the killing of a third who had been indicted by the International War Crimes Tribunal. The recent arrests and the tribunal's sentencing of Dusan Tadic to 20 years in prison for his part in the torture and murder of innocent civilians are a major step forward.

Yet the fact remains that, while the war crimes tribunal has publicly indicted 76 people to date, 66 indicted suspects remain at large, despite the fact that the tribunal has been issued international indictments, despite the fact that the Dayton accords requires the parties to that agreement to surrender those who are within their effective jurisdiction, and despite the fact the U.S. Security Council Resolution 827 requires all states to cooperate in this effort.

This must stop, Mr. Speaker. If countries do not live up to their international obligations and cooperate with the tribunal, we should not cooperate with them. I am pleased that the legislation before us provides for sanction against those countries which harbor war criminals. The bill permits the President to withhold foreign assistance from these states and instructs the Secretary of the Treasury to oppose assistance from the international financial institutions.

I would have preferred frankly an outright ban on such aid but am pleased that we are moving in the right direction. I want to thank the gentleman from Alabama [Mr. CALLAHAN] and the gentlewoman from California [Ms. PELOSI] for their support and leadership in this effort.

I am pleased this committee has recommended a $3 million voluntary contribution to the war crimes tribunal to assist in its challenging work. In closing, Mr. Speaker, let me just say that I would have preferred that we had done more to assist the emerging democracy in Russia and other CIS states. I understand the constraints that the committee was under. And I am rising in support of this bill and looking forward to their success in conference.

Mr. CALLAHAN. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. GOSS], member of the Committee on Rules.

Mr. GOSS. Mr. Chairman, I thank the distinguished chairman for yielding me the time. I point out that less than 1 percent of the Federal budget we are talking about here, foreign aid spending, is not the problem when it comes to our budget ills. But it is clear that everything is on the table when we talk about the budget.

The reason I am supporting this bill is not budgetary, however. It is because this bill was crafted by making difficult choices, shifting limited resources and reflecting new priorities. And I congratulate both the chairman and ranking member for that. Also of course it keeps spending down, and Chairman Callahan has done a fabulous job at that.

In fact, Chairman Callahan has delivered a bill that comes in, I understand, at $4.6 billion below the President's request and below the spending allocation. That is a pretty good trick in these tight budgetary times.

But the important point is the committee has prioritized spending to fund child survival programs and to fund efforts in nonproliferation, antiterrorism, and counternarcotics. As chairman of the House Permanent Select Committee on Intelligence, that is a very important area for me. And it is an area of critical concern involving both the security and the quality of life for Americans at home and abroad.

And I think it is very important that this bill focuses on that. And I am pleased it does, and that is one of the reasons I strongly support it.

But as a southwest Floridian, I am pleased that this bill will choke off some of the international assistance that might be funneled to Fidel Castro to complete dangerous nuclear reactors at Juragua. The foreign operations bill also includes $72 million in funding for operations in Haiti. But the gentleman from Alabama [Mr. CALLAHAN] has wisely conditioned that aid on progress on economic reforms and investigations into political killings since President Preval's election.

Although I would have preferred language that included all the killings since the troops returned President Aristide, I am nevertheless pleased to see that we have some specific markers set out on accountability in this area.

To date, and to the best of our ability to get an accounting from the Clinton team, we know that more than $3 billion has been spent for Haiti and we see little evidence for that $3 billion of good governance or any other progress we were hoping for in that nation. I urge support for this legislation.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 1 minute to the gentlewoman from California [Ms. WOOLSEY].

Ms. WOOLSEY. Mr. Chairman, I rise in strong support of the bipartisan consensus that the committee has reached in this bill on the troubled Caucasus region in Armenia.

Since Azerbaijan began its blockade of Armenia 5 years ago, the citizens of Armenia have suffered from lack of shelter, lack of heat, lack of food and lack of crucial medicine. In fact, the world food bank has described Armenia as a prefamine state. Even worse, Mr. Chairman, the Armenians in Nagorno Karabagh have been blockaded by Azerbaijan for 8 years.

That is why we must maintain economic sanctions against them. That is why economic sanctions will send a clear and straightforward message to the perpetrators of this cruel and senseless blockade. It is a message that their actions will no longer be tolerated.

Mr. Chairman, I urge my colleagues to join me in congratulating the committee on a job well done and in supporting this important consensus.

Ms. PELOSI. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. BENTSEN].

Mr. BENTSEN. Mr. Chairman, I rise in support of the bill.

Mr. Chairman, I rise to support the fiscal year 1998 foreign operations appropriations bill.

Especially at this critical juncture of the peace process, and in light of today's tragic bombing in Jerusalem, the United States must continue to support Israel and help assure its security as it takes the very difficult steps needed to secure peace. Any cuts in foreign aid to Israel now could damage Israel's security, its negotiating posture, and the peace process, as well as other United States interests in the region. As one of the United States' strongest allies and the only true democracy in the Middle East, Israel is certainly deserving of this support.

I want to emphasize that this measure is in the United States' strategic and economic best interest. Israel is the most reliable ally of the United States in the Middle East and continued foreign aid funding will maintain a solid partnership with the United States. Because of the depth of the United States-Israel relationship and the permanence of Israel's democracy, the United States knows we can depend on Israel in a crisis. By its continued support of Israel, the United States honors a historic commitment to a fellow democracy with which we share unique security, economic, and cultural ties.

I am especially pleased by the growing relationship between Israel and my State of Texas. Texas and Israel are substantial trading partners, sharing economic interests in telecommunications, medical technology, hightech computers, and agriculture. In 1996, Texas exports to Israel totaled nearly $580 million in goods and services, which represented an 89 percent increase since 1995. With regard to medical technology, Israel and Texas have established many joint research programs. For example, the Texas-Israel Telemedicine Exchange has brought together the Texas Children's Hospital in Houston and the Rabin Medical Center in Petach Tikvah in developing a telemedicine framework for Israel's

hospitals and health care clinics. As this partnership continues to develop, new business opportunities will make the economies of Texas and Israel stronger and more competitive in the 21st century.

The United States has a strong national interest in bringing peace, stability, and economic growth to one of the most strategic and potentially destabilizing regions of the world. The United States can best achieve these goals by continuing its commitment to ensuring Israel's security. I urge my colleagues to continue a proud tradition of support for Israel and to recognize that our Nation's national interests will be reinforced by voting for this appropriation.

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Mr. CALLAHAN. Mr. Chairman, I yield 1 minute to the gentleman from Delaware [Mr. CASTLE].

Mr. CASTLE. I thank the distinguished gentleman for yielding me this time.

Mr. Chairman, I am the chairman of a subcommittee on the Committee on Banking and Financial Services called the Subcommittee on Domestic and International Monetary Policy. We deal with the Eximbank as well as the international financial institutions.

My 1 minute will not allow me to go into all the different aspects of this, but we are very supportive of this legislation. We are also very supportive of the concept that the United States of America needs to continue to be involved with some of these organizations, including the World Bank, the International Development Association and some of the various development funds which are out there.

We think that the International Development Association has become a symbol of the willingness of the United States to meet its international obligations. We will not be able to effectively advance our reform agenda unless we stay fully involved and keep our payments up to date, which we are attempting to do at this point and which this legislation indeed attempts to do.

These are difficult choices. Few Members really wish to in some instances subsidize export promotion or be involved in some of these supports overseas with respect to these areas, but as we go more and more into international trading and an international economy, I feel they are necessary.

I hope that all Members would take the time at some point to more fully understand what we are doing. It is relatively limited compared to most countries that offer the same level of support. But for today, I believe the foreign operations appropriations bill is doing just the right thing.

Mr. Chairman, I rise to comment on the provisions of this bill regarding the international financial institutions [IFI's] and the Export-Import Bank of the United States [Eximbank]. Both the IFI's and Eximbank are within the authorizing jurisdiction of the Subcommittee on Domestic and International Monetary Policy, which I chair.

For fiscal year 1998, the administration requested the support of the Banking Committee for authorization of U.S. contributions to the 11th replenishment of the International Development Association [IDA]; the 7th replenishment of the All Development Fund [ADF]; the European Bank for Reconstruction and Development [EBRD]; the Inter-American Development Bank [IDB]; the Enhanced Structural Adjustment Facility of the International Monetary Fund [IMF]; and the New Arrangements to Borrow [NAB], a new multilateral line of credit available to the IMF in the event of a serious threat to the international financial system. In addition, the committee has been requested to reauthorize the Export-Import Bank of the United States for 4 additional years.

Specifically, with respect to the international financial institutions, the administration requested authorization of appropriations in the amount of $1.6 billion over 2 years for U.S. contributions to IDA–11; $400 million over 4 years for the U.S. contribution to ADF–7; $285 million over 8 years for the U.S. contribution to the second general capital increase of the EBRD; $76.8 million over 3 years for a scheduled capital subscription to the IDB; $75 million over 10 years for the interest subsidy account of the ESAF facility of the IMP; and approximately $3.4 billion (as valued in special drawing rights) for U.S. participation in the NAB.

On May 8, 1997, the Subcommittee on Domestic and International Monetary Policy considered and favorably reported by voice vote to the full Banking Committee H.R. 1488, the International Financial Institution Reform and Authorization Act of 1997. That bill fully authorizes over 2 years the U.S. contribution to the 11th replenishment of IDA, the World Bank facility that provides concessional lending to the world's poorest developing countries. The subcommittee intends to work closely with the Treasury and other interested parties to ensure that the World Bank remains on the reform path and that U.S. taxpayer resources are used effectively. This commitment to ongoing reform is reflected in the policy provisions of H.R. 1488.

But the subcommittee also recognized that IDA has become a symbol of the willingness of the United States to meet its international obligations. I believe the United States cannot effectively advance reform or our policy priorities if we remain in arrears to IDA and other multilateral lending institutions. In this regard, I would strongly support efforts to address past due payments to the international financial institutions in a manner consistent both with the overall request, and the assumption of a cap adjustment for exchanges of monetary assets and for international organization arrears as provided for in the budget resolution. Let's get these arrears behind us to ensure that America can effectively lead these institutions in a way that advances our national interests.

The regional development banks were all authorized at the fiscal year 1998 appropriations request level, not because of a lack of subcommittee support, but in recognition of existing fiscal constraints. The ESAF was also authorized at the fiscal year 1998 level, although future subcommittee support for the ESAF will depend on the results on an ongoing external review of this facility. The subcommittee also authorized U.S. participation in the NAB. As you know, U.S. participation in the NAB entails no scoring of budgetary outlays.

On May 8, 1997, the Subcommittee on Domestic and International Monetary Policy also considered and favorably reported by voice vote to the full Banking Committee H.R. 1370, a bill to reauthorize the U.S. Export-Import Bank through September 30, 2001. That bill was passed by voice vote, as amended, by the full Banking Committee on July 9 of this year.

These international issues present Congress with difficult choices. Few Members wish to subsidize export promotion, but the heavy hand of our foreign competitors in trade finance makes continued U.S. support for Eximbank imperative. Likewise, many observers can point to specific failings by the international financial institutions, and the bipartisan agreement on the need for reform suggests that a good deal of the criticism of the IFI's has been at least partially valid. Yet there is also strong bipartisan agreement that the IFI's continue to make an important contribution to economic development and to the stability of the international financial system. On balance, they were serve U.S. international economic as well as foreign policy interests. I would urge my colleagues to give them their support.

Mr. CALLAHAN. Mr. Chairman, I yield 30 seconds to the gentleman from Arizona [Mr. PASTOR].

Mr. PASTOR. Mr. Chairman, I thank the gentleman for yielding me this time. I would like to engage the gentleman from Alabama in a brief colloquy regarding the sustainable desert development program for combating desertification, a program which I support. Am I correct to understand that the committee's intent is that the $5 million made available under this bill is to be administered by the Agency for International Development on a competitive peer-reviewed basis?

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. PASTOR. I yield to the gentleman from Alabama.

Mr. CALLAHAN. The gentleman from Arizona is correct.

Mr. PASTOR. Mr. Chairman, I thank the gentleman for his time and assistance in this matter.

Ms. PELOSI. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Chairman, I will take more time when I strike the last word on an OPIC amendment.

A company from my district agreed to be a model investment company in Gaza under OPIC, and they experienced a number of unethical and downright illegal activities that must be brought before the Congress. The company is Bucheit International and, among other things, they allowed a private individual over there to cancel checks, to put up as collateral their account for a private loan. I have never seen such type of banking irregularities ever.

This was the only company to make an investment of $4.4 million in Gaza which caused them to default on a $2 million loan. Under the 5-minute rule I am going to explain it more fully, but I am hoping we do not conclude business today and that I could put some language in here that will protect American companies that are being ripped off. We cannot have the PLO, who sponsors terrorism, also ripping off American companies.

Ms. PELOSI. Mr. Chairman, I yield myself the balance of my time.

In closing, I want to commend our distinguished chairman for his tremendous leadership in crafting this legislation and bringing such a strong bipartisan bill to the floor. I think the strength of our bill today and the consensus that he built will go a long way to taking us to passage and to conference, where some of the fights will be tougher ones and where we will have the battle over priorities and how much money is the appropriate figure to have in this legislation.

I want to once again thank the majority and the minority staff and, very important, the distinguished members of the subcommittee, both Republican and Democratic members of the committee for the cooperation they gave to our chairman and to me as ranking member.

I believe that this bill is a very important one to the Congress and to our country. Because of the resources that we are appropriating here today, the Clinton administration will be able to promote democratic freedoms, stop proliferation of weapons of mass destruction, promote U.S. exports through the export finance provisions of this legislation, and indeed work for our national security by promoting peace throughout the world.

I come from a different kind of district than the district of the gentleman from Alabama [Mr. CALLAHAN]. I am sympathetic to him in terms of having to sell foreign assistance back home. I come from a very globally oriented district that places a very high value on the leadership role that the United States plays in the world, and I think that the commitment that we make here today and hopefully an expanded one that we will come out of the conference with is one that does promote the values of our country. I urge my colleagues to support the legislation the gentleman from Alabama [Mr. CALLAHAN] has brought to the floor today.

Mr. CALLAHAN. Mr. Chairman, I yield myself the balance of my time.

In closing let me reemphasize that this once again cuts last year's appropriation level. It is $4.6 billion below the President's request and it is $233 million under our 602(b) allocation.

Once again, this is a vote on final passage of this bill to cut foreign aid.

Mr. POMEROY. Mr. Chairman, I want to express my appreciation to the House Appropriations Committee for its support of overseas programs by U.S. cooperatives and credit unions. I have supported the work of cooperatives and credit unions in my state. These people-to-people assistance programs are the types of foreign aid that the American people fully support.

In its report (105–176), the Committee stated that:

> The Committee continues to support development efforts carried out by United States cooperatives and credit unions. These programs promote free markets, create business linkages with the United States, export American technology, and build local economies, and help create a friendly climate for new and expanding United States markets. They enable people to achieve dignity and lasting economic benefits through member-owned businesses.

Overseas cooperative development is a unique type of self-help assistance, carried out in America's tradition of humanitarian assistance and in America's national interest. Critical support for these efforts comes from the U.S. Agency for International Development.

Cooperatives provide private sector approach to international development that combines a humanitarian concern with a business discipline. Cooperatives give people a stake in the system by bringing them into the marketplace. They introduce democratic business practices in many countries with little experience in democracy.

In the U.S., they have enhanced and promoted the economic well-being of farmers and spread the benefits of free markets through credit unions and community-based businesses. Cooperatives have used their domestic experiences to share their business know-how abroad. In turn, these overseas programs directly benefit America by enhancing stability in developing countries, building long-term business partners and increasing international sales and investments by U.S. businesses.

The following are a few examples of overseas U.S. cooperative development efforts:

In El Salvador, illegal immigration is slowed as cooperatives develop two-way trade in non-traditional and non-competitive products. In Bolivia, United States agricultural and electric cooperatives support alternative crops to coca production, and thus are combating illegal drug trafficking.

In Africa, cooperatives and credit unions are carrying out micro-enterprise programs that reverse the flow of capital and bring it back to rural communities. In Indonesia, cooperatives are helping micro-entrepreneurs in the production of specialty export crops, integrated livestock and fishery production and rural enterprise development including joint ventures with United States companies.

In Romania, United States housing and other cooperatives are playing a crucial role in strengthening civil society to address decaying social problems by providing training and technical assistance in management, accounting, fundraising, marketing and financial analysis to new and struggling non-governmental organizations.

In Georgia, United States agricultural cooperatives have built a network of growers with a seed production cooperative and are building a supply association for inputs to private farmers. The new cooperative is a private sector alternative to the defunct government wheat seed and multiplication and supply system.

Through programs like these, cooperatives provide hope for economic prosperity through grassroots businesses that provide jobs, income, basic education and democratic experience. By providing private sector to private sector assistance, rather than government to government assistance, U.S. cooperatives are better able to link American communities and cooperative businesses with overseas partners that, in turn, serve U.S. economic interests.

Mrs. KENNELLY of Connecticut. Mr. Chairman, I rise in support of the fiscal year 1998 foreign operations appropriations bill and wish to express my strong support for a provision in the bill which would permit $95 million in aid to promote important economic reforms in Armenia.

Armenia, can play an pivotal role in American foreign policy in the Caucasus region with our continued support. Current economic and political reforms taking place offer important opportunities for the emergence of a strong pro-western government that can compete on the world market, and open trade opportunities for the United States.

Continued economic support combined with an expanded U.S. role in the Caucasus region as co-Chair of the Organization for Security and Cooperation in Europe, Minsk Group, will be critical to breaking the current impasse between Armenia and Azerbaijan over Nagorno-Karabagh. Further, a lifting of the blockade of Armenia by its neighbors in conjunction with a peaceful settlement to the Nagorno-Karabagh issue will only lead to greater stability and growth in the region. I urge the Administration to remain diligent on these important issues and applaud the committees decision to earmark foreign assistance to Armenia.

Mr. KOLBE. Mr. Chairman, I have been a longtime advocate of funding for research in the field of sustainable development of arid lands in order to fight desertification, and I applaud the committee's decision to recommend greater resources be made available for this important work. Significant work has been accomplished in this field by the University of Arizona and its cooperating partners in the International Arid Lands Consortium. It is vital, however, that the funds for Middle East Desertification activity be administered by AID in a competitive, peer-reviewed program that will encourage the best scientists, researchers, and land managers in this important field to seek solutions to the complicated problems associated with desertification.

Resources for important research have become all too scarce, and I know my colleagues on both sides of the aisle agree that we must ensure that those funds we do make available are expended in a fashion that will produce tangible results and inspire taxpayer confidence. Peer-review is vital to assessing the quality of the science produced by federal funding, and increasing the number of disciplines involved in arid lands sciences will help bring about a greater utilization of sustainable arid land management techniques.

It is for these reasons I ask that Congress require any program that results from this funding for the Middle East Desertification activities be administered through a peer-reviewed, competitive process.

Mr. UNDERWOOD. Mr. Chairman, I am pleased to note that there are several provisions in the FY 1998 Foreign Appropriations bill aimed at curbing human rights violations and promoting democratic ideals. A number of countries affected by these stipulations are Guam's neighbors in the Asia-Pacific region. Not only are we in close proximity to nations such as South Korea and China, the people of Guam also enjoy social and cultural links with them.

I stress the importance of promoting democracy and human rights in Asia, and I am confident that certain aspects of this bill will contribute towards greater acceptance of self-determination and individual liberties. For example, the Committee's recommendation that the State Department select a special envoy to facilitate the peaceful resolution of the East Timor dilemma should United Nations efforts fail is a clear signal of American commitment to the plight of the East Timorese. I had the pleasure of meeting Bishop Carlos Ximenes Belo, a co-recipient of the Nobel Prize for his work in East Timor, and was amazed by his dedication to provide the East Timorese with an international voice. We must continue our support for leaders such as Bishop Belo in their peaceful quest for basic human rights.

I am also pleased that an arrangement is provided for an East-Asian Pacific democracy fund, as proposed in the President's budget request, which would promote democracy and democratic institutions in China. Although the details of this fund have yet to be finalized by the State Department and approved by Congress, it is yet another pledge to protect democracy. As we cautiously observe China's management of Hong Kong, we must continue to constructively engage China economically and politically. Through economic relations, diplomatic maneuverings and democratic influences, it will not be long before China and its territories enjoy the same freedoms we experience every day.

The United States is a major player in the global area, and the provisions we debate in Congress tonight command international attention. Democracy and human rights do not stem merely from a nation's automatic self-awareness. Sometimes we must prod and remind others and ourselves that democratic principles and respect for individual liberties are necessary components of a strong, stable nation.

Mr. ORTIZ. Mr. Chairman, I rise today in support of the Overseas Private Investment Corporation and to express my opposition to the amendments offered by Mr. ROYCE and Mr. PAUL to H.R. 2159, the fiscal year 1998 Foreign Operations Appropriations Act. These amendments would do nothing but hurt American businesses and American workers.

Mr. Chairman, at a time when American businesses are facing increased competition in the global marketplace, it is inconceivable to me that we, the very Government charged with helping our businesses, would obstruct the most important means to this end. To those who support the elimination of OPIC, I implore them to give up the isolationist belief that if we ignore foreign trade deficits, they will simply go away. Nothing could be farther from the truth. We must engage our competitors in the global marketplace or we will become a second place economic power.

Mr. Chairman, there is a reason we have trade deficits with some foreign nations—they actively support their businesses to a much greater extent than we do. If we cut OPIC, we tie the hands of American businesses just as they are poised to step into the ring. My colleagues have to understand this essential fact: the global marketplace is not going to go away. If we stick our heads in the sand and let foreign businesses get the upper hand in the global marketplace, then we are turning our backs on our own people and our own future. Let us make no mistake, Mr. Chairman, we need OPIC.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the order of the House of Thursday, July 24, 1997, the bill shall be considered for amendment under the 5-minute rule.

Amendments printed in House Report 105–184 may be offered only by a Member designated in the report or the order of the House and only at the appropriate point in the reading of the bill, are considered as having been read, are debatable for the time specified in the report or the order of the House, equally divided and controlled by the proponent and an opponent, are not subject to amendment except as specified in the report, and are not subject to a demand for division of the question.

No other amendment shall be in order unless printed in the CONGRESSIONAL RECORD.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

The Clerk will read.

The Clerk read as follows:

H.R. 2159

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1998, and for other purposes, namely:

TITLE I—EXPORT AND INVESTMENT ASSISTANCE

EXPORT-IMPORT BANK OF THE UNITED STATES

The Export-Import Bank of the United States is authorized to make such expenditures within the limits of funds and borrowing authority available to such corporation, and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations, as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out the program for the current fiscal year for such corporation: *Provided*, That none of the funds available during the current fiscal year may be used to make expenditures, contracts, or commitments for the export of nuclear equipment, fuel, or technology to any country other than a nuclear-weapon State as defined in Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons eligible to receive economic or military assistance under this Act that has detonated a nuclear explosive after the date of enactment of this Act.

SUBSIDY APPROPRIATION

For the cost of direct loans, loan guarantees, insurance, and tied-aid grants as authorized by section 10 of the Export-Import Bank Act of 1945, as amended, $632,000,000 to remain available until September 30, 1999: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That such sums shall remain available until 2013 for the disbursement of direct loans, loan guarantees, and insurance obligated in fiscal years 1998 and 1999: *Provided further*, That funds appropriated by this paragraph are made available notwithstanding section 2(b)(2) of the Export-Import Bank Act of 1945, in connection with the purchase of lease of any product by any East European country, any Baltic State, or any agency or national thereof.

ADMINISTRATIVE EXPENSES

For administrative expenses to carry out the direct and guaranteed loan and insurance programs (to be computed on an accrual basis), including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109, and not to exceed $20,000 for official reception and representation expenses for members of the board of Directors, $48,614,000: *Provided*, That necessary expenses (including special services performed on a contract or fee basis, but not including other personal services) in connection with the collection of moneys owed the Export-Import Bank, repossession or sale of pledged collateral or other assets acquired by the Export-Import Bank in satisfaction of moneys owed the Export-Import Bank, or the investigation or appraisal of any property, or the evaluation of the legal or technical aspects of any transaction for which an application for a loan, guarantee or insurance commitment has been made, shall be considered nonadministrative expenses for the purposes of this heading: *Provided further*, That, notwithstanding subsection (b) of section 117 of the Export Enhancement Act of 1992, subsection (a) thereof shall remain in effect until October 1, 1998.

OVERSEAS PRIVATE INVESTMENT CORPORATION NONCREDIT ACCOUNT

The Overseas Private Investment Corporation is authorized to make, without regard to fiscal year limitations, as provided by 31 U.S.C. 9104, such expenditures and commitments within the limits of funds available to it and in accordance with law as may be necessary: *Provided*, That the amount available for administrative expenses to carry out the credit and insurance programs (including an amount for official reception and representation expenses which shall not exceed $35,000) shall not exceed $32,000,000: *Provided further*, That project-specific transaction costs, including direct and indirect costs incurred in claims settlements, and other direct costs associated with services provided to specific investors or potential investors pursuant to section 234 of the Foreign Assistance Act of 1961, shall not be considered administrative expenses for the purposes of this heading.

Mr. PORTER. Mr. Chairman, I move to strike the last word to engage the chairman of the subcommittee in a colloquy.

Mr. Chairman, I am seeking clarification with regard to a provision we included in the bill regarding Economic

Support Funds for Turkey. It is my understanding that this provision limits the overall level of assistance to $40 million, with no less than half of the funds to be spent on democracy building and other activities by nongovernmental organizations, private voluntary organizations or other instrumentalities, and these funds will be administered through the Agency for International Development.

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. PORTER. I yield to the gentleman from Alabama.

Mr. CALLAHAN. The gentleman is correct. The Agency for International Development will be responsible for administering the project elements of section 571 utilizing NGO's, PVO's and other instrumentalities consistent with the purposes outlined in this section and in consultation with this subcommittee.

Mr. PORTER. I would also like to clarify that these two tracks of assistance are not severable, and if for whatever reason the directed assistance were not provided and spent in the manner provided in the bill, then the government of Turkey would not receive the direct government-to-government assistance.

Mr. CALLAHAN. That is the intention of the committee in including the provision, and the administration will be apprised that this is the appropriate interpretation of this provision.

Mr. PORTER. I thank the gentleman for taking the time to clarify this matter and for his leadership on this issue.

Mr. BILIRAKIS. Mr. Chairman, will the gentleman yield?

Mr. PORTER. I yield to the gentleman from Florida.

Mr. BILIRAKIS. I thank the gentleman for yielding.

Mr. Chairman, I wish to engage the distinguished gentleman from Illinois, a member of the Committee on Appropriations, in a further discussion on the issue of Economic Support Funds to Turkey.

Mr. PORTER. I am pleased to engage in a discussion with the gentleman from Florida.

Mr. BILIRAKIS. As the gentleman knows, I had originally intended to offer a bipartisan amendment with the gentleman from Indiana [Mr. VISCLOSKY]. However, based on this discussion and the one preceding it, I will not offer my amendment.

It is my understanding that the concept of the Economic Support Fund was first established in the foreign assistance act of 1961 because Congress recognized that special circumstances, either economic, political or security conditions, may necessitate the need to give economic assistance to foreign countries. The ESF is a flexible but complex aid category and continues play an important role in promoting U.S. interests overseas.

Last Congress ESF funds were made available to Turkey to support efforts to reform its economy. This Congress only $20 million in ESF funds will be made available as a cash transfer to the Turkish government, a 10 percent reduction from the fiscal year 1997 level.

Mr. PORTER. The gentleman is correct. The Economic Support Fund helps provide economic assistance for countries that, given special circumstances, may require U.S. aid. In addition, the ESF funds made available as a cash transfer to the government of Turkey will be no more than $20 million for fiscal year 1998.

Mr. BILIRAKIS. If the gentleman will further yield, it is my understanding that the NGOs and PVOs referred to in the gentleman's colloquy with the distinguished gentleman from Alabama [Mr. CALLAHAN], the chairman of the Subcommittee on Foreign Operations, Export Financing and Related Programs of the Committee on Appropriations, referred to nongovernmental organizations and private voluntary organizations. It is also my understanding that at least $20 million of the assistance available in section 571 will be spent on democracy building and other economic development activities administered by the U.S. Agency for International Development. This agency will utilize NGOs, PVOs and other instrumentalities.

Mr. PORTER. The gentleman is correct. My understanding of the assistance made available in section 571 is that no less than half the funds are made available for democracy building and other activities by nongovernmental organizations.

Mr. BILIRAKIS. I thank the gentleman so very much for his clarification on this issue.

Mr. TAYLOR of North Carolina. Mr. Chairman, I move to strike the last word to engage in a colloquy with the gentleman from Alabama, the chairman of the subcommittee.

Mr. Chairman, I intended to offer an amendment to establish a pilot program to provide affordable housing in the Russian Federation. This program would prohibit any funds from being used to support Russian military housing. It has the support of the gentleman from New York [Mr. GILMAN] the authorizing committee chairman, and also the gentleman from Indiana [Mr. HAMILTON], the ranking member. I understand that the gentleman will pursue this program with the executive branch. It is my understanding that he will also pursue this concept in conference. Therefore, my legislative language is not necessary. Is that the understanding of the gentleman from Alabama?

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of North Carolina. I yield to the gentleman from Alabama.

Mr. CALLAHAN. I thank the gentleman first of all for withdrawing his amendment because he knows my feeling on language in this bill, but by withdrawing it, we will pursue this issue in conference and I will also discuss this pilot program with the executive branch as well.

Mr. TAYLOR of North Carolina. I thank the gentleman very much.

Mr. CALLAHAN. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. THORNBERRY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2159) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1998, and for other purposes, had come to no resolution thereon.

CONFERENCE REPORT ON H.R. 2014, TAXPAYER RELIEF ACT OF 1997

Mr. ARCHER submitted the following conference report and statement on the bill (H.R. 2014) to provide for reconciliation pursuant to subsections (b)(2) and (d) of section 105 of the concurrent resolution on the budget for fiscal year 1998:

CONFERENCE REPORT (H. REPT. 105–220)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2014) to provide for reconciliation pursuant to subsections (b)(2) and (d) of section 105 of the concurrent resolution on the budget for fiscal year 1998, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Taxpayer Relief Act of 1997".

(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) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 for any period before January 1, 1998, for any payment the due date of which is before January 16, 1998, with respect to any underpayment attributable to such period to the extent such underpayment was created or increased by any provision of this Act.

(e) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—CHILD TAX CREDIT

Sec. 101. Child tax credit.

TITLE II—EDUCATION INCENTIVES

Subtitle A—Tax Benefits Relating to Education Expenses

Sec. 201. Hope and lifetime learning credits.
Sec. 202. Deduction for interest on education loans.
Sec. 203. Penalty-free withdrawals from individual retirement plans for higher education expenses.

Subtitle B—Expanded Education Investment Savings Opportunities

PART I—QUALIFIED TUITION PROGRAMS

Sec. 211. Modifications of qualified State tuition programs.

PART II—EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS

Sec. 213. Education individual retirement accounts.

Subtitle C—Other Education Initiatives

Sec. 221. Extension of exclusion for employer-provided educational assistance.
Sec. 222. Repeal of limitation on qualified 501(c)(3) bonds other than hospital bonds.
Sec. 223. Increase in arbitrage rebate exception for governmental bonds used to finance education facilities.
Sec. 224. Contributions of computer technology and equipment for elementary or secondary school purposes.
Sec. 225. Treatment of cancellation of certain student loans.
Sec. 226. Incentives for education zones.

TITLE III—SAVINGS AND INVESTMENT INCENTIVES

Subtitle A—Retirement Savings

Sec. 301. Restoration of IRA deduction for certain taxpayers.
Sec. 302. Establishment of nondeductible tax-free individual retirement accounts.
Sec. 303. Distributions from certain plans may be used without penalty to purchase first homes.
Sec. 304. Certain bullion not treated as collectibles.

Subtitle B—Capital Gains

Sec. 311. 20 percent maximum capital gains rate for individuals.
Sec. 312. Exemption from tax for gain on sale of principal residence.
Sec. 313. Rollover of gain from sale of qualified stock.
Sec. 314. Amount of net capital gain taken into account in computing alternative tax on capital gains for corporations not to exceed taxable income of the corporation.

TITLE IV—ALTERNATIVE MINIMUM TAX REFORM

Sec. 401. Exemption from alternative minimum tax for small corporations.
Sec. 402. Repeal of separate depreciation lives for minimum tax purposes.
Sec. 403. Minimum tax not to apply to farmers' installment sales.

TITLE V—ESTATE, GIFT, AND GENERATION-SKIPPING TAX PROVISIONS

Subtitle A—Estate and Gift Tax Provisions

Sec. 501. Cost-of-living adjustments relating to estate and gift tax provisions.
Sec. 502. Family-owned business exclusion.
Sec. 503. Modifications to rate of interest on portion of estate tax extended under section 6166.
Sec. 504. Extension of treatment of certain rents under section 2032A to lineal descendants.
Sec. 505. Clarification of judicial review of eligibility for extension of time for payment of estate tax.
Sec. 506. Gifts may not be revalued for estate tax purposes after expiration of statute of limitations.
Sec. 507. Repeal of throwback rules applicable to certain domestic trusts.
Sec. 508. Treatment of land subject to a qualified conservation easement.

Subtitle B—Generation-Skipping Tax Provision

Sec. 511. Expansion of exception from generation-skipping transfer tax for transfers to individuals with deceased parents.

TITLE VI—EXTENSIONS

Sec. 601. Research tax credit.
Sec. 602. Contributions of stock to private foundations.
Sec. 603. Work opportunity tax credit.
Sec. 604. Orphan drug tax credit.

TITLE VII—INCENTIVES FOR REVITALIZATION OF THE DISTRICT OF COLUMBIA

Sec. 701. Tax incentives for revitalization of the District of Columbia.

TITLE VIII—WELFARE-TO-WORK INCENTIVES

Sec. 801. Incentives for employing long-term family assistance recipients.

TITLE IX—MISCELLANEOUS PROVISIONS

Subtitle A—Provisions Relating to Excise Taxes

Sec. 901. General revenue portion of highway motor fuels taxes deposited into Highway Trust Fund.
Sec. 902. Repeal of tax on diesel fuel used in recreational boats.
Sec. 903. Continued application of tax on imported recycled Halon-1211.
Sec. 904. Uniform rate of tax on vaccines.
Sec. 905. Operators of multiple gasoline retail outlets treated as wholesale distributor for refund purposes.
Sec. 906. Exemption of electric and other clean-fuel motor vehicles from luxury automobile classification.
Sec. 907. Rate of tax on certain special fuels determined on basis of BTU equivalency with gasoline.
Sec. 908. Modification of tax treatment of hard cider.
Sec. 909. Study of feasibility of moving collection point for distilled spirits excise tax.
Sec. 910. Clarification of authority to use semi-generic designations on wine labels.

Subtitle B—Revisions Relating to Disasters

Sec. 911. Authority to postpone certain tax-related deadlines by reason of presidentially declared disaster.
Sec. 912. Use of certain appraisals to establish amount of disaster loss.
Sec. 913. Treatment of livestock sold on account of weather-related conditions.
Sec. 914. Mortgage financing for residences located in disaster areas.
Sec. 915. Abatement of interest on underpayments by taxpayers in presidentially declared disaster areas.

Subtitle C—Provisions Relating to Employment Taxes

Sec. 921. Clarification of standard to be used in determining employment tax status of securities brokers.
Sec. 922. Clarification of exemption from self-employment tax for certain termination payments received by former insurance salesmen.

Subtitle D—Provisions Relating to Small Businesses

Sec. 931. Waiver of penalty through June 30, 1998, on small businesses failing to make electronic fund transfers of taxes.
Sec. 932. Clarification of treatment of home office use for administrative and management activities.
Sec. 933. Averaging of farm income over 3 years.
Sec. 934. Increase in deduction for health insurance costs of self-employed individuals.
Sec. 935. Moratorium on certain regulations.

Subtitle E—Brownfields

Sec. 941. Expensing of environmental remediation costs.

Subtitle F—Empowerment Zones, Enterprise Communities, Brownfields, and Community Development Financial Institutions

CHAPTER 1—ADDITIONAL EMPOWERMENT ZONES

Sec. 951. Additional empowerment zones.

CHAPTER 2—NEW EMPOWERMENT ZONES

Sec. 952. Designation of new empowerment zones.
Sec. 953. Volume cap not to apply to enterprise zone facility bonds with respect to new empowerment zones.
Sec. 954. Modification to eligibility criteria for designation of future enterprise zones in Alaska or Hawaii.

CHAPTER 3—TREATMENT OF EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Sec. 955. Modifications to enterprise zone facility bond rules for all empowerment zones and enterprise communities.
Sec. 956. Modifications to enterprise zone business definition for all empowerment zones and enterprise communities.

Subtitle G—Other Provisions

Sec. 961. Use of estimates of shrinkage for inventory accounting.
Sec. 962. Assignment of workmen's compensation liability eligible for exclusion relating to personal injury liability assignments.
Sec. 963. Tax-exempt status for certain State worker's compensation act companies.
Sec. 964. Election for 1987 partnerships to continue exception from treatment of publicly traded partnerships as corporations.
Sec. 965. Exclusion from unrelated business taxable income for certain sponsorship payments.
Sec. 966. Associations of holders of timeshare interests to be taxed like other homeowners associations.
Sec. 967. Additional advance refunding of certain Virgin Island bonds.
Sec. 968. Nonrecognition of gain on sale of stock to certain farmers' cooperatives.
Sec. 969. Increased deductibility of business meal expenses for individuals subject to Federal hours of service.
Sec. 970. Clarification of de minimis fringe benefit rules to no-charge employee meals.
Sec. 971. Exemption of the incremental cost of a clean fuel vehicle from the limits on depreciation for vehicles.
Sec. 972. Temporary suspension of taxable income limit on percentage depletion for marginal production.
Sec. 973. Increase in standard mileage rate expense deduction for charitable use of passenger automobile.

Sec. 974. Clarification of treatment of certain receivables purchased by cooperative hospital service organizations.
Sec. 975. Deduction in computing adjusted gross income for expenses in connection with service performed by certain officials.
Sec. 976. Combined employment tax reporting demonstration project.
Sec. 977. Elective carryback of existing carryovers of National Railroad Passenger Corporation.

Subtitle H—Extension of Duty-Free Treatment Under Generalized System of Preferences

Sec. 981. Generalized System of Preferences.

TITLE X—REVENUES

Subtitle A—Financial Products

Sec. 1001. Constructive sales treatment for appreciated financial positions.
Sec. 1002. Limitation on exception for investment companies under section 351.
Sec. 1003. Gains and losses from certain terminations with respect to property.
Sec. 1004. Determination of original issue discount where pooled debt obligations subject to acceleration.
Sec. 1005. Denial of interest deductions on certain debt instruments.

Subtitle B—Corporate Organizations and Reorganizations

Sec. 1011. Tax treatment of certain extraordinary dividends.
Sec. 1012. Application of section 355 to distributions in connection with acquisitions and to intragroup transactions.
Sec. 1013. Tax treatment of redemptions involving related corporations.
Sec. 1014. Certain preferred stock treated as boot.
Sec. 1015. Modification of holding period applicable to dividends received deduction.

Subtitle C—Administrative Provisions

Sec. 1021. Reporting of certain payments made to attorneys.
Sec. 1022. Decrease of threshold for reporting payments to corporations performing services for Federal agencies.
Sec. 1023. Disclosure of return information for administration of certain veterans programs.
Sec. 1024. Continuous levy on certain payments.
Sec. 1025. Modification of levy exemption.
Sec. 1026. Confidentiality and disclosure of returns and return information.
Sec. 1027. Returns of beneficiaries of estates and trusts required to file returns consistent with estate or trust return or to notify Secretary of inconsistency.
Sec. 1028. Registration and other provisions relating to confidential corporate tax shelters.

Subtitle D—Excise and Employment Tax Provisions

Sec. 1031. Extension and modification of taxes funding Airport and Airway Trust Fund; increased deposits into such Fund.
Sec. 1032. Kerosene taxed as diesel fuel.
Sec. 1033. Restoration of Leaking Underground Storage Tank Trust Fund taxes.
Sec. 1034. Application of communications tax to prepaid telephone cards.
Sec. 1035. Extension of temporary unemployment tax.

Subtitle E—Provisions Relating to Tax-Exempt Entities

Sec. 1041. Expansion of look-thru rule for interest, annuities, royalties, and rents derived by subsidiaries of tax-exempt organizations.
Sec. 1042. Termination of certain exceptions from rules relating to exempt organizations which provide commercial-type insurance.

Subtitle F—Foreign Provisions

Sec. 1051. Definition of foreign personal holding company income.
Sec. 1052. Personal property used predominantly in the United States treated as not property of a like kind with respect to property used predominantly outside the United States.
Sec. 1053. Holding period requirement for certain foreign taxes.
Sec. 1054. Denial of treaty benefits for certain payments through hybrid entities.
Sec. 1055. Interest on underpayments not reduced by foreign tax credit carrybacks.
Sec. 1056. Clarification of period of limitations on claim for credit or refund attributable to foreign tax credit carryforward.
Sec. 1057. Repeal of exception to alternative minimum foreign tax credit limit.

Subtitle G—Partnership Provisions

Sec. 1061. Allocation of basis among properties distributed by partnership.
Sec. 1062. Repeal of requirement that inventory be substantially appreciated with respect to sale or exchange of partnership interest.
Sec. 1063. Extension of time for taxing precontribution gain.

Subtitle H—Pension Provisions

Sec. 1071. Pension accrued benefit distributable without consent increased to $5,000.
Sec. 1072. Election to receive taxable cash compensation in lieu of nontaxable parking benefits.
Sec. 1073. Repeal of excess distribution and excess retirement accumulation tax.
Sec. 1074. Increase in tax on prohibited transactions.
Sec. 1075. Basis recovery rules for annuities over more than one life.

Subtitle I—Other Revenue Provisions

Sec. 1081. Termination of suspense accounts for family corporations required to use accrual method of accounting.
Sec. 1082. Modification of taxable years to which net operating losses may be carried.
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Sec. 1084. Expansion of denial of deduction for certain amounts paid in connection with insurance.
Sec. 1085. Improved enforcement of the application of the earned income credit.
Sec. 1086. Limitation on property for which income forecast method may be used.
Sec. 1087. Expansion of requirement that involuntarily converted property be replaced with property acquired from an unrelated person.
Sec. 1088. Treatment of exception from installment sales rules for sales of property by a manufacturer to a dealer.
Sec. 1089. Limitations on charitable remainder trust eligibility for certain trusts.
Sec. 1090. Expanded SSA records for tax enforcement.
Sec. 1091. Modification of estimated tax safe harbors.

TITLE XI—SIMPLIFICATION AND OTHER FOREIGN-RELATED PROVISIONS

Subtitle A—General Provisions

Sec. 1101. Certain individuals exempt from foreign tax credit limitation.
Sec. 1102. Exchange rate used in translating foreign taxes.
Sec. 1103. Election to use simplified section 904 limitation for alternative minimum tax.
Sec. 1104. Treatment of personal transactions by individuals under foreign currency rules.
Sec. 1105. Foreign tax credit treatment of dividends from noncontrolled section 902 corporations.

Subtitle B—Treatment of Controlled Foreign Corporations

Sec. 1111. Gain on certain stock sales by controlled foreign corporations treated as dividends.
Sec. 1112. Miscellaneous modifications to subpart F.
Sec. 1113. Indirect foreign tax credit allowed for certain lower tier companies.

Subtitle C—Treatment of Passive Foreign Investment Companies

Sec. 1121. United States shareholders of controlled foreign corporations not subject to PFIC inclusion.
Sec. 1122. Election of mark to market for marketable stock in passive foreign investment company.
Sec. 1123. Valuation of assets for passive foreign investment company determination.
Sec. 1124. Effective date.

Subtitle D—Repeal of Excise Tax on Transfers to Foreign Entities

Sec. 1131. Repeal of excise tax on transfers to foreign entities; recognition of gain on certain transfers to foreign trusts and estates.

Subtitle E—Information Reporting

Sec. 1141. Clarification of application of return requirement to foreign partnerships.
Sec. 1142. Controlled foreign partnerships subject to information reporting comparable to information reporting for controlled foreign corporations.
Sec. 1143. Modifications relating to returns required to be filed by reason of changes in ownership interests in foreign partnership.
Sec. 1144. Transfers of property to foreign partnerships subject to information reporting comparable to information reporting for such transfers to foreign corporations.
Sec. 1145. Extension of statute of limitations for foreign transfers.
Sec. 1146. Increase in filing thresholds for returns as to organization of foreign corporations and acquisitions of stock in such corporations.

Subtitle F—Determination of Foreign or Domestic Status of Partnerships

Sec. 1151. Determination of foreign or domestic status of partnerships.

Subtitle G—Other Simplification Provisions

Sec. 1161. Transition rule for certain trusts.
Sec. 1162. Repeal of stock and securities safe harbor requirement that principal office be outside the United States.
Sec. 1163. Miscellaneous clarifications.

Subtitle H—Other Provisions

Sec. 1171. Treatment of computer software as FSC export property.
Sec. 1172. Adjustment of dollar limitation on section 911 exclusion.
Sec. 1173. United States property not to include certain assets acquired by dealers in ordinary course of trade or business.
Sec. 1174. Treatment of nonresident aliens engaged in international transportation services.
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TITLE XII—SIMPLIFICATION PROVISIONS RELATING TO INDIVIDUALS AND BUSINESSES

Subtitle A—Provisions Relating to Individuals

Sec. 1201. Basic standard deduction and minimum tax exemption amount for certain dependents.
Sec. 1202. Increase in amount of tax exempt from estimated tax requirements.
Sec. 1203. Treatment of certain reimbursed expenses of rural mail carriers.
Sec. 1204. Treatment of traveling expenses of certain Federal employees engaged in criminal investigations.
Sec. 1205. Payment of tax by commercially acceptable means.

Subtitle B—Provisions Relating to Businesses Generally

Sec. 1211. Modifications to look-back method for long-term contracts.
Sec. 1212. Minimum tax treatment of certain property and casualty insurance companies.
Sec. 1213. Qualified lessee construction allowances for short-term leases.

Subtitle C—Simplification Relating to Electing Large Partnerships

PART I—GENERAL PROVISIONS

Sec. 1221. Simplified flow-through for electing large partnerships.
Sec. 1222. Simplified audit procedures for electing large partnerships.
Sec. 1223. Due date for furnishing information to partners of electing large partnerships.
Sec. 1224. Returns required on magnetic media.
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PART II—PROVISIONS RELATED TO TEFRA PARTNERSHIP PROCEEDINGS

Sec. 1231. Treatment of partnership items in deficiency proceedings.
Sec. 1232. Partnership return to be determinative of audit procedures to be followed.
Sec. 1233. Provisions relating to statute of limitations.
Sec. 1234. Expansion of small partnership exception.
Sec. 1235. Exclusion of partial settlements from 1-year limitation on assessment.
Sec. 1236. Extension of time for filing a request for administrative adjustment.
Sec. 1237. Availability of innocent spouse relief in context of partnership proceedings.
Sec. 1238. Determination of penalties at partnership level.
Sec. 1239. Provisions relating to court jurisdiction, etc.
Sec. 1240. Treatment of premature petitions filed by notice partners or 5-percent groups.
Sec. 1241. Bonds in case of appeals from certain proceeding.
Sec. 1242. Suspension of interest where delay in computational adjustment resulting from certain settlements.
Sec. 1243. Special rules for administrative adjustment requests with respect to bad debts or worthless securities.

PART III—PROVISION RELATING TO CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER, ETC.

Sec. 1246. Closing of partnership taxable year with respect to deceased partner, etc.

Subtitle D—Provisions Relating to Real Estate Investment Trusts

Sec. 1251. Clarification of limitation on maximum number of shareholders.
Sec. 1252. De minimis rule for tenant services income.
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Sec. 1254. Credit for tax paid by REIT on retained capital gains.
Sec. 1255. Repeal of 30-percent gross income requirement.
Sec. 1256. Modification of earnings and profits rules for determining whether REIT has earnings and profits from non-REIT year.
Sec. 1257. Treatment of foreclosure property.
Sec. 1258. Payments under hedging instruments.
Sec. 1259. Excess noncash income.
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Sec. 1261. Shared appreciation mortgages.
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Subtitle E—Provisions Relating to Regulated Investment Companies

Sec. 1271. Repeal of 30-percent gross income limitation.

Subtitle F—Taxpayer Protections

Sec. 1281. Reasonable cause exception for certain penalties.
Sec. 1282. Clarification of period for filing claims for refunds.
Sec. 1283. Repeal of authority to disclose whether prospective juror has been audited.
Sec. 1284. Clarification of statute of limitations.
Sec. 1285. Awarding of administrative costs.

TITLE XIII—SIMPLIFICATION PROVISIONS RELATING TO ESTATE AND GIFT TAXES

Sec. 1301. Gifts to charities exempt from gift tax filing requirements.
Sec. 1302. Clarification of waiver of certain rights of recovery.
Sec. 1303. Transitional rule under section 2056A.
Sec. 1304. Treatment for estate tax purposes of short-term obligations held by nonresident aliens.
Sec. 1305. Certain revocable trusts treated as part of estate.
Sec. 1306. Distributions during first 65 days of taxable year of estate.
Sec. 1307. Separate share rules available to estates.
Sec. 1308. Executor of estate and beneficiaries treated as related persons for disallowance of losses, etc.
Sec. 1309. Treatment of funeral trusts.
Sec. 1310. Adjustments for gifts within 3 years of decedent's death.
Sec. 1311. Clarification of treatment of survivor annuities under qualified terminable interest rules.
Sec. 1312. Treatment under qualified domestic trust rules of forms of ownership which are not trusts.
Sec. 1313. Opportunity to correct certain failures under section 2032A.
Sec. 1314. Authority to waive requirement of United States trustee for qualified domestic trusts.

TITLE XIV—SIMPLIFICATION PROVISIONS RELATING TO EXCISE TAXES, TAX-EXEMPT BONDS, AND OTHER MATTERS

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PART I—EXCISE TAXES ON HEAVY TRUCKS AND LUXURY CARS

Sec. 1401. Increase in de minimis limit for aftermarket alterations for heavy trucks and luxury cars.
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Sec. 1411. Credit or refund for imported bottled distilled spirits returned to distilled spirits plant.
Sec. 1412. Authority to cancel or credit export bonds without submission of records.
Sec. 1413. Repeal of required maintenance of records on premises of distilled spirits plant.
Sec. 1414. Fermented material from any brewery may be received at a distilled spirits plant.
Sec. 1415. Repeal of requirement for wholesale dealers in liquors to post sign.
Sec. 1416. Refund of tax to wine returned to bond not limited to unmerchantable wine.
Sec. 1417. Use of additional ameliorating material in certain wines.
Sec. 1418. Domestically produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.
Sec. 1419. Beer may be withdrawn free of tax for destruction.
Sec. 1420. Authority to allow drawback on exported beer without submission of records.
Sec. 1421. Transfer to brewery of beer imported in bulk without payment of tax.
Sec. 1422. Transfer to bonded wine cellars of wine imported in bulk without payment of tax.

PART III—OTHER EXCISE TAX PROVISIONS

Sec. 1431. Authority to grant exemptions from registration requirements.
Sec. 1432. Repeal of expired provisions.
Sec. 1433. Simplification of imposition of excise tax on arrows.
Sec. 1434. Modifications to retail tax on heavy trucks.
Sec. 1435. Skydiving flights exempt from tax on transportation of persons by air.
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Subtitle B—Tax-Exempt Bond Provisions

Sec. 1441. Repeal of $100,000 limitation on unspent proceeds under 1-year exception from rebate.
Sec. 1442. Exception from rebate for earnings on bona fide debt service fund under construction bond rules.
Sec. 1443. Repeal of debt service-based limitation on investment in certain nonpurpose investments.
Sec. 1444. Repeal of expired provisions.
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Subtitle C—Tax Court Procedures

Sec. 1451. Overpayment determinations of Tax Court.
Sec. 1452. Redetermination of interest pursuant to motion.
Sec. 1453. Application of net worth requirement for awards of litigation costs.
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Subtitle D—Other Provisions

Sec. 1461. Extension of due date of first quarter estimated tax payment by private foundations.

Sec. 1462. Clarification of authority to withhold Puerto Rico income taxes from salaries of Federal employees.

Sec. 1463. Certain notices disregarded under provision increasing interest rate on large corporate underpayments.

TITLE XV—PENSIONS AND EMPLOYEE BENEFITS

Subtitle A—Simplification

Sec. 1501. Matching contributions of self-employed individuals not treated as elective employer contributions.

Sec. 1502. Modification of prohibition of assignment or alienation.

Sec. 1503. Elimination of paperwork burdens on plans.

Sec. 1504. Modification of 403(b) exclusion allowance to conform to 415 modifications.

Sec. 1505. Extension of moratorium on application of certain nondiscrimination rules to State and local governments.

Sec. 1506. Clarification of certain rules relating to employee stock ownership plans of S corporations.

Sec. 1507. Modification of 10-percent tax for nondeductible contributions.

Sec. 1508. Modification of funding requirements for certain plans.

Sec. 1509. Clarification of disqualification rules relating to acceptance of rollover contributions.

Sec. 1510. New technologies in retirement plans.

Subtitle B—Other Provisions Relating to Pensions and Employee Benefits

Sec. 1521. Increase in current liability funding limit.

Sec. 1522. Special rules for church plans.

Sec. 1523. Repeal of application of unrelated business income tax to ESOPs.

Sec. 1524. Diversification of section 401(k) plan investments.

Sec. 1525. Section 401(k) plans for certain irrigation and drainage entities.

Sec. 1526. Portability of permissive service credit under governmental pension plans.

Sec. 1527. Removal of dollar limitation on benefit payments from a defined benefit plan maintained for certain police and fire employees.

Sec. 1528. Survivor benefits for public safety officers killed in the line of duty.

Sec. 1529. Treatment of certain disability benefits received by former police officers or firefighters.

Sec. 1530. Gratuitous transfers for the benefit of employees.

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Sec. 1531. Amendments to the Internal Revenue Code of 1986 to implement the Newborns' and Mothers' Health Protection Act of 1996 and the Mental Health Parity Act of 1996.

Sec. 1532. Special rules relating to church plans.

Subtitle D—Provisions Relating to Plan Amendments

Sec. 1541. Provisions relating to plan amendments.

TITLE XVI—TECHNICAL AMENDMENTS RELATED TO SMALL BUSINESS JOB PROTECTION ACT OF 1996 AND OTHER LEGISLATION

Sec. 1600. Coordination with other titles.

Sec. 1601. Amendments related to Small Business Job Protection Act of 1996.

Sec. 1602. Amendments related to Health Insurance Portability and Accountability Act of 1996.

Sec. 1603. Amendments related to Taxpayer Bill of Rights 2.

Sec. 1604. Miscellaneous provisions.

TITLE XVII—IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO

Sec. 1701. Identification of limited tax benefits subject to line item veto.

TITLE I—CHILD TAX CREDIT

SEC. 101. CHILD TAX CREDIT.

(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 23 the following new section:

"SEC. 24. CHILD TAX CREDIT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer an amount equal to $500 ($400 in the case of taxable years beginning in 1998).

"(b) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount of the credit allowable under subsection (a) shall be reduced (but not below zero) by $50 for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term 'modified adjusted gross income' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

"(2) THRESHOLD AMOUNT.—For purposes of paragraph (1), the term 'threshold amount' means—

"(A) $110,000 in the case of a joint return,

"(B) $75,000 in the case of an individual who is not married, and

"(C) $55,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

"(c) QUALIFYING CHILD.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualifying child' means any individual if—

"(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for the taxable year,

"(B) such individual has not attained the age of 17 as of the close of the calendar year in which the taxable year of the taxpayer begins, and

"(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B).

"(2) EXCEPTION FOR CERTAIN NONCITIZENS.—The term 'qualifying child' shall not include any individual who would not be a dependent if the first sentence of section 152(b)(3) were applied without regard to all that follows 'resident of the United States'.

"(d) ADDITIONAL CREDIT FOR FAMILIES WITH 3 OR MORE CHILDREN.—

"(1) IN GENERAL.—In the case of a taxpayer with 3 or more qualifying children for any taxable year, the amount of the credit allowed under this section shall be equal to the greater of—

"(A) the amount of the credit allowed under this section (without regard to this subsection and after application of the limitation under section 26), or

"(B) the alternative credit amount determined under paragraph (2).

"(2) ALTERNATIVE CREDIT AMOUNT.—For purposes of this subsection, the alternative credit amount is the amount of the credit which would be allowed under this section if the limitation under paragraph (3) were applied in lieu of the limitation under section 26.

"(3) LIMITATION.—The limitation under this paragraph for any taxable year is the limitation under section 26 (without regard to this subsection)—

"(A) increased by the taxpayer's social security taxes for such taxable year, and

"(B) reduced by the sum of—

"(i) the credits allowed under this part other than under subpart C or this section, and

"(ii) the credit allowed under section 32 without regard to subsection (m) thereof.

"(4) UNUSED CREDIT TO BE REFUNDABLE.—If the amount of the credit under paragraph (1)(B) exceeds the amount of the credit under paragraph (1)(A), such excess shall be treated as a credit to which subpart C applies. The rule of section 32(h) shall apply to such excess.

"(5) SOCIAL SECURITY TAXES.—For purposes of paragraph (3)—

"(A) IN GENERAL.—The term 'social security taxes' means, with respect to any taxpayer for any taxable year—

"(i) the amount of the taxes imposed by sections 3101 and 3201(a) on amounts received by the taxpayer during the calendar year in which the taxable year begins,

"(ii) 50 percent of the taxes imposed by section 1401 on the self-employment income of the taxpayer for the taxable year, and

"(iii) 50 percent of the taxes imposed by section 3211(a)(1) on amounts received by the taxpayer during the calendar year in which the taxable year begins.

"(B) COORDINATION WITH SPECIAL REFUND OF SOCIAL SECURITY TAXES.—The term 'social security taxes' shall not include any taxes to the extent the taxpayer is entitled to a special refund of such taxes under section 6413(c).

"(C) SPECIAL RULE.—Any amounts paid pursuant to an agreement under section 3121(l) (relating to agreements entered into by American employers with respect to foreign affiliates) which are equivalent to the taxes referred to in subparagraph (A)(i) shall be treated as taxes referred to in such subparagraph.

"(e) IDENTIFICATION REQUIREMENT.—No credit shall be allowed under this section to a taxpayer with respect to any qualifying child unless the taxpayer includes the name and taxpayer identification number of such qualifying child on the return of tax for the taxable year.

"(f) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.".

(b) SUPPLEMENTAL CREDIT.—Section 32 is amended by adding at the end the following new subsection:

"(m) SUPPLEMENTAL CHILD CREDIT.—

"(1) IN GENERAL.—In the case of a taxpayer with respect to whom a credit is allowed under section 24 for the taxable year, there shall be allowed as a credit under this section an amount equal to the supplemental child credit (if any) determined for such taxpayer for such taxable year under paragraph (2). Such credit shall be in addition to the credit allowed under subsection (a).

"(2) SUPPLEMENTAL CHILD CREDIT.—For purposes of this subsection, the supplemental child credit is an amount equal to the excess (if any) of—

"(A) the amount determined under section 24(d)(1)(A), over

"(B) the amount determined under section 24(d)(1)(B).

The amounts referred to in subparagraphs (A) and (B) shall be determined as if section 24(d) applied to all taxpayers.

"(3) COORDINATION WITH SECTION 24.—The amount of the credit under section 24 shall be reduced by the amount of the credit allowed under this subsection."

(c) HIGH RISK POOLS PERMITTED TO COVER SPOUSES AND DEPENDENTS OF HIGH RISK INDIVIDUALS.—Paragraph (26) of section 501(c) is amended by adding at the end the following flush sentence:

"A spouse and any qualifying child (as defined in section 24(c)) of an individual described in subparagraph (B) (without regard to this sentence) shall be treated as described in subparagraph (B).".

(d) CONFORMING AMENDMENTS.—

(1) Section 1324(b)(2) of title 31, United States Code, is amended by inserting before the period at the end ", or enacted by the Taxpayer Relief Act of 1997".

(2) Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ", and", and by inserting after subparagraph (H) the following new subparagraph:

"(I) an omission of a correct TIN required under section 24(e) (relating to child tax credit) to be included on a return.".

(3) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 23 the following new item:

"Sec. 24. Child tax credit.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

TITLE II—EDUCATION INCENTIVES

Subtitle A—Tax Benefits Relating to Education Expenses

SEC. 201. HOPE AND LIFETIME LEARNING CREDITS.

(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 25 the following new section:

"SEC. 25A. HOPE AND LIFETIME LEARNING CREDITS.

"(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 the amount equal to the sum of—

"(1) the Hope Scholarship Credit, plus

"(2) the Lifetime Learning Credit.

"(b) HOPE SCHOLARSHIP CREDIT.—

"(1) PER STUDENT CREDIT.—In the case of any eligible student for whom an election is in effect under this section for any taxable year, the Hope Scholarship Credit is an amount equal to the sum of—

"(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $1,000, plus

"(B) 50 percent of such expenses so paid as exceeds $1,000 but does not exceed the applicable limit.

"(2) LIMITATIONS APPLICABLE TO HOPE SCHOLARSHIP CREDIT.—

"(A) CREDIT ALLOWED ONLY FOR 2 TAXABLE YEARS.—An election to have this section apply with respect to any eligible student for purposes of the Hope Scholarship Credit under subsection (a)(1) may not be made for any taxable year if such an election (by the taxpayer or any other individual) is in effect with respect to such student for any 2 prior taxable years.

"(B) CREDIT ALLOWED FOR YEAR ONLY IF INDIVIDUAL IS AT LEAST ½ TIME STUDENT FOR PORTION OF YEAR.—The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an individual unless such individual is an eligible student for at least one academic period which begins during such year.

"(C) CREDIT ALLOWED ONLY FOR FIRST 2 YEARS OF POSTSECONDARY EDUCATION.—The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an eligible student if the student has completed (before the beginning of such taxable year) the first 2 years of postsecondary education at an eligible educational institution.

"(D) DENIAL OF CREDIT IF STUDENT CONVICTED OF A FELONY DRUG OFFENSE.—The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for qualified tuition and related expenses for the enrollment or attendance of a student for any academic period if such student has been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends.

"(3) ELIGIBLE STUDENT.—For purposes of this subsection, the term 'eligible student' means, with respect to any academic period, a student who—

"(A) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of this section, and

"(B) is carrying at least ½ the normal full-time work load for the course of study the student is pursuing.

"(4) APPLICABLE LIMIT.—For purposes of paragraph (1)(B), the applicable limit for any taxable year is an amount equal to 2 times the dollar amount in effect under paragraph (1)(A) for such taxable year.

"(c) LIFETIME LEARNING CREDIT.—

"(1) PER TAXPAYER CREDIT.—The Lifetime Learning Credit for any taxpayer for any taxable year is an amount equal to 20 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished during any academic period beginning in such taxable year) as does not exceed $10,000 ($5,000 in the case of taxable years beginning before January 1, 2003).

"(2) SPECIAL RULES FOR DETERMINING EXPENSES.—

"(A) COORDINATION WITH HOPE SCHOLARSHIP.—The qualified tuition and related expenses with respect to an individual who is an eligible student for whom a Hope Scholarship Credit under subsection (a)(1) is allowed for the taxable year shall not be taken into account under this subsection.

"(B) EXPENSES ELIGIBLE FOR LIFETIME LEARNING CREDIT.—For purposes of paragraph (1), qualified tuition and related expenses shall include expenses described in subsection (f)(1) with respect to any course of instruction at an eligible educational institution to acquire or improve job skills of the individual.

"(d) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount which would (but for this subsection) be taken into account under subsection (a) for the taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—The amount determined under this paragraph is the amount which bears the same ratio to the amount which would be so taken into account as—

"(A) the excess of—

"(i) the taxpayer's modified adjusted gross income for such taxable year, over

"(ii) $40,000 ($80,000 in the case of a joint return), bears to

"(B) $10,000 ($20,000 in the case of a joint return).

"(3) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

"(e) ELECTION TO HAVE SECTION APPLY.—

"(1) IN GENERAL.—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses of an individual unless the taxpayer elects to have this section apply with respect to such individual for such year.

"(2) COORDINATION WITH EXCLUSIONS.—An election under this subsection shall not take effect with respect to an individual for any taxable year if any portion of any distribution during such taxable year from an education individual retirement account is excluded from gross income under section 530(d)(2).

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

"(1) QUALIFIED TUITION AND RELATED EXPENSES.—

"(A) IN GENERAL.—The term 'qualified tuition and related expenses' means tuition and fees required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution for courses of instruction of such individual at such institution.

"(B) EXCEPTION FOR EDUCATION INVOLVING SPORTS, ETC.—Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies, unless such course or other education is part of the individual's degree program.

"(C) EXCEPTION FOR NONACADEMIC FEES.—Such term does not include student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction.

"(2) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means an institution—

"(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and

"(B) which is eligible to participate in a program under title IV of such Act.

"(g) SPECIAL RULES.—

"(1) IDENTIFICATION REQUIREMENT.—No credit shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of such individual on the return of tax for the taxable year.

"(2) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS, ETC.—The amount of qualified tuition and related expenses otherwise taken into account under subsection (a) with respect to an individual for an academic period shall be reduced (before the application of subsections (b), (c), and (d)) by the sum of any amounts paid for the benefit of such individual which are allocable to such period as—

"(A) a qualified scholarship which is excludable from gross income under section 117,

"(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code, and

"(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for such individual's educational expenses, or attributable to such individual's enrollment at an eligible educational institution, which is excludable from gross income under any law of the United States.

"(3) TREATMENT OF EXPENSES PAID BY DEPENDENT.—If a deduction under section 151 with respect to an individual is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins—

"(A) no credit shall be allowed under subsection (a) to such individual for such individual's taxable year, and

"(B) qualified tuition and related expenses paid by such individual during such individual's taxable year shall be treated for purposes of this section as paid by such other taxpayer.

"(4) TREATMENT OF CERTAIN PREPAYMENTS.—If qualified tuition and related expenses are paid by the taxpayer during a taxable year for an academic period which begins during the first 3 months following such taxable year, such academic period shall be treated for purposes of this section as beginning during such taxable year.

"(5) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for any expense for which a deduction is allowed under any other provision of this chapter.

"(6) NO CREDIT FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

"(7) NONRESIDENT ALIENS.—If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

"(h) INFLATION ADJUSTMENTS.—

"(1) DOLLAR LIMITATION ON AMOUNT OF CREDIT.—

"(A) IN GENERAL.—In the case of a taxable year beginning after 2001, each of the $1,000 amounts under subsection (b)(1) 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 the calendar year in which the taxable year begins, determined by substituting 'calendar year 2000' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

"(2) INCOME LIMITS.—

"(A) IN GENERAL.—In the case of a taxable year beginning after 2001, the $40,000 and $80,000 amounts in subsection (d)(2) shall each 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 the calendar year in which the taxable year begins, determined by substituting 'calendar year 2000' for 'calendar year 1992' in subparagraph (B) thereof.

"(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.

"(i) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of the credit allowed under this section in cases where there is a refund in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.".

(b) EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors), as amended by section 101, is amended by striking "and" at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting ", and", and by inserting after subparagraph (I) the following new subparagraph:

"(J) an omission of a correct TIN required under section 25A(g)(1) (relating to higher education tuition and related expenses) to be included on a return.".

(c) RETURNS RELATING TO TUITION AND RELATED EXPENSES.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by inserting after section 6050R the following new section:

"SEC. 6050S. RETURNS RELATING TO HIGHER EDUCATION TUITION AND RELATED EXPENSES.

"(a) IN GENERAL.—Any person—

"(1) which is an eligible educational institution which receives payments for qualified tuition and related expenses with respect to any individual for any calendar year, or

"(2) which is engaged in a trade or business and which, in the course of such trade or business, makes payments during any calendar year to any individual which constitute reimbursements or refunds (or similar amounts) of qualified tuition and related expenses of such individual,

shall make the return described in subsection (b) with respect to the individual at such time as the Secretary may by regulations prescribe.

"(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe,

"(2) contains—

"(A) the name, address, and TIN of the individual with respect to whom payments described in subsection (a) were received from (or were paid to),

"(B) the name, address, and TIN of any individual certified by the individual described in subparagraph (A) as the taxpayer who will claim the individual as a dependent for purposes of the deduction allowable under section 151 for any taxable year ending with or within the calendar year, and

"(C) the—

"(i) aggregate amount of payments for qualified tuition and related expenses received with respect to the individual described in subparagraph (A) during the calendar year, and

"(ii) aggregate amount of reimbursements or refunds (or similar amounts) paid to such individual during the calendar year, and

"(D) such other information as the Secretary may prescribe.

"(c) APPLICATION TO GOVERNMENTAL UNITS.—For purposes of this section—

"(1) a governmental unit or any agency or instrumentality thereof shall be treated as a person, and

"(2) any return required under subsection (a) by such governmental entity shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return under subparagraph (A) or (B) of subsection (b)(2) a written statement showing—

"(1) the name, address, and phone number of the information contact of the person required to make such return, and

"(2) the aggregate amounts described in subparagraph (C) of subsection (b)(2).

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

"(e) DEFINITIONS.—For purposes of this section, the terms 'eligible educational institution' and 'qualified tuition and related expenses' have the meanings given such terms by section 25A.

"(f) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section. No penalties shall be imposed under part II of subchapter B of chapter 68 with respect to any return or statement required under this section until such time as such regulations are issued.".

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ix) through (xiv) as clauses (x) through (xv), respectively, and by inserting after clause (viii) the following new clause:

"(ix) section 6050S (relating to returns relating to payments for qualified tuition and related expenses),".

(B) Paragraph (2) of section 6724(d) is amended by striking "or" at the end of the next to last subparagraph, by striking the period at the end of the last subparagraph and inserting ", or", and by adding at the end the following new subparagraph:

"(Z) section 6050S(d) (relating to returns relating to qualified tuition and related expenses).".

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050R the following new item:

"Sec. 6050S. Returns relating to higher education tuition and related expenses.".

(d) COORDINATION WITH SECTION 135.—Subsection (d) of section 135 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) COORDINATION WITH HIGHER EDUCATION CREDIT.—The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the amount of such expenses which are taken into account in determining the credit allowable to the taxpayer or any other person under section 25A with respect to such expenses.".

(e) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25 the following new item:

"Sec. 25A. Higher education tuition and related expenses.".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to expenses paid after December 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

(2) LIFETIME LEARNING CREDIT.—Section 25A(a)(2) of the Internal Revenue Code of 1986 shall apply to expenses paid after June 30, 1998 (in taxable years ending after such date), for education furnished in academic periods beginning after such dates.

SEC. 202. DEDUCTION FOR INTEREST ON EDUCATION LOANS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. INTEREST ON EDUCATION LOANS.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

"(b) MAXIMUM DEDUCTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the deduction allowed by subsection (a) for the taxable year shall not exceed the amount determined in accordance with the following table:

"In the case of taxable years beginning in:	The dollar amount is:
1998	$1,000
1999	$1,500
2000	$2,000
2001 or thereafter	$2,500.

"(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—The amount which would (but for this paragraph) be allowable as a deduction under this section shall be reduced (but not below zero) by the amount determined under subparagraph (B).

"(B) AMOUNT OF REDUCTION.—The amount determined under this subparagraph is the amount which bears the same ratio to the amount which would be so taken into account as—

"(i) the excess of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $40,000 ($60,000 in the case of a joint return), bears to

"(ii) $15,000.

"(C) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means adjusted gross income determined—

"(i) without regard to this section and sections 135, 137, 911, 931, and 933, and

"(ii) after application of sections 86, 219, and 469.

For purposes of sections 86, 135, 137, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

"(c) DEPENDENTS NOT ELIGIBLE FOR DEDUCTION.—No deduction 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 DEDUCTION ALLOWED.—A deduction shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan.

"(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 any dependent of the taxpayer as of the time the indebtedness was incurred,

"(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 an eligible 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, 20 U.S.C. 1087ll, as in effect on the day before the date of the enactment of this Act) at an eligible educational institution, reduced by the sum of—

"(A) the amount excluded from gross income under section 127, 135, or 530 by reason of such expenses, and

"(B) the amount of any scholarship, allowance, or payment described in section 25A(g)(2).

For purposes of the preceding sentence, the term 'eligible educational institution' has the same meaning given such term by section 25A(f)(2), 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) ELIGIBLE STUDENT.—The term 'eligible student' has the meaning given such term by section 25A(b)(3).

"(4) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152.

"(f) SPECIAL RULES.—

"(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

"(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

"(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.

"(g) INFLATION ADJUSTMENTS.—

"(1) IN GENERAL.—In the case of a taxable year beginning after 2002, the $40,000 and $60,000 amounts in subsection (b)(2) shall each 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, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.".

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (16) the following new paragraph:

"(17) INTEREST ON EDUCATION LOANS.—The deduction allowed by section 221.".

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—Section 6050S(a)(2) (relating to returns relating to higher education tuition and related expenses) is amended to read as follows:

"(2) which is engaged in a trade or business and which, in the course of such trade or business—

"(A) makes payments during any calendar year to any individual which constitutes reimbursements or refunds (or similar amounts) of qualified tuition and related expenses of such individual, or

"(B) except as provided in regulations, receives from any individual interest aggregating $600 or more for any calendar year on 1 or more qualified education loans,".

(2) INFORMATION.—Section 6050S(b)(2) is amended—

(A) by inserting "or interest" after "payments" in subparagraph (A), and

(B) in subparagraph (C), by striking "and" at the end of clause (i), by inserting "and" at the end of clause (ii), and by inserting after clause (ii) the following:

"(iii) aggregate amount of interest received for the calendar year from such individual,".

(3) DEFINITION.—Section 6050S(e) is amended by inserting ", and except as provided in regulations, the term 'qualified education loan' has the meaning given such term by section 221(e)(1)" after "section 25A".

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new items:

"Sec. 221. Interest on education loans.

"Sec. 222. Cross reference.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this Act, but only with respect to—

(1) any loan interest payment due and paid after December 31, 1997, and

(2) the portion of the 60-month period referred to in section 221(d) of the Internal Revenue Code of 1986 (as added by this section) after December 31, 1997.

SEC. 203. PENALTY-FREE WITHDRAWALS FROM INDIVIDUAL RETIREMENT PLANS FOR HIGHER EDUCATION 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 the following new subparagraph:

"(E) DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR HIGHER EDUCATION EXPENSES.—Distributions to an individual from an individual retirement plan 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. Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), or (D) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).".

(b) DEFINITION.—Section 72(t) is amended by adding at the end the following new paragraph:

"(7) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(E)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means qualified higher education expenses (as defined in section 529(e)(3)) for education furnished to—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) any child (as defined in section 151(c)(3)) or grandchild of the taxpayer or the taxpayer's spouse,

at an eligible educational institution (as defined in section 529(e)(5)).

"(B) COORDINATION WITH OTHER BENEFITS.—The amount of qualified higher education expenses for any taxable year shall be reduced as provided in section 25A(g)(2).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

Subtitle B—Expanded Education Investment Savings Opportunities

PART I—QUALIFIED TUITION PROGRAMS

SEC. 211. MODIFICATIONS OF QUALIFIED STATE TUITION PROGRAMS.

(a) QUALIFIED HIGHER EDUCATION EXPENSES TO INCLUDE ROOM AND BOARD.—Paragraph (3) of section 529(e) (defining qualified higher education expenses) is amended to read as follows:

"(3) QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.

"(B) ROOM AND BOARD INCLUDED FOR STUDENTS UNDER GUARANTEED PLANS WHO ARE AT LEAST HALF-TIME.—

"(i) IN GENERAL.—In the case of an individual who is an eligible student (as defined in section 25A(b)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the qualified State tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(7), a designated beneficiary shall be treated as meeting the requirements of this clause.

"(ii) LIMITATION.—The amount treated as qualified higher education expenses by reason of the preceding sentence shall not exceed the minimum amount (applicable to the student) included for room and board for such period in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the date of the enactment of this paragraph) for the eligible educational institution for such period."

(b) ADDITIONAL MODIFICATIONS.—

(1) MEMBER OF FAMILY.—Paragraph (2) of section 529(e) (relating to other definitions and special rules) is amended to read as follows:

"(2) MEMBER OF FAMILY.—The term 'member of the family' means—

"(A) an individual who bears a relationship to another individual which is a relationship described in paragraphs (1) through (8) of section 152(a), and

"(B) the spouse of any individual described in subparagraph (A).".

(2) ELIGIBLE EDUCATIONAL INSTITUTION.—Section 529(e) is amended by adding at the end the following:

"(5) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means an institution—

"(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this paragraph, and

"(B) which is eligible to participate in a program under title IV of such Act.".

(3) ESTATE AND GIFT TAX TREATMENT.—

(A) GIFT TAX TREATMENT.—

(i) Paragraph (2) of section 529(c) is amended to read as follows:

"(2) GIFT TAX TREATMENT OF CONTRIBUTIONS.—For purposes of chapters 12 and 13—

"(A) IN GENERAL.—Any contribution to a qualified tuition program on behalf of any designated beneficiary—

"(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

"(ii) shall not be treated as a qualified transfer under section 2503(e).

"(B) TREATMENT OF EXCESS CONTRIBUTIONS.—If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year."

(ii) Paragraph (5) of section 529(c) is amended to read as follows:

"(5) OTHER GIFT TAX RULES.—For purposes of chapters 12 and 13—

"(A) TREATMENT OF DISTRIBUTIONS.—Except as provided in subparagraph (B), in no event shall a distribution from a qualified tuition program be treated as a taxable gift.

"(B) TREATMENT OF DESIGNATION OF NEW BENEFICIARY.—The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) only if the new beneficiary is a generation below the generation of the old beneficiary (determined in accordance with section 2651).".

(B) ESTATE TAX TREATMENT.—Paragraph (4) of section 529(c) is amended to read as follows:

"(4) ESTATE TAX TREATMENT.—

"(A) IN GENERAL.—No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

"(B) AMOUNTS INCLUDIBLE IN ESTATE OF DESIGNATED BENEFICIARY IN CERTAIN CASES.—Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.

"(C) AMOUNTS INCLUDIBLE IN ESTATE OF DONOR MAKING EXCESS CONTRIBUTIONS.—In the case of a donor who makes the election described in paragraph (2)(B) and who dies before the close of the 5-year period referred to in such paragraph, notwithstanding subparagraph (A), the gross estate of the donor shall include the portion of such contributions properly allocable to periods after the date of death of the donor."

(4) PROHIBITION AGAINST INVESTMENT DIRECTION.—Section 529(b)(5) is amended by inserting "directly or indirectly" after "may not".

(c) COORDINATION WITH EDUCATION SAVINGS BOND.—Section 135(c)(2) (defining qualified higher education expenses) is amended by adding at the end the following:

"(C) CONTRIBUTIONS TO QUALIFIED STATE TUITION PROGRAM.—Such term shall include any contribution to a qualified State tuition program (as defined in section 529) on behalf of a designated beneficiary (as defined in such section) who is an individual described in subparagraph (A); but there shall be no increase in the investment in the contract for purposes of applying section 529(c)(3)(A) by reason of any portion of such contribution which is not includible in gross income by reason of this subparagraph.".

(d) CLARIFICATION OF TAXATION OF DISTRIBUTIONS.—Subparagraph (A) of section 529(c)(3) is amended by striking "section 72" and inserting "section 72(b)".

(e) TECHNICAL AMENDMENTS.—

(1)(A) The heading for part VIII of subchapter F of chapter 1 is amended to read as follows:

"PART VIII—HIGHER EDUCATION SAVINGS ENTITIES".

(B) The table of parts for subchapter F of chapter 1 is amended by striking the item relating to part VIII and inserting:

"Part VIII. Higher education savings entities.".

(2)(A) Section 529(d) is amended to read as follows:

"(d) REPORTS.—Each officer or employee having control of the qualified State tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.".

(B) Paragraph (2) of section 6693(a) (relating to failure to provide reports on individual retirement accounts or annuities) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) Section 529(d) (relating to qualified State tuition programs).".

(C) The section heading for section 6693 is amended by striking "**individual retirement**" and inserting "**certain tax-favored**".

(D) The item relating to section 6693 in the table of sections for part I of subchapter B of chapter 68 is amended by striking "individual retirement" and inserting "certain tax-favored".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1998.

(2) EXPENSES TO INCLUDE ROOM AND BOARD.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1806 of the Small Business Job Protection Act of 1996.

(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The amendment made by subsection (b)(2) shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

(4) COORDINATION WITH EDUCATION SAVINGS BONDS.—The amendment made by subsection (c) shall apply to taxable years beginning after December 31, 1997.

(5) ESTATE AND GIFT TAX CHANGES.—

(A) GIFT TAX CHANGES.—Paragraphs (2) and (5) of section 529(c) of the Internal Revenue Code of 1986, as amended by this section, shall apply to transfers (including designations of new beneficiaries) made after the date of the enactment of this Act.

(B) ESTATE TAX CHANGES.—Paragraph (4) of such section 529(c) shall apply to estates of decedents dying after June 8, 1997.

(6) TRANSITION RULE FOR PRE-AUGUST 20, 1996 CONTRACTS.—In the case of any contract issued prior to August 20, 1996, section 529(c)(3)(C) of the Internal Revenue Code of 1986 shall be applied for taxable years ending after August 20, 1996, without regard to the requirement that a distribution be transferred to a member of the family or the requirement that a change in beneficiaries may be made only to a member of the family.

PART II—EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS

SEC. 213. EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Part VIII of subchapter F of chapter 1 (relating to qualified State tuition programs) is amended by adding at the end the following new section:

"SEC. 530. EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) GENERAL RULE.—An education individual retirement account shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, the education individual retirement account shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) EDUCATION INDIVIDUAL RETIREMENT ACCOUNT.—The term 'education individual retirement account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the designated beneficiary of the trust (and designated as an education individual retirement account at the time created or

organized), but only if the written governing instrument creating the trust meets the following requirements:

"(A) No contribution will be accepted—

"(i) unless it is in cash,

"(ii) after the date on which such beneficiary attains age 18, or

"(iii) except in the case of rollover contributions, if such contribution would result in aggregate contributions for the taxable year exceeding $500.

"(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan.

"(C) No part of the trust assets will be invested in life insurance contracts.

"(D) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

"(E) Upon the death of the designated beneficiary, any balance to the credit of the beneficiary shall be distributed within 30 days after the date of death to the estate of such beneficiary.

"(2) QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—The term 'qualified higher education expenses' has the meaning given such term by section 529(e)(3), reduced as provided in section 25A(g)(2).

"(B) QUALIFIED STATE TUITION PROGRAMS.—Such term shall include amounts paid or incurred to purchase tuition credits or certificates, or to make contributions to an account, under a qualified State tuition program (as defined in section 529(b)) for the benefit of the beneficiary of the account.

"(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' has the meaning given such term by section 529(e)(5).

"(c) REDUCTION IN PERMITTED CONTRIBUTIONS BASED ON ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The maximum amount which a contributor could otherwise make to an account under this section shall be reduced by an amount which bears the same ratio to such maximum amount as—

"(A) the excess of—

"(i) the contributor's modified adjusted gross income for such taxable year, over

"(ii) $95,000 ($150,000 in the case of a joint return), bears to

"(B) $15,000 ($10,000 in the case of a joint return).

"(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of paragraph (1), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Any distribution shall be includible in the gross income of the distributee in the manner as provided in section 72(b).

"(2) DISTRIBUTIONS FOR QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—No amount shall be includible in gross income under paragraph (1) if the qualified higher education expenses of the designated beneficiary during the taxable year are not less than the aggregate distributions during the taxable year.

"(B) DISTRIBUTIONS IN EXCESS OF EXPENSES.—If such aggregate distributions exceed such expenses during the taxable year, the amount otherwise includible in gross income under paragraph (1) shall be reduced by the amount which bears the same ratio to the amount which would be includible in gross income under paragraph (1) (without regard to this subparagraph) as the qualified higher education expenses bear to such aggregate distributions.

"(C) ELECTION TO WAIVE EXCLUSION.—A taxpayer may elect to waive the application of this paragraph for any taxable year.

"(3) SPECIAL RULES FOR APPLYING ESTATE AND GIFT TAXES WITH RESPECT TO ACCOUNT.—Rules similar to the rules of paragraphs (2), (4), and (5) of section 529(c) shall apply for purposes of this section.

"(4) ADDITIONAL TAX FOR DISTRIBUTIONS NOT USED FOR EDUCATIONAL EXPENSES.—

"(A) IN GENERAL.—The tax imposed by this chapter for any taxable year on any taxpayer who receives a payment or distribution from an education individual retirement account which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply if the payment or distribution is—

"(i) made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary,

"(ii) attributable to the designated beneficiary's being disabled (within the meaning of section 72(m)(7)), or

"(iii) made on account of a scholarship, allowance, or payment described in section 25A(g)(2) received by the account holder to the extent the amount of the payment or distribution does not exceed the amount of the scholarship, allowance, or payment.

"(C) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of a designated beneficiary to the extent that such contribution exceeds $500 if—

"(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such contributor's return for such taxable year, and

"(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

"(5) ROLLOVER CONTRIBUTIONS.—Paragraph (1) shall not apply to any amount paid or distributed from an education individual retirement account to the extent that the amount received is paid into another education individual retirement account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary not later than the 60th day after the date of such payment or distribution. The preceding sentence shall not apply to any payment or distribution if it applied to any prior payment or distribution during the 12-month period ending on the date of the payment or distribution.

"(6) CHANGE IN BENEFICIARY.—Any change in the beneficiary of an education individual retirement account shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a member of the family (as so defined) of the old beneficiary.

"(7) SPECIAL RULES FOR DEATH AND DIVORCE.—Rules similar to the rules of paragraphs (7) and (8) of section 220(f) shall apply.

"(e) TAX TREATMENT OF ACCOUNTS.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to any education individual retirement account.

"(f) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

"(g) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an account described in subsection (b)(1). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(h) REPORTS.—The trustee of an education individual retirement account shall make such reports regarding such account to the Secretary and to the beneficiary of the account with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required.".

(b) TAX ON PROHIBITED TRANSACTIONS.—

(1) IN GENERAL.—Paragraph (1) of section 4975(e) (relating to prohibited transactions) is amended by striking "or" at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

"(E) an education individual retirement account described in section 530, or".

(2) SPECIAL RULE.—Subsection (c) of section 4975 is amended by adding at the end of subsection (c) the following new paragraph:

"(5) SPECIAL RULE FOR EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS.—An individual for whose benefit an education individual retirement account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 530(d) applies with respect to such transaction.".

(c) FAILURE TO PROVIDE REPORTS ON EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS.—Paragraph (2) of section 6693(a) (relating to failure to provide reports on individual retirement accounts or annuities) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) Section 530(h) (relating to education individual retirement accounts).".

(d) TAX ON EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (a) of section 4973 is amended by striking "or" at the end of paragraph (2), by adding "or" at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

"(4) an education individual retirement account (as defined in section 530),".

(2) EXCESS CONTRIBUTIONS DEFINED.—Section 4973 is amended by adding at the end the following new subsection:

"(e) EXCESS CONTRIBUTIONS TO EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS.—For purposes of this section—

"(1) IN GENERAL.—In the case of education individual retirement accounts maintained for the benefit of any 1 beneficiary, the term 'excess contributions' means—

"(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $500, and

"(B) any amount contributed to such accounts for any taxable year if any amount is contributed during such year to a qualified State tuition program for the benefit of such beneficiary.

"(2) SPECIAL RULES.—For purposes of paragraph (1), the following contributions shall not be taken into account:

"(A) Any contribution which is distributed out of the education individual retirement account in a distribution to which section 530(d)(4)(C) applies.

"(B) Any contribution described in section 530(b)(2)(B) to a qualified State tuition program.

"(C) Any rollover contribution.".

(e) TECHNICAL AMENDMENTS.—

(1) Section 26(b)(2) is amended by redesignating subparagraphs (E) through (P) as subparagraphs (F) through (Q), respectively, and by inserting after subparagraph (D) the following new subparagraph:

"(E) section 530(d)(3) (relating to additional tax on certain distributions from education individual retirement accounts),".

(2) Subparagraph (C) of section 135(c)(2), as added by the preceding section, is amended by inserting ", or to an education individual retirement account (as defined in section 530) on behalf of an account beneficiary," after "(as defined in such section)".

(3) The table of sections for part VIII of subchapter F of chapter 1 is amended by adding at the end the following new item:

"Sec. 530. Education individual retirement accounts.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

Subtitle C—Other Education Initiatives

SEC. 221. EXTENSION OF EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended to read as follows:

"(d) TERMINATION.—This section shall not apply to expenses paid with respect to courses beginning after May 31, 2000.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1996.

SEC. 222. REPEAL OF LIMITATION ON QUALIFIED 501(c)(3) BONDS OTHER THAN HOSPITAL BONDS.

Section 145(b) (relating to qualified 501(c)(3) bond) is amended by adding at the end the following new paragraph:

"(5) TERMINATION OF LIMITATION.—This subsection shall not apply with respect to bonds issued after the date of the enactment of this paragraph as part of an issue 95 percent or more of the net proceeds of which are to be used to finance capital expenditures incurred after such date.".

SEC. 223. INCREASE IN ARBITRAGE REBATE EXCEPTION FOR GOVERNMENTAL BONDS USED TO FINANCE EDUCATION FACILITIES.

(a) IN GENERAL.—Section 148(f)(4)(D) (relating to exception for governmental units issuing $5,000,000 or less of bonds) is amended by adding at the end the following new clause:

"(vii) INCREASE IN EXCEPTION FOR BONDS FINANCING PUBLIC SCHOOL CAPITAL EXPENDITURES.—Each of the $5,000,000 amounts in the preceding provisions of this subparagraph shall be increased by the lesser of $5,000,000 or so much of the aggregate face amount of the bonds as are attributable to financing the construction (within the meaning of subparagraph (C)(iv)) of public school facilities.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 1997.

SEC. 224. CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR ELEMENTARY OR SECONDARY SCHOOL PURPOSES.

(a) CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR ELEMENTARY OR SECONDARY SCHOOL PURPOSES.—Subsection (e) of section 170 is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR ELEMENTARY OR SECONDARY SCHOOL PURPOSES.—

"(A) LIMIT ON REDUCTION.—In the case of a qualified elementary or secondary educational contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

"(B) QUALIFIED ELEMENTARY OR SECONDARY EDUCATIONAL CONTRIBUTION.—For purposes of this paragraph, the term 'qualified elementary or secondary educational contribution' means a charitable contribution by a corporation of any computer technology or equipment, but only if—

"(i) the contribution is to—

"(I) an educational organization described in subsection (b)(1)(A)(ii), or

"(II) an entity described in section 501(c)(3) and exempt from tax under section 501(a) (other than an entity described in subclause (I)) that is organized primarily for purposes of supporting elementary and secondary education,

"(ii) the contribution is made not later than 2 years after the date the taxpayer acquired the property (or in the case of property constructed by the taxpayer, the date the construction of the property is substantially completed),

"(iii) the original use of the property is by the donor or the donee,

"(iv) substantially all of the use of the property by the donee is for use within the United States for educational purposes in any of the grades K–12 that are related to the purpose or function of the organization or entity,

"(v) the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs,

"(vi) the property will fit productively into the entity's education plan, and

"(vii) the entity's use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v).

"(C) CONTRIBUTION TO PRIVATE FOUNDATION.—A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in section 509) shall be treated as a qualified elementary or secondary educational contribution for purposes of this paragraph if—

"(i) the contribution to the private foundation satisfies the requirements of clauses (ii) and (v) of subparagraph (B), and

"(ii) within 30 days after such contribution, the private foundation—

"(I) contributes the property to an entity described in clause (i) of subparagraph (B) that satisfies the requirements of clauses (iv) through (vii) of subparagraph (B), and

"(II) notifies the donor of such contribution.

"(D) SPECIAL RULE RELATING TO CONSTRUCTION OF PROPERTY.—For the purposes of this paragraph, the rules of paragraph (4)(C) shall apply.

"(E) DEFINITIONS.—For the purposes of this paragraph—

"(i) COMPUTER TECHNOLOGY OR EQUIPMENT.—The term 'computer technology or equipment' means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to computer use.

"(ii) CORPORATION.—The term 'corporation' has the meaning given to such term by paragraph (4)(D).

"(F) TERMINATION.—This paragraph shall not apply to any contribution made during any taxable year beginning after December 31, 1999.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 225. TREATMENT OF CANCELLATION OF CERTAIN STUDENT LOANS.

(a) CERTAIN LOANS BY EXEMPT ORGANIZATIONS.—

(1) IN GENERAL.—Paragraph (2) of section 108(f) (defining student loan) is amended by striking "or" at the end of subparagraph (B) and by striking subparagraph (D) and inserting the following:

"(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

"(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

"(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term 'student loan' includes any loan made by an educational organization so described or by an organization exempt from tax under section 501(a) to refinance a loan meeting the requirements of the preceding sentence.".

(2) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Subsection (f) of section 108 is amended by adding at the end the following new paragraph:

"(3) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) (or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D)) if the discharge is on account of services performed for either such organization.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness after the date of the enactment of this Act.

SEC. 226. INCENTIVES FOR EDUCATION ZONES.

(a) IN GENERAL.—Subchapter U of chapter 1 (relating to additional incentives for empowerment zones) is amended by redesignating part IV as part V, by redesignating section 1397E as section 1397F, and by inserting after part III the following new part:

"PART IV—INCENTIVES FOR EDUCATION ZONES

"Sec. 1397E. Credit to holders of qualified zone academy bonds."

"SEC. 1397E. CREDIT TO HOLDERS OF QUALIFIED ZONE ACADEMY BONDS.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible taxpayer who holds a qualified zone academy bond on the credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year the amount determined under subsection (b).

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any qualified zone academy bond is the amount equal to the product of—

"(A) the credit rate determined by the Secretary under paragraph (2) for the month in which such bond was issued, multiplied by

"(B) the face amount of the bond held by the taxpayer on the credit allowance date.

"(2) DETERMINATION.—During each calendar month, the Secretary shall determine a credit rate which shall apply to bonds issued during the following calendar month. The credit rate for any month is the percentage which the Secretary estimates will permit the issuance of qualified zone academy bonds without discount and without interest cost to the issuer.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits).

"(d) QUALIFIED ZONE ACADEMY BOND.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified zone academy bond' means any bond issued as part of an issue if—

"(A) 95 percent or more of the proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

"(B) the bond is issued by a State or local government within the jurisdiction of which such academy is located,

"(C) the issuer—

"(i) designates such bond for purposes of this section,

"(ii) certifies that it has written assurances that the private business contribution requirement of paragraph (2) will be met with respect to such academy, and

"(iii) certifies that it has the written approval of the eligible local education agency for such bond issuance, and

"(D) the term of each bond which is part of such issue does not exceed the maximum term permitted under paragraph (3).

"(2) PRIVATE BUSINESS CONTRIBUTION REQUIREMENT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the private business contribution requirement of this paragraph is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

"(B) QUALIFIED CONTRIBUTIONS.—For purposes of subparagraph (A), the term 'qualified contribution' means any contribution (of a type and quality acceptable to the eligible local education agency) of—

"(i) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

"(ii) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

"(iii) services of employees as volunteer mentors,

"(iv) internships, field trips, or other educational opportunities outside the academy for students, or

"(v) any other property or service specified by the eligible local education agency.

"(3) TERM REQUIREMENT.—During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of the bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

"(4) QUALIFIED ZONE ACADEMY.—

"(A) IN GENERAL.—The term 'qualified zone academy' means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if—

"(i) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

"(ii) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

"(iii) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

"(iv)(I) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

"(II) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

"(B) ELIGIBLE LOCAL EDUCATION AGENCY.—The term 'eligible local education agency' means any local education agency as defined in section 14101 of the Elementary and Secondary Education Act of 1965.

"(5) QUALIFIED PURPOSE.—The term 'qualified purpose' means, with respect to any qualified zone academy—

"(A) rehabilitating or repairing the public school facility in which the academy is established,

"(B) providing equipment for use at such academy,

"(C) developing course materials for education to be provided at such academy, and

"(D) training teachers and other school personnel in such academy.

"(6) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means—

"(A) a bank (within the meaning of section 581),

"(B) an insurance company to which subchapter L applies, and

"(C) a corporation actively engaged in the business of lending money.

"(e) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

"(1) NATIONAL LIMITATION.—There is a national zone academy bond limitation for each calendar year. Such limitation is $400,000,000 for 1998 and 1999, and, except as provided in paragraph (4), zero thereafter.

"(2) ALLOCATION OF LIMITATION.—The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

"(3) DESIGNATION SUBJECT TO LIMITATION AMOUNT.—The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (d)(1) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

"(4) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

"(A) the limitation amount for any State, exceeds

"(B) the amount of bonds issued during such year which are designated under subsection (d)(1) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess.

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) CREDIT ALLOWANCE DATE.—The term 'credit allowance date' means, with respect to any issue, the last day of the 1-year period beginning on the date of issuance of such issue and the last day of each successive 1-year period thereafter.

"(2) BOND.—The term 'bond' includes any obligation.

"(3) STATE.—The term 'State' includes the District of Columbia and any possession of the United States.

"(g) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section."

(b) CONFORMING AMENDMENTS.—

(1) The table of parts for subchapter U of chapter 1 is amended by striking the last item and inserting the following:

"Part IV. Incentives for education zones.

"Part V. Regulations."

(2) The table of sections for part V, as so redesignated, is amended to read as follows:

"Sec. 1397F. Regulations."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 1997.

TITLE III—SAVINGS AND INVESTMENT INCENTIVES

Subtitle A—Retirement Savings

SEC. 301. RESTORATION OF IRA DEDUCTION FOR CERTAIN TAXPAYERS.

(a) INCREASE IN INCOME LIMITS APPLICABLE TO ACTIVE PARTICIPANTS.—

(1) IN GENERAL.—Subparagraph (B) of section 219(g)(3) (relating to applicable dollar amount) is amended to read as follows:

"(B) APPLICABLE DOLLAR AMOUNT.—The term 'applicable dollar amount' means the following:

"(i) In the case of a taxpayer filing a joint return:

"For taxable years beginning in:	The applicable dollar amount is:
1998	$50,000
1999	$51,000
2000	$52,000
2001	$53,000
2002	$54,000
2003	$60,000
2004	$65,000
2005	$70,000
2006	$75,000
2007 and thereafter	$80,000.

"(ii) In the case of any other taxpayer (other than a married individual filing a separate return):

"For taxable years beginning in:	The applicable dollar amount is:
1998	$30,000
1999	$31,000
2000	$32,000
2001	$33,000
2002	$34,000
2003	$40,000
2004	$45,000
2005 and thereafter	$50,000.

"(iii) In the case of a married individual filing a separate return, zero.".

(2) INCREASE IN PHASE-OUT RANGE FOR JOINT RETURNS.—Clause (ii) of section 219(g)(2)(A) is amended by inserting "($20,000 in the case of a joint return for a taxable year beginning after December 31, 2006)".

(b) LIMITATIONS FOR ACTIVE PARTICIPATION NOT BASED ON SPOUSE'S PARTICIPATION.—Section 219(g) (relating to limitation on deduction for active participants in certain pension plans) is amended—

(1) by striking "or the individual's spouse" in paragraph (1), and

(2) by adding at the end the following new paragraph:

"(7) SPECIAL RULE FOR CERTAIN SPOUSES.—In the case of an individual who is an active participant at no time during any plan year ending with or within the taxable year but whose spouse is an active participant for any part of any such plan year—

"(A) the applicable dollar amount under paragraph (3)(B)(i) with respect to the taxpayer shall be $150,000, and

"(B) the amount applicable under paragraph (2)(A)(ii) shall be $10,000."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 302. 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. ROTH IRAS.

"(a) GENERAL RULE.—Except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) ROTH IRA.—For purposes of this title, the term 'Roth IRA' means an individual retirement plan (as defined in section 7701(a)(37)) which is designated (in such manner as the Secretary may prescribe) at the time of establishment of the plan as a Roth IRA. Such designation shall be made in such manner as the Secretary may prescribe.

"(c) TREATMENT OF CONTRIBUTIONS.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to a Roth IRA.

"(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all Roth IRAs 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 (computed without regard to subsection (d)(1) or (g) of such section), over

"(B) the aggregate amount of contributions for such taxable year to all other individual retirement plans (other than Roth IRAs) maintained for the benefit of the individual.

"(3) LIMITS BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) DOLLAR LIMIT.—The amount determined under paragraph (2) for any taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to such amount as—

"(i) the excess of—

"(I) the taxpayer's adjusted gross income for such taxable year, over

"(II) the applicable dollar amount, bears to

"(ii) $15,000 ($10,000 in the case of a joint return).

The rules of subparagraphs (B) and (C) of section 219(g)(2) shall apply to any reduction under this subparagraph.

"(B) ROLLOVER FROM IRA.—A taxpayer shall not be allowed to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if—

"(i) the taxpayer's adjusted gross income for such taxable year exceeds $100,000, or

"(ii) the taxpayer is a married individual filing a separate return.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account and the deduction under section 219 shall be taken into account, and

"(ii) the applicable dollar amount is—

"(I) in the case of a taxpayer filing a joint return, $150,000,

"(II) in the case of any other taxpayer (other than a married individual filing a separate return), $95,000, and

"(III) in the case of a married individual filing a separate return, zero.

"(D) MARITAL STATUS.—Section 219(g)(4) shall apply for purposes of this paragraph.

"(4) CONTRIBUTIONS PERMITTED AFTER AGE 70½.—Contributions to a Roth IRA may be made even after the individual for whom the account is maintained has attained age 70½.

"(5) MANDATORY DISTRIBUTION RULES NOT TO APPLY BEFORE DEATH.—Notwithstanding subsections (a)(6) and (b)(3) of section 408 (relating to required distributions), the following provisions shall not apply to any Roth IRA:

"(A) Section 401(a)(9)(A).

"(B) The incidental death benefit requirements of section 401(a).

"(6) ROLLOVER CONTRIBUTIONS.—

"(A) IN GENERAL.—No rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

"(B) COORDINATION WITH LIMIT.—A qualified rollover contribution shall not be taken into account for purposes of paragraph (2).

"(7) TIME WHEN CONTRIBUTIONS MADE.—For purposes of this section, the rule of section 219(f)(3) shall apply.

"(d) DISTRIBUTION RULES.—For purposes of this title—

"(1) GENERAL RULES.—

"(A) EXCLUSIONS FROM GROSS INCOME.—Any qualified distribution from a Roth IRA shall not be includible in gross income.

"(B) NONQUALIFIED DISTRIBUTIONS.—In applying section 72 to any distribution from a Roth IRA which is not a qualified distribution, such distribution shall be treated as made from contributions to the Roth IRA to the extent that such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate amount of contributions to the Roth IRA.

"(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified distribution' means any payment or distribution—

"(i) made on or after the date on which the individual attains age 59½,

"(ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual,

"(iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7)), or

"(iv) which is a qualified special purpose distribution.

"(B) CERTAIN DISTRIBUTIONS WITHIN 5 YEARS.—A payment or distribution shall not be treated as a qualified distribution under subparagraph (A) if—

"(i) it is made within the 5-taxable year period beginning with the 1st taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual, or

"(ii) in the case of a payment or distribution properly allocable (as determined in the manner prescribed by the Secretary) to a qualified rollover contribution from an individual retirement plan other than a Roth IRA (or income allocable thereto), it is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made.

"(3) ROLLOVERS FROM AN IRA OTHER THAN A ROTH IRA.—

"(A) IN GENERAL.—Notwithstanding section 408(d)(3), in the case of any distribution to which this paragraph applies—

"(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

"(ii) section 72(t) shall not apply, and

"(iii) in the case of a distribution before January 1, 1999, any amount required to be included in gross income by reason of this paragraph shall be so included ratably over the 4-taxable year period beginning with the taxable year in which the payment or distribution is made.

"(B) DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a distribution from an individual retirement plan (other than a Roth IRA) maintained for the benefit of an individual which is contributed to a Roth IRA maintained for the benefit of such individual in a qualified rollover contribution.

"(C) CONVERSIONS.—The conversion of an individual retirement plan (other than a Roth IRA) to a Roth IRA shall be treated for purposes of this paragraph as a distribution to which this paragraph applies.

"(D) CONVERSION OF EXCESS CONTRIBUTIONS.—If, no later than the due date for filing the return of tax for any taxable year (without regard to extensions), an individual transfers, from an individual retirement plan (other than a Roth IRA), contributions for such taxable year (and any earnings allocable thereto) to a Roth IRA, no such amount shall be includible in gross income to the extent no deduction was allowed with respect to such amount.

"(E) ADDITIONAL REPORTING REQUIREMENTS.—Trustees of Roth IRAs, trustees of individual retirement plans, or both, whichever is appropriate, shall include such additional information in reports required under section 408(i) as the Secretary may require to ensure that amounts required to be included in gross income under subparagraph (A) are so included.

"(4) COORDINATION WITH INDIVIDUAL RETIREMENT ACCOUNTS.—Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.

"(5) QUALIFIED SPECIAL PURPOSE DISTRIBUTION.—For purposes of this section, the term 'qualified special purpose distribution' means any distribution to which subparagraph (F) of section 72(t)(2) applies.

"(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.".

(b) EXCESS CONTRIBUTIONS.—Section 4973(b), as amended by title II, is amended by adding at the end the following new subsection:

"(f) EXCESS CONTRIBUTIONS TO ROTH IRAS.—For purposes of this section, in the case of contributions to a Roth IRA (within the meaning of section 408A(b)), the term 'excess contributions' means the sum of—

"(1) the excess (if any) of—

"(A) the amount contributed for the taxable year to such accounts (other than a qualified rollover contribution described in section 408A(e)), over

"(B) the amount allowable as a contribution under sections 408A (c)(2) and (c)(3), and

"(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

"(A) the distributions out of the accounts for the taxable year, and

"(B) the excess (if any) of the maximum amount allowable as a contribution under sections 408A (c)(2) and (c)(3) for the taxable year over the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed from a Roth IRA in a distribution described in section 408(d)(4) shall be treated as an amount not contributed."

(c) SPOUSAL IRA.—Clause (ii) of section 219(c)(1)(B) is amended to read as follows:

"(ii) the compensation includible in the gross income of such individual's spouse for the taxable year reduced by—

"(I) the amount allowed as a deduction under subsection (a) to such spouse for such taxable year, and

"(II) the amount of any contribution on behalf of such spouse to a Roth IRA under section 408A for such taxable year.".

(d) AUTHORITY TO PRESCRIBE NECESSARY REPORTING.—Section 408(i) is amended—

(1) by striking "under regulations", and

(2) by striking "in such regulations" each place it appears.

(e) 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. Roth IRAs.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 303. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PURCHASE FIRST HOMES.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans), as amended by section 203, is amended by adding at the end the following new subparagraph:

"(F) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES.—Distributions to an individual from an individual retirement plan which are qualified first-time homebuyer distributions (as defined in paragraph (8)). Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), (D), or (E) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).".

(b) DEFINITIONS.—Section 72(t), as amended by section 203, is amended by adding at the end the following new paragraphs:

"(8) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(F)—

"(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 120th 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, the spouse of such individual, or any child, grandchild, or ancestor of such individual or the individual's spouse.

"(B) LIFETIME DOLLAR LIMITATION.—The aggregate amount of payments or distributions received by an individual which may be treated as qualified first-time homebuyer distributions for any taxable year shall not exceed the excess (if any) of—

"(i) $10,000, over

"(ii) the aggregate amounts treated as qualified first-time homebuyer distributions with respect to such individual for all prior taxable years.

"(C) 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.

"(D) 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 (as in effect on the day before the date of the enactment of this paragraph) did not suspend the running of any period of time specified in section 1034 (as so in effect) with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 121.

"(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.

"(E) 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 in determining whether section 408(d)(3)(B) applies to any other amount.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions in taxable years beginning after December 31, 1997.

SEC. 304. CERTAIN BULLION NOT TREATED AS COLLECTIBLES.

(a) IN GENERAL.—Paragraph (3) of section 408(m) (relating to exception for certain coins) is amended to read as follows:

"(3) EXCEPTION FOR CERTAIN COINS AND BULLION.—For purposes of this subsection, the term 'collectible' shall not include—

"(A) any coin which is—

"(i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code,

"(ii) a silver coin described in section 5112(e) of title 31, United States Code,

"(iii) a platinum coin described in section 5112(k) of title 31, United States Code, or

"(iv) a coin issued under the laws of any State, or

"(B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7) requires for metals which may be delivered in satisfaction of a regulated futures contract,

if such bullion is in the physical possession of a trustee described under subsection (a) of this section.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

Subtitle B—Capital Gains

SEC. 311. MAXIMUM CAPITAL GAINS RATES FOR INDIVIDUALS.

(a) IN GENERAL.—Subsection (h) of section 1 (relating to maximum capital gains rate) is amended to read as follows:

"(h) MAXIMUM CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(i) taxable income reduced by the net capital gain, or

"(ii) the lesser of—

"(I) the amount of taxable income taxed at a rate below 28 percent, or

"(II) taxable income reduced by the adjusted net capital gain, plus

"(B) 25 percent of the excess (if any) of—

"(i) the unrecaptured section 1250 gain (or, if less, the net capital gain), over

"(ii) the excess (if any) of—

"(I) the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

"(II) taxable income, plus

"(C) 28 percent of the amount of taxable income in excess of the sum of—

"(i) the adjusted net capital gain, plus

"(ii) the sum of the amounts on which tax is determined under subparagraphs (A) and (B), plus

"(D) 10 percent of so much of the taxpayer's adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

"(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 28 percent, over

"(ii) the taxable income reduced by the adjusted net capital gain, plus

"(E) 20 percent of the taxpayer's adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (D).

"(2) REDUCED CAPITAL GAIN RATES FOR QUALIFIED 5-YEAR GAIN.—

"(A) REDUCTION IN 10-PERCENT RATE.—In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(D) shall be 8 percent with respect to so much of the amount to which the 10-percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

"(B) REDUCTION IN 20-PERCENT RATE.—The rate under paragraph (1)(E) shall be 18 percent with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of—

"(i) the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph, or

"(ii) the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000),

and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.

"(3) NET CAPITAL GAIN TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—For purposes of this subsection, the net capital gain for any taxable

year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

"(4) ADJUSTED NET CAPITAL GAIN.—For purposes of this subsection, the term 'adjusted net capital gain' means net capital gain determined without regard to—

"(A) collectibles gain,

"(B) unrecaptured section 1250 gain,

"(C) section 1202 gain, and

"(D) mid-term gain.

"(5) COLLECTIBLES GAIN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'collectibles gain' means gain from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income.

"(B) PARTNERSHIPS, ETC.—For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

"(6) UNRECAPTURED SECTION 1250 GAIN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'unrecaptured section 1250 gain' means the amount of long-term capital gain which would be treated as ordinary income if—

"(i) section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, and

"(ii) in the case of gain properly taken into account after July 28, 1997, only gain from section 1250 property held for more than 18 months were taken into account.

"(B) LIMITATION WITH RESPECT TO SECTION 1231 PROPERTY.—The amount of unrecaptured section 1250 gain from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the excess of the net section 1231 gain (as defined in section 1231(c)(3)) for such year over the amount treated as ordinary income under section 1231(c)(1) for such year.

"(C) PRE-MAY 7, 1997, GAIN.—In the case of a taxable year which includes May 7, 1997, subparagraph (A) shall be applied by taking into account only the gain properly taken into account for the portion of the taxable year after May 6, 1997.

"(7) SECTION 1202 GAIN.—For purposes of this subsection, the term 'section 1202 gain' means an amount equal to the gain excluded from gross income under section 1202(a).

"(8) MID-TERM GAIN.—For purposes of this subsection, the term 'mid-term gain' means the amount which would be adjusted net capital gain for the taxable year if—

"(A) adjusted net capital gain were determined by taking into account only the gain or loss properly taken into account after July 28, 1997, from property held for more than 1 year but not more than 18 months, and

"(B) paragraph (3) and section 1212 did not apply.

"(9) QUALIFIED 5-YEAR GAIN.—For purposes of this subsection, the term 'qualified 5-year gain' means the amount of long-term capital gain which would be computed for the taxable year if only gains from the sale or exchange of property held by the taxpayer for more than 5 years were taken into account. The determination under the preceding sentence shall be made without regard to collectibles gain, unrecaptured section 1250 gain (determined without regard to subparagraph (B) of paragraph (6)), section 1202 gain, or mid-term gain.

"(10) PRE-EFFECTIVE DATE GAIN.—

"(A) IN GENERAL.—In the case of a taxable year which includes May 7, 1997, gains and losses properly taken into account for the portion of the taxable year before May 7, 1997, shall be taken into account in determining mid-term gain as if such gains and losses were described in paragraph (8)(A).

"(B) SPECIAL RULES FOR PASS-THRU ENTITIES.—In applying subparagraph (A) with respect to any pass-thru entity, the determination of when gains and loss are properly taken into account shall be made at the entity level.

"(C) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (B), 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.

"(11) TREATMENT OF PASS-THRU ENTITIES.—The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities (as defined in paragraph (10)(C)) and of interests in such entities.".

(b) MINIMUM TAX.—

(1) IN GENERAL.—Subsection (b) of section 55 is amended by adding at the end the following new paragraph:

"(3) MAXIMUM RATE OF TAX ON NET CAPITAL GAIN OF NONCORPORATE TAXPAYERS.—The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

"(A) the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the lesser of—

"(i) the net capital gain, or

"(ii) the sum of—

"(I) the adjusted net capital gain, plus

"(II) the unrecaptured section 1250 gain, plus

"(B) 25 percent of the lesser of—

"(i) the unrecaptured section 1250 gain, or

"(ii) the amount of taxable excess in excess of the sum of—

"(I) the adjusted net capital gain, plus

"(II) the amount on which a tax is determined under subparagraph (A), plus

"(C) 10 percent of so much of the taxpayer's adjusted net capital gain (or, if less, taxable excess) as does not exceed the amount on which a tax is determined under section 1(h)(1)(D), plus

"(D) 20 percent of the taxpayer's adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (C).

In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (C) and (D). Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h).".

(2) CONFORMING AMENDMENTS.—

(A) Clause (ii) of section 55(b)(1)(A) is amended by striking "clause (i)" and inserting "this subsection".

(B) Paragraph (7) of section 57(a) is amended by striking "one-half" and inserting "42 percent".

(c) OTHER CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 1445(e) is amended by striking "28 percent" and inserting "20 percent".

(2) The second sentence of section 7518(g)(6)(A), and the second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936, are each amended by striking "28 percent" and inserting "20 percent".

(3) Paragraph (2) of section 904(b) is amended by adding at the end the following new subparagraph:

"(C) COORDINATION WITH CAPITAL GAINS RATES.—The Secretary may by regulations modify the application of this paragraph and paragraph (3) to the extent necessary to properly reflect any capital gain rate differential under section 1(h) or 1201(a) and the computation of net capital gain.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after May 6, 1997.

(2) WITHHOLDING.—The amendment made by subsection (c)(1) shall apply only to amounts paid after the date of the enactment of this Act.

(e) ELECTION TO RECOGNIZE GAIN ON ASSETS HELD ON JANUARY 1, 2001.—For purposes of the Internal Revenue Code of 1986—

(1) IN GENERAL.—A taxpayer other than a corporation may elect to treat—

(A) any readily tradable stock (which is a capital asset) held by such taxpayer on January 1, 2001, and not sold before the next business day after such date, as having been sold on such next business day for an amount equal to its closing market price on such next business day (and as having been reacquired on such next business day for an amount equal to such closing market price), and

(B) any other capital asset or property used in the trade or business (as defined in section 1231(b) of the Internal Revenue Code of 1986) held by the taxpayer on January 1, 2001, as having been sold on such date for an amount equal to its fair market value on such date (and as having been reacquired on such date for an amount equal to such fair market value).

(2) TREATMENT OF GAIN OR LOSS.—

(A) Any gain resulting from an election under paragraph (1) shall be treated as received or accrued on the date the asset is treated as sold under paragraph (1) and shall be recognized notwithstanding any provision of the Internal Revenue Code of 1986.

(B) Any loss resulting from an election under paragraph (1) shall not be allowed for any taxable year.

(3) ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe and shall specify the assets for which such election is made. Such an election, once made with respect to any asset, shall be irrevocable.

(4) READILY TRADABLE STOCK.—For purposes of this subsection, the term "readily tradable stock" means any stock which, as of January 1, 2001, is readily tradable on an established securities market or otherwise.

SEC. 312. EXEMPTION FROM TAX FOR GAIN ON SALE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended to read as follows:

"SEC. 121. EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE.

"(a) EXCLUSION.—Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

"(b) LIMITATIONS.—

"(1) IN GENERAL.—The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed $250,000.

"(2) $500,000 LIMITATION FOR CERTAIN JOINT RETURNS.—Paragraph (1) shall be applied by substituting '$500,000' for '$250,000' if—

"(A) a husband and wife make a joint return for the taxable year of the sale or exchange of the property,

"(B) either spouse meets the ownership requirements of subsection (a) with respect to such property,

"(C) both spouses meet the use requirements of subsection (a) with respect to such property, and

"(D) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

"(3) APPLICATION TO ONLY 1 SALE OR EXCHANGE EVERY 2 YEARS.—

"(A) IN GENERAL.—Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

"(B) PRE-MAY 7, 1997, SALES NOT TAKEN INTO ACCOUNT.—Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

"(c) EXCLUSION FOR TAXPAYERS FAILING TO MEET CERTAIN REQUIREMENTS.—

"(1) IN GENERAL.—In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a) shall not apply and subsection (b)(3) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale or exchange shall not exceed—

"(A) the amount which bears the same ratio to the amount which would be so excluded under this section if such requirements had been met, as

"(B) the shorter of—

"(i) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence, or

"(ii) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange,

bears to 2 years.

"(2) SALES AND EXCHANGES TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any sale or exchange if—

"(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of—

"(i) a failure to meet the ownership and use requirements of subsection (a), or

"(ii) subsection (b)(3), and

"(B) such sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

"(d) SPECIAL RULES.—

"(1) JOINT RETURNS.—If a husband and wife make a joint return for the taxable year of the sale or exchange of the property, subsections (a) and (c) shall apply if either spouse meets the ownership and use requirements of subsection (a) with respect to such property.

"(2) PROPERTY OF DECEASED SPOUSE.—For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individual owned and used such property shall include the period such deceased spouse owned and used such property before death.

"(3) PROPERTY OWNED BY SPOUSE OR FORMER SPOUSE.—For purposes of this section—

"(A) PROPERTY TRANSFERRED TO INDIVIDUAL FROM SPOUSE OR FORMER SPOUSE.—In the case of an individual holding property transferred to such individual in a transaction described in section 1041(a), the period such individual owns such property shall include the period the transferor owned the property.

"(B) PROPERTY USED BY FORMER SPOUSE PURSUANT TO DIVORCE DECREE, ETC.—Solely for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of ownership while such individual's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)).

"(4) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

"(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

"(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

"(5) INVOLUNTARY CONVERSIONS.—

"(A) IN GENERAL.—For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

"(B) APPLICATION OF SECTION 1033.—In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

"(C) PROPERTY ACQUIRED AFTER INVOLUNTARY CONVERSION.—If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

"(6) RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

"(7) DETERMINATION OF USE DURING PERIODS OF OUT-OF-RESIDENCE CARE.—In the case of a taxpayer who—

"(A) becomes physically or mentally incapable of self-care, and

"(B) owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

"(8) SALES OF REMAINDER INTERESTS.—For purposes of this section—

"(A) IN GENERAL.—At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

"(B) EXCEPTION FOR SALES TO RELATED PARTIES.—Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

"(e) DENIAL OF EXCLUSION FOR EXPATRIATES.—This section shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) applies to such individual.

"(f) ELECTION TO HAVE SECTION NOT APPLY.—This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

"(g) RESIDENCES ACQUIRED IN ROLLOVERS UNDER SECTION 1034.—For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034 (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(7) in determining the holding period of such property) had been so owned and used.".

(b) REPEAL OF NONRECOGNITION OF GAIN ON ROLLOVER OF PRINCIPAL RESIDENCE.—Section 1034 (relating to rollover of gain on sale of principal residence) is hereby repealed.

(c) EXCEPTION FROM REPORTING.—Subsection (e) of section 6045 (relating to return required in the case of real estate transactions) is amended by adding at the end the following new paragraph:

"(5) EXCEPTION FOR SALES OR EXCHANGES OF CERTAIN PRINCIPAL RESIDENCES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any sale or exchange of a residence for $250,000 or less if the person referred to in paragraph (2) receives written assurance in a form acceptable to the Secretary from the seller that—

"(i) such residence is the principal residence (within the meaning of section 121) of the seller,

"(ii) if the Secretary requires the inclusion on the return under subsection (a) of information as to whether there is federally subsidized mortgage financing assistance with respect to the mortgage on residences, that there is no such assistance with respect to the mortgage on such residence, and

"(iii) the full amount of the gain on such sale or exchange is excludable from gross income under section 121.

If such assurance includes an assurance that the seller is married, the preceding sentence shall be applied by substituting '$500,000' for '$250,000'.

The Secretary may by regulation increase the dollar amounts under this subparagraph if the Secretary determines that such an increase will not materially reduce revenues to the Treasury.

"(B) SELLER.—For purposes of this paragraph, the term 'seller' includes the person relinquishing the residence in an exchange.".

(d) CONFORMING AMENDMENTS.—

(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "section 1034" and inserting "section 121": sections 25(e)(7), 56(e)(1)(A), 56(e)(3)(B)(i), 143(i)(1)(C)(i)(I), 163(h)(4)(A)(i)(I), 280A(d)(4)(A), 464(f)(3)(B)(i), 1033(h)(4), 1274(c)(3)(B), 6334(a)(13), and 7872(f)(11)(A).

(2) Paragraph (4) of section 32(c) is amended by striking "(as defined in section 1034(h)(3))" and by adding at the end the following new sentence: "For purposes of the preceding sentence, the term 'extended active duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.".

(3) Subparagraph (A) of 143(m)(6) is amended by inserting "(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)" after "1034(e)".

(4) Subsection (e) of section 216 is amended by striking "such exchange qualifies for nonrecognition of gain under section 1034(f)" and

inserting "such dwelling unit is used as his principal residence (within the meaning of section 121)".

(5) Section 512(a)(3)(D) is amended by inserting "(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)" after "1034".

(6) Paragraph (7) of section 1016(a) is amended by inserting "(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)" after "1034" and by inserting "(as so in effect)" after "1034(e)".

(7) Paragraph (3) of section 1033(k) is amended to read as follows:

"(3) For exclusion from gross income of gain from involuntary conversion of principal residence, see section 121.".

(8) Subsection (e) of section 1038 is amended to read as follows:

"(e) PRINCIPAL RESIDENCES.—If—

"(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which gain was not recognized under section 121 (relating to gain on sale of principal residence); and

"(2) within 1 year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying section 121, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.".

(9) Paragraph (7) of section 1223 is amended by inserting "(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)" after "1034".

(10)(A) Subsection (d) of section 1250 is amended by striking paragraph (7) and by redesignating paragraphs (9) and (10) as paragraphs (7) and (8), respectively.

(B) Subsection (e) of section 1250 is amended by striking paragraph (3).

(11) Subsection (c) of section 6012 is amended by striking "(relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55)" and inserting "(relating to gain from sale of principal residence)".

(12) Paragraph (2) of section 6212(c) is amended by striking subparagraph (C) and by redesignating the succeeding subparagraphs accordingly.

(13) Section 6504 is amended by striking paragraph (4) and by redesignating the succeeding paragraphs accordingly.

(14) The item relating to section 121 in the table of sections for part III of subchapter B of chapter 1 is amended to read as follows:

"Sec. 121. Exclusion of gain from sale of principal residence.".

(15) The table of sections for part III of subchapter O of chapter 1 is amended by striking the item relating to section 1034.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to sales and exchanges after May 6, 1997.

(2) SALES BEFORE DATE OF ENACTMENT.—At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange before the date of the enactment of this Act.

(3) CERTAIN SALES WITHIN 2 YEARS AFTER DATE OF ENACTMENT.—Section 121 of the Internal Revenue Code of 1986 (as amended by this section) shall be applied without regard to subsection (c)(2)(B) thereof in the case of any sale or exchange of property during the 2-year period beginning on the date of the enactment of this Act if the taxpayer held such property on the date of the enactment of this Act and fails to meet the ownership and use requirements of subsection (a) thereof with respect to such property.

(4) BINDING CONTRACTS.—At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if—

(A) such sale or exchange is pursuant to a contract which was binding on such date, or

(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual.

SEC. 313. ROLLOVER OF GAIN FROM SALE OF QUALIFIED STOCK.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 is amended by adding at the end the following new section:

"SEC. 1045. ROLLOVER OF GAIN FROM QUALIFIED SMALL BUSINESS STOCK TO ANOTHER QUALIFIED SMALL BUSINESS STOCK.

"(a) NONRECOGNITION OF GAIN.—In the case of any sale of qualified small business stock held by an individual for more than 6 months and with respect to which such individual elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

"(1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

"(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this title.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED SMALL BUSINESS STOCK.—The term 'qualified small business stock' has the meaning given such term by section 1202(c).

"(2) PURCHASE.—A taxpayer shall be treated as having purchased any property if, but for paragraph (3), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

"(3) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

"(4) HOLDING PERIOD.—For purposes of determining whether the nonrecognition of gain under subsection (a) applies to stock which is sold—

"(A) the taxpayer's holding period for such stock and the stock referred to in subsection (a)(1) shall be determined without regard to section 1223, and

"(B) only the first 6 months of the taxpayer's holding period for the stock referred to in subsection (a)(1) shall be taken into account for purposes of applying section 1202(c)(2).".

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a)(23) is amended—

(A) by striking "or 1044" and inserting ", 1044, or 1045", and

(B) by striking "or 1044(d)" and inserting ", 1044(d), or 1045(b)(4)".

(2) Section 1223 is amended by redesignating paragraph (15) as paragraph (16) and by inserting after paragraph (14) the following new paragraph:

"(15) In determining the period for which the taxpayer has held property the acquisition of which resulted under section 1045 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property has been held as of the date of such sale.".

(3) The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end the following new item:

"Sec. 1045. Rollover of gain from qualified small business stock to another qualified small business stock.".

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

SEC. 314. AMOUNT OF NET CAPITAL GAIN TAKEN INTO ACCOUNT IN COMPUTING ALTERNATIVE TAX ON CAPITAL GAINS FOR CORPORATIONS NOT TO EXCEED TAXABLE INCOME OF THE CORPORATION.

(a) IN GENERAL.—Paragraph (2) of section 1201(a) is amended by inserting before the period "(or, if less, taxable income)".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 1997.

TITLE IV—ALTERNATIVE MINIMUM TAX REFORM

SEC. 401. EXEMPTION FROM ALTERNATIVE MINIMUM TAX FOR SMALL CORPORATIONS.

(a) IN GENERAL.—Section 55 (relating to alternative minimum tax imposed) is amended by adding at the end the following new subsection:

"(e) EXEMPTION FOR SMALL CORPORATIONS.—

"(1) IN GENERAL.—The tentative minimum tax of a corporation shall be zero for any taxable year if—

"(A) such corporation met the $5,000,000 gross receipts test of section 448(c) for its first taxable year beginning after December 31, 1996, and

"(B) such corporation would meet such test for the taxable year and all prior taxable years beginning after such first taxable year if such test were applied by substituting '$7,500,000' for '$5,000,000'.

"(2) PROSPECTIVE APPLICATION OF MINIMUM TAX IF SMALL CORPORATION CEASES TO BE SMALL.—In the case of a corporation whose tentative minimum tax is zero for any prior taxable year by reason of paragraph (1), the application of this part for taxable years beginning with the first taxable year such corporation ceases to be described in paragraph (1) shall be determined with the following modifications:

"(A) Section 56(a)(1) (relating to depreciation) and section 56(a)(5) (relating to pollution control facilities) shall apply only to property placed in service on or after the change date.

"(B) Section 56(a)(2) (relating to mining exploration and development costs) shall apply only to costs paid or incurred on or after the change date.

"(C) Section 56(a)(3) (relating to treatment of long-term contracts) shall apply only to contracts entered into on or after the change date.

"(D) Section 56(a)(4) (relating to alternative net operating loss deduction) shall apply in the same manner as if, in section 56(d)(2), the change date were substituted for 'January 1, 1987' and the day before the change date were substituted for 'December 31, 1986' each place it appears.

"(E) Section 56(g)(2)(B) (relating to limitation on allowance of negative adjustments based on adjusted current earnings) shall apply only to prior taxable years beginning on or after the change date.

"(F) Section 56(g)(4)(A) (relating to adjustment for depreciation to adjusted current earnings) shall not apply.

"(G) Subparagraphs (D) and (F) of section 56(g)(4) (relating to other earnings and profits adjustments and depletion) shall apply in the same manner as if the day before the change date were substituted for 'December 31, 1989' each place it appears therein.

"(3) EXCEPTION.—The modifications in paragraph (2) shall not apply to—

"(A) any item acquired by the corporation in a transaction to which section 381 applies, and

"(B) any property the basis of which in the hands of the corporation is determined by reference to the basis of the property in the hands of the transferor,

if such item or property was subject to any provision referred to in paragraph (2) while held by the transferor.

"(4) CHANGE DATE.—For purposes of paragraph (2), the change date is the first day of the first taxable year for which the taxpayer ceases to be described in paragraph (1).

"(5) LIMITATION ON USE OF CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY.—In the case of a taxpayer whose tentative minimum tax for any taxable year is zero by reason of paragraph (1), section 53(c) shall be applied for such year by reducing the amount otherwise taken into account under section 53(c)(1) by 25 percent of so much of such amount as exceeds $25,000. Rules similar to the rules of section 38(c)(3)(B) shall apply for purposes of the preceding sentence.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 402. REPEAL OF SEPARATE DEPRECIATION LIVES FOR MINIMUM TAX PURPOSES.

(a) IN GENERAL.—Clause (i) of section 56(a)(1)(A) is amended by adding at the end the following new sentence: "In the case of property placed in service after December 31, 1998, the preceding sentence shall not apply but clause (ii) shall continue to apply."

(b) POLLUTION CONTROL FACILITIES.—Paragraph (5) of section 56(a) is amended by adding at the end the following new sentence: "In the case of such a facility placed in service after December 31, 1998, such deduction shall be determined under section 168 using the straight line method.".

SEC. 403. MINIMUM TAX NOT TO APPLY TO FARMERS' INSTALLMENT SALES.

(a) IN GENERAL.—Subsection (a) of section 56 is amended by striking paragraph (6) (relating to treatment of installment sales) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to dispositions in taxable years beginning after December 31, 1987.

(2) SPECIAL RULE FOR 1987.—In the case of taxable years beginning in 1987, the last sentence of section 56(a)(6) of the Internal Revenue Code of 1986 (as in effect for such taxable years) shall be applied by inserting "or in the case of a taxpayer using the cash receipts and disbursements method of accounting, any disposition described in section 453C(e)(1)(B)(ii)" after "section 453C(e)(4)".

TITLE V—ESTATE, GIFT, AND GENERATION-SKIPPING TAX PROVISIONS

Subtitle A—Estate and Gift Tax Provisions

SEC. 501. COST-OF-LIVING ADJUSTMENTS RELATING TO ESTATE AND GIFT TAX PROVISIONS.

(a) INCREASE IN UNIFIED ESTATE AND GIFT TAX CREDIT.—

(1) ESTATE TAX CREDIT.—

(A) IN GENERAL.—Subsection (a) of section 2010 (relating to unified credit against estate tax) is amended by striking "$192,800" and inserting "the applicable credit amount".

(B) APPLICABLE CREDIT AMOUNT.—Section 2010 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) APPLICABLE CREDIT AMOUNT.—For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the applicable exclusion amount determined in accordance with the following table:

"In the case of estates of decedents dying and gifts made during:	The applicable exclusion amount is:
1998	$ 625,000
1999	$ 650,000
2000 and 2001	$ 675,000
2002 and 2003	$ 700,000
2004	$ 850,000
2005	$ 950,000
2006 or thereafter	$1,000,000."

(C) ESTATE TAX RETURNS.—Paragraph (1) of section 6018(a) is amended by striking "$600,000" and inserting "the applicable exclusion amount in effect under section 2010(c) for the calendar year which includes the date of death".

(D) PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.—Paragraph (2) of section 2001(c) is amended by striking "$21,040,000" and inserting "the amount at which the average tax rate under this section is 55 percent".

(E) ESTATES OF NONRESIDENTS NOT CITIZENS.—Subparagraph (A) of section 2102(c)(3) is amended by striking "$192,800" and inserting "the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death".

(2) UNIFIED GIFT TAX CREDIT.—Paragraph (1) of section 2505(a) is amended by striking "$192,800" and inserting "the applicable credit amount in effect under section 2010(c) for such calendar year".

(b) ALTERNATE VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.—Subsection (a) of section 2032A is amended by adding at the end the following new paragraph:

"(3) INFLATION ADJUSTMENT.—In the case of estates of decedents dying in a calendar year after 1998, the $750,000 amount contained in paragraph (2) shall be increased by an amount equal to—

"(A) $750,000, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.".

(c) ANNUAL GIFT TAX EXCLUSION.—Subsection (b) of section 2503 is amended—

(1) by striking the subsection heading and inserting the following:

"(b) EXCLUSIONS FROM GIFTS.—

"(1) IN GENERAL.—",

(2) by moving the text 2 ems to the right, and

(3) by adding at the end the following new paragraph:

"(2) INFLATION ADJUSTMENT.—In the case of gifts made in a calendar year after 1998, the $10,000 amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) $10,000, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.".

(d) EXEMPTION FROM GENERATION-SKIPPING TAX.—Section 2631 (relating to GST exemption) is amended by adding at the end the following new subsection:

"(c) INFLATION ADJUSTMENT.—In the case of an individual who dies in any calendar year after 1998, the $1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

"(1) $1,000,000, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.".

(e) AMOUNT SUBJECT TO REDUCED RATE WHERE EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX ON CLOSELY HELD BUSINESS.—Subsection (j) of section 6601 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) INFLATION ADJUSTMENT.—In the case of estates of decedents dying in a calendar year after 1998, the $1,000,000 amount contained in paragraph (2)(A) shall be increased by an amount equal to—

"(A) $1,000,000, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 1997.

SEC. 502. FAMILY-OWNED BUSINESS EXCLUSION.

(a) IN GENERAL.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2033 the following new section:

"SEC. 2033A. FAMILY-OWNED BUSINESS EXCLUSION.

"(a) IN GENERAL.—In the case of an estate of a decedent to which this section applies, the value of the gross estate shall not include the lesser of—

"(1) the adjusted value of the qualified family-owned business interests of the decedent otherwise includible in the estate, or

"(2) the excess of $1,300,000 over the applicable exclusion amount under section 2010(c) with respect to such estate.

"(b) ESTATES TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to an estate if—

"(A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

"(B) the executor elects the application of this section and files the agreement referred to in subsection (h),

"(C) the sum of—

"(i) the adjusted value of the qualified family-owned business interests described in paragraph (2), plus

"(ii) the amount of the gifts of such interests determined under paragraph (3),

exceeds 50 percent of the adjusted gross estate, and

"(D) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

"(i) such interests were owned by the decedent or a member of the decedent's family, and

"(ii) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the

operation of the business to which such interests relate.

"(2) INCLUDIBLE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—The qualified family-owned business interests described in this paragraph are the interests which—

"(A) are included in determining the value of the gross estate (without regard to this section), and

"(B) are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)).

"(3) INCLUDIBLE GIFTS OF INTERESTS.—The amount of the gifts of qualified family-owned business interests determined under this paragraph is the excess of—

"(A) the sum of—

"(i) the amount of such gifts from the decedent to members of the decedent's family taken into account under subsection 2001(b)(1)(B), plus

"(ii) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death, over

"(B) the amount of such gifts from the decedent to members of the decedent's family otherwise included in the gross estate.

"(c) ADJUSTED GROSS ESTATE.—For purposes of this section, the term 'adjusted gross estate' means the value of the gross estate (determined without regard to this section)—

"(1) reduced by any amount deductible under paragraph (3) or (4) of section 2053(a), and

"(2) increased by the excess of—

"(A) the sum of—

"(i) the amount of gifts determined under subsection (b)(3), plus

"(ii) the amount (if more than de minimis) of other transfers from the decedent to the decedent's spouse (at the time of the transfer) within 10 years of the date of the decedent's death, plus

"(iii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of such date, other than gifts to members of the decedent's family otherwise excluded under section 2503(b), over

"(B) the sum of the amounts described in clauses (i), (ii), and (iii) of subparagraph (A) which are otherwise includible in the gross estate.

For purposes of the preceding sentence, the Secretary may provide that de minimis gifts to persons other than members of the decedent's family shall not be taken into account.

"(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—

"(1) any amount deductible under paragraph (3) or (4) of section 2053(a), over

"(2) the sum of—

"(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus

"(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent's spouse, or the decedent's dependents (within the meaning of section 152), plus

"(C) any indebtedness not described in subparagraph (A) or (B), to the extent such indebtedness does not exceed $10,000.

"(e) QUALIFIED FAMILY-OWNED BUSINESS INTEREST.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified family-owned business interest' means—

"(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

"(B) an interest in an entity carrying on a trade or business, if—

"(i) at least—

"(I) 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family,

"(II) 70 percent of such entity is so owned by members of 2 families, or

"(III) 90 percent of such entity is so owned by members of 3 families, and

"(ii) for purposes of subclause (II) or (III) of clause (i), at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

"(2) LIMITATION.—Such term shall not include—

"(A) any interest in a trade or business the principal place of business of which is not located in the United States,

"(B) any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years of the date of the decedent's death,

"(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent's death would qualify as personal holding company income (as defined in section 543(a)),

"(D) that portion of an interest in a trade or business that is attributable to—

"(i) cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business, and

"(ii) any other assets of the trade or business (other than assets used in the active conduct of a trade or business described in section 542(c)(2)), which produce, or are held for the production of, income of which is described in section 543(a) or in section 954(c)(1) (determined without regard to subparagraph (A) thereof and by substituting 'trade or business' for 'controlled foreign corporation').

"(3) RULES REGARDING OWNERSHIP.—

"(A) OWNERSHIP OF ENTITIES.—For purposes of paragraph (1)(B)—

"(i) CORPORATIONS.—Ownership of a corporation shall be determined by the holding of stock possessing the appropriate percentage of the total combined voting power of all classes of stock entitled to vote and the appropriate percentage of the total value of shares of all classes of stock.

"(ii) PARTNERSHIPS.—Ownership of a partnership shall be determined by the owning of the appropriate percentage of the capital interest in such partnership.

"(B) OWNERSHIP OF TIERED ENTITIES.—For purposes of this section, if by reason of holding an interest in a trade or business, a decedent, any member of the decedent's family, any qualified heir, or any member of any qualified heir's family is treated as holding an interest in any other trade or business—

"(i) such ownership interest in the other trade or business shall be disregarded in determining if the ownership interest in the first trade or business is a qualified family-owned business interest, and

"(ii) this section shall be applied separately in determining if such interest in any other trade or business is a qualified family-owned business interest.

"(C) INDIVIDUAL OWNERSHIP RULES.—For purposes of this section, an interest owned, directly or indirectly, by or for an entity described in paragraph (1)(B) shall be considered as being owned proportionately by or for the entity's shareholders, partners, or beneficiaries. A person shall be treated as a beneficiary of any trust only if such person has a present interest in such trust.

"(f) TAX TREATMENT OF FAILURE TO MATERIALLY PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTERESTS.—

"(1) IN GENERAL.—There is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death—

"(A) the material participation requirements described in section 2032A(c)(6)(B) are not met with respect to the qualified family-owned business interest which was acquired (or passed) from the decedent,

"(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h)),

"(C) the qualified heir loses United States citizenship (within the meaning of section 877) or with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) occurs, and such heir does not comply with the requirements of subsection (g), or

"(D) the principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

"(2) ADDITIONAL ESTATE TAX.—

"(A) IN GENERAL.—The amount of the additional estate tax imposed by paragraph (1) shall be equal to—

"(i) the applicable percentage of the adjusted tax difference attributable to the qualified family-owned business interest (as determined under rules similar to the rules of section 2032A(c)(2)(B)), plus

"(ii) interest on the amount determined under clause (i) at the underpayment rate established under section 6621 for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

"(B) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage shall be determined under the following table:

"If the event described in paragraph (1) occurs in the following year of material participation:	***The applicable percentage is:***
1 through 6	*100*
7	*80*
8	*60*
9	*40*
10	*20.*

"(g) SECURITY REQUIREMENTS FOR NONCITIZEN QUALIFIED HEIRS.—

"(1) IN GENERAL.—Except upon the application of subparagraph (F) or (M) of subsection (i)(3), if a qualified heir is not a citizen of the United States, any interest under this section passing to or acquired by such heir (including any interest held by such heir at a time described in subsection (f)(1)(C)) shall be treated as a qualified family-owned business interest only if the interest passes or is acquired (or is held) in a qualified trust.

"(2) QUALIFIED TRUST.—The term 'qualified trust' means a trust—

"(A) which is organized under, and governed by, the laws of the United States or a State, and

"(B) except as otherwise provided in regulations, with respect to which the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation.

"(h) AGREEMENT.—The agreement referred to in this subsection is a written agreement signed by each person in being who has an interest

(whether or not in possession) in any property designated in such agreement consenting to the application of subsection (f) with respect to such property.

"(i) OTHER DEFINITIONS AND APPLICABLE RULES.—For purposes of this section—

"(1) QUALIFIED HEIR.—The term 'qualified heir'—

"(A) has the meaning given to such term by section 2032A(e)(1), and

"(B) includes any active employee of the trade or business to which the qualified family-owned business interest relates if such employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent's death.

"(2) MEMBER OF THE FAMILY.—The term 'member of the family' has the meaning given to such term by section 2032A(e)(2).

"(3) APPLICABLE RULES.—Rules similar to the following rules shall apply:

"(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

"(B) Section 2032A(b)(5) (relating to special rules for surviving spouses).

"(C) Section 2032A(c)(2)(D) (relating to partial dispositions).

"(D) Section 2032A(c)(3) (relating to only 1 additional tax imposed with respect to any 1 portion).

"(E) Section 2032A(c)(4) (relating to due date).

"(F) Section 2032A(c)(5) (relating to liability for tax; furnishing of bond).

"(G) Section 2032A(c)(7) (relating to no tax if use begins within 2 years; active management by eligible qualified heir treated as material participation).

"(H) Paragraphs (1) and (3) of section 2032A(d) (relating to election; agreement).

"(I) Section 2032A(e)(10) (relating to community property).

"(J) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

"(K) Section 2032A(f) (relating to statute of limitations).

"(L) Section 6166(b)(3) (relating to farmhouses and certain other structures taken into account).

"(M) Subparagraphs (B), (C), and (D) of section 6166(g)(1) (relating to acceleration of payment).

"(N) Section 6324B (relating to special lien for additional estate tax).".

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by inserting after the item relating to section 2033 the following new item:

"Sec. 2033A. Family-owned business exclusion.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1997.

SEC. 503. MODIFICATIONS TO RATE OF INTEREST ON PORTION OF ESTATE TAX EXTENDED UNDER SECTION 6166.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 6601(j) (relating to 4-percent rate on certain portion of estate tax extended under section 6166) are amended to read as follows:

"(1) IN GENERAL.—If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6166, then in lieu of the annual rate provided by subsection (a)—

"(A) interest on the 2-percent portion of such amount shall be paid at the rate of 2 percent, and

"(B) interest on so much of such amount as exceeds the 2-percent portion shall be paid at a rate equal to 45 percent of the annual rate provided by subsection (a).

For purposes of this subsection, the amount of any deficiency which is prorated to installments payable under section 6166 shall be treated as an amount of tax payable in installments under such section.

"(2) 2-PERCENT PORTION.—For purposes of this subsection, the term '2-percent portion' means the lesser of—

"(A)(i) the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the sum of $1,000,000 and the applicable exclusion amount in effect under section 2010(c), reduced by

"(ii) the applicable credit amount in effect under section 2010(c), or

"(B) the amount of the tax imposed by chapter 11 which is extended as provided in section 6166.".

(b) DISALLOWANCE OF INTEREST DEDUCTION.—

(1) ESTATE TAX.—Paragraph (1) of section 2053(c) is amended by adding at the end the following new subparagraph:

"(D) SECTION 6166 INTEREST.—No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.".

(2) INCOME TAX.—

(A) Section 163 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) SECTION 6166 INTEREST.—No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.".

(B) Subparagraph (E) of section 163(h)(2) is amended by striking "or 6166" and all that follows and inserting a period.

(c) CONFORMING AMENDMENTS.—

(1) Paragraphs (7)(A)(iii) and (8)(A)(iii) of section 6166(b) are amended by striking "4-percent" each place it appears (including the heading) and inserting "2-percent".

(2) Paragraph (4) of section 6601(j), as redesignated by section 501(e), is amended by striking "4-percent" each place it appears and inserting "2-percent".

(3) The subsection heading for section 6601(j) is amended by striking "4-PERCENT" and inserting "2-PERCENT".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1997.

(2) ELECTION.—In the case of the estate of any decedent dying before January 1, 1998, with respect to which there is an election under section 6166 of the Internal Revenue Code of 1986, the executor of the estate may elect to have the amendments made by this section apply with respect to installments due after the effective date of the election; except that the 2-percent portion of such installments shall be equal to the amount which would be the 4-percent portion of such installments without regard to such election. Such an election shall be made before January 1, 1999 in the manner prescribed by the Secretary of the Treasury and, once made, is irrevocable.

SEC. 504. EXTENSION OF TREATMENT OF CERTAIN RENTS UNDER SECTION 2032A TO LINEAL DESCENDANTS.

(a) GENERAL RULE.—Paragraph (7) of section 2032A(c) (relating to special rules for tax treatment of dispositions and failures to use for qualified use) is amended by adding at the end the following new subparagraph:

"(E) CERTAIN RENTS TREATED AS QUALIFIED USE.—For purposes of this subsection, a surviving spouse or lineal descendant of the decedent shall not be treated as failing to use qualified real property in a qualified use solely because such spouse or descendant rents such property to a member of the family of such spouse or descendant on a net cash basis. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.".

(b) CONFORMING AMENDMENT.—Section 2032A(b)(5)(A) is amended by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to leases entered into after December 31, 1976.

SEC. 505. CLARIFICATION OF JUDICIAL REVIEW OF ELIGIBILITY FOR EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX.

(a) IN GENERAL.—Part IV of subchapter C of chapter 76 of the Internal Revenue Code of 1986 (relating to declaratory judgments) is amended by adding at the end the following new section:

"SEC. 7479. DECLARATORY JUDGMENTS RELATING TO ELIGIBILITY OF ESTATE WITH RESPECT TO INSTALLMENT PAYMENTS UNDER SECTION 6166.

"(a) CREATION OF REMEDY.—In a case of actual controversy involving a determination by the Secretary of (or a failure by the Secretary to make a determination with respect to)—

"(1) whether an election may be made under section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business) with respect to an estate, or

"(2) whether the extension of time for payment of tax provided in section 6166(a) has ceased to apply with respect to an estate,

upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to whether such election may be made or whether such extension has ceased to apply. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section, with respect to any estate, only—

"(A) by the executor of such estate, or

"(B) by any person who has assumed an obligation to make payments under section 6166 with respect to such estate (but only if each other such person is joined as a party).

"(2) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service. A petitioner shall be deemed to have exhausted its administrative remedies with respect to a failure of the Secretary to make a determination at the expiration of 180 days after the date on which the request for such determination was made if the petitioner has taken, in a timely manner, all reasonable steps to secure such determination.

"(3) TIME FOR BRINGING ACTION.—If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing.".

(b) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter C of chapter 76 of such Code is amended by adding at the end the following new item:

"Sec. 7479. Declaratory judgments relating to eligibility of estate with respect to installment payments under section 6166.".

(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. 506. GIFTS MAY NOT BE REVALUED FOR ESTATE TAX PURPOSES AFTER EXPIRATION OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 2001 (relating to imposition and rate of estate tax) is amended by adding at the end the following new subsection:

"(f) VALUATION OF GIFTS.—If—

"(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), and

"(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12.".

(b) MODIFICATION OF APPLICATION OF STATUTE OF LIMITATIONS.—Paragraph (9) of section 6501(c) is amended to read as follows:

"(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN ON RETURN.—If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d) which) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item. The value of any item which is so disclosed may not be redetermined by the Secretary after the expiration of the period under subsection (a).".

(c) DECLARATORY JUDGMENT PROCEDURE FOR DETERMINING VALUE OF GIFT.—

(1) IN GENERAL.—Part IV of subchapter C of chapter 76 is amended by inserting after section 7476 the following new section:

"SEC. 7477. DECLARATORY JUDGMENTS RELATING TO VALUE OF CERTAIN GIFTS.

"(a) CREATION OF REMEDY.—In a case of an actual controversy involving a determination by the Secretary of the value of any gift shown on the return of tax imposed by chapter 12 or disclosed on such return or in any statement attached to such return, upon the filing of an appropriate pleading, the Tax Court may make a declaration of the value of such gift. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by the donor.

"(2) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service.

"(3) TIME FOR BRINGING ACTION.—If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing.".

(2) CLERICAL AMENDMENT.—The table of sections for such part IV is amended by inserting after the item relating to section 7476 the following new item:

"Sec. 7477. Declaratory judgments relating to value of certain gifts.".

(d) CONFORMING AMENDMENT.—Subsection (c) of section 2504 is amended by striking ", and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar period".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to gifts made after the date of the enactment of this Act.

(2) SUBSECTION (b)—The amendment made by subsection (b) shall apply to gifts made in calendar years ending after the date of the enactment of this Act.

SEC. 507. REPEAL OF THROWBACK RULES APPLICABLE TO CERTAIN DOMESTIC TRUSTS.

(a) ACCUMULATION DISTRIBUTIONS.—

(1) IN GENERAL.—Section 665 is amended by inserting after subsection (b) the following new subsection:

"(c) EXCEPTION FOR ACCUMULATION DISTRIBUTIONS FROM CERTAIN DOMESTIC TRUSTS.—For purposes of this subpart—

"(1) IN GENERAL.—In the case of a qualified trust, any distribution in any taxable year beginning after the date of the enactment of this subsection shall be computed without regard to any undistributed net income.

"(2) QUALIFIED TRUST.—For purposes of this subsection, the term 'qualified trust' means any trust other than—

"(A) a foreign trust (or, except as provided in regulations, a domestic trust which at any time was 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 AMENDMENTS.—Subsection (b) of section 665 is amended by inserting "except as provided in subsection (c)," after "subpart,".

(b) REPEAL OF TAX ON TRANSFERS TO TRUSTS AT LESS THAN FAIR MARKET VALUE.—

(1) Subpart A of part I of subchapter J of chapter 1 is amended by striking section 644 and by redesignating section 645 as section 644.

(2) Paragraph (5) of section 706(b) is amended by striking "section 645" and inserting "section 644".

(3) The table of sections for such subpart is amended by striking the last 2 items and inserting the following new item:

"Sec. 644. Taxable year of trusts."

(c) EFFECTIVE DATES.—

(1) ACCUMULATION DISTRIBUTIONS.—The amendments made by subsection (a) shall apply to distributions in taxable years beginning after the date of the enactment of this Act.

(2) TRANSFERRED PROPERTY.—The amendments made by subsection (b) shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 508. TREATMENT OF LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.

(a) ESTATE TAX WITH RESPECT TO LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—Section 2031 (relating to the definition of gross estate) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) ESTATE TAX WITH RESPECT TO LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—

"(1) IN GENERAL.—If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of—

"(A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or

"(B) the exclusion limitation.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land (determined without regard to the value of such easement and reduced by the value of any retained development right (as defined in paragraph (5)).

"(3) EXCLUSION LIMITATION.—For purposes of paragraph (1), the exclusion limitation is the limitation determined in accordance with the following table:

"In the case of estates of decedents dying during:	The exclusion limitation is:
1998	$100,000
1999	$200,000
2000	$300,000
2001	$400,000
2002 or thereafter	$500,000.

"(4) TREATMENT OF CERTAIN INDEBTEDNESS.—

"(A) IN GENERAL.—The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) DEBT-FINANCED PROPERTY.—The term 'debt-financed property' means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

"(ii) ACQUISITION INDEBTEDNESS.—The term 'acquisition indebtedness' means, with respect to debt-financed property, the unpaid amount of—

"(I) the indebtedness incurred by the donor in acquiring such property,

"(II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,

"(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and

"(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

"(5) TREATMENT OF RETAINED DEVELOPMENT RIGHT.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

"(B) TERMINATION OF RETAINED DEVELOPMENT RIGHT.—If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

"(C) ADDITIONAL TAX.—Any failure to implement the agreement described in subparagraph (B) not later than the earlier of—

"(i) the date which is 2 years after the date of the decedent's death, or

"(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights

subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

"(D) DEVELOPMENT RIGHT DEFINED.—For purposes of this paragraph, the term 'development right' means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

"(6) ELECTION.—The election under this subsection shall be made on the return of the tax imposed by section 2001. Such an election, once made, shall be irrevocable.

"(7) CALCULATION OF ESTATE TAX DUE.—An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) LAND SUBJECT TO A QUALIFIED CONSERVATION EASEMENT.—The term 'land subject to a qualified conservation easement' means land—

"(i) which is located—

"(I) in or within 25 miles of an area which, on the date of the decedent's death, is a metropolitan area (as defined by the Office of Management and Budget),

"(II) in or within 25 miles of an area which, on the date of the decedent's death, is a national park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 25 miles of such a park or wilderness area is not under significant development pressure), or

"(III) in or within 10 miles of an area which, on the date of the decedent's death, is an Urban National Forest (as designated by the Forest Service),

"(ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and

"(iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

"(B) QUALIFIED CONSERVATION EASEMENT.—The term 'qualified conservation easement' means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

"(C) INDIVIDUAL DESCRIBED.—An individual is described in this subparagraph if such individual is—

"(i) the decedent,

"(ii) a member of the decedent's family,

"(iii) the executor of the decedent's estate, or

"(iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

"(D) MEMBER OF FAMILY.—The term 'member of the decedent's family' means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

"(9) APPLICATION OF THIS SECTION TO INTERESTS IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2033A(e)(3).".

(b) CARRYOVER BASIS.—Section 1014(a) (relating to basis of property acquired from a decedent) is amended by striking "or" at the end of paragraphs (1) and (2), by striking the period at the end of paragraph (3) and inserting ", or" and by adding at the end the following new paragraph:

"(4) to the extent of the applicability of the exclusion described in section 2031(c), the basis in the hands of the decedent.".

(c) QUALIFIED CONSERVATION CONTRIBUTION IS NOT A DISPOSITION.—Subsection (c) of section 2032A (relating to alternative valuation method) is amended by adding at the end the following new paragraph:

"(8) QUALIFIED CONSERVATION CONTRIBUTION IS NOT A DISPOSITION.—A qualified conservation contribution (as defined in section 170(h)) by gift or otherwise shall not be deemed a disposition under subsection (c)(1)(A).".

(d) QUALIFIED CONSERVATION CONTRIBUTION WHERE SURFACE AND MINERAL RIGHTS ARE SEPARATED.—Section 170(h)(5)(B)(ii) (relating to special rule) is amended to read as follows:

"(ii) SPECIAL RULE.—With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.".

(e) EFFECTIVE DATES.—

(1) EXCLUSION.—The amendments made by subsections (a) and (b) shall apply to estates of decedents dying after December 31, 1997.

(2) EASEMENTS.—The amendments made by subsections (c) and (d) shall apply to easements granted after December 31, 1997.

Subtitle B—Generation-Skipping Tax Provision

SEC. 511. EXPANSION OF EXCEPTION FROM GENERATION-SKIPPING TRANSFER TAX FOR TRANSFERS TO INDIVIDUALS WITH DECEASED PARENTS.

(a) IN GENERAL.—Section 2651 (relating to generation assignment) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) SPECIAL RULE FOR PERSONS WITH A DECEASED PARENT.—

"(1) IN GENERAL.—For purposes of determining whether any transfer is a generation-skipping transfer, if—

"(A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and

"(B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or derived) is subject to a tax imposed by chapter 11 or 12 upon the transferor (and if there shall be more than 1 such time, then at the earliest such time), such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

"(2) LIMITED APPLICATION OF SUBSECTION TO COLLATERAL HEIRS.—This subsection shall not apply with respect to a transfer to any individual who is not a lineal descendant of the transferor (or the transferor's spouse or former spouse) if, at the time of the transfer, such transferor has any living lineal descendant.".

(b) CONFORMING AMENDMENTS.—

(1) Section 2612(c) (defining direct skip) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) Section 2612(c)(2) (as so redesignated) is amended by striking "section 2651(e)(2)" and inserting "section 2651(f)(2)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to terminations, distributions, and transfers occurring after December 31, 1997.

TITLE VI—EXTENSIONS

SEC. 601. RESEARCH TAX CREDIT.

(a) IN GENERAL.—Paragraph (1) of section 41(h) (relating to termination) is amended—

(1) by striking "May 31, 1997" and inserting "June 30, 1998", and

(2) by striking in the last sentence "during the first 11 months of such taxable year." and inserting "during the 24-month period beginning with the first month of such year. The 24 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section.".

(b) TECHNICAL AMENDMENTS.—

(1) Subparagraph (B) of section 41(c)(4) is amended to read as follows:

"(B) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.".

(2) Paragraph (1) of section 45C(b) is amended by striking "May 31, 1997" and inserting "June 30, 1998".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after May 31, 1997.

SEC. 602. CONTRIBUTIONS OF STOCK TO PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Clause (ii) of section 170(e)(5)(D) (relating to termination) is amended by striking "May 31, 1997" and inserting "June 30, 1998".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after May 31, 1997.

SEC. 603. WORK OPPORTUNITY TAX CREDIT.

(a) EXTENSION.—Subparagraph (B) of section 51(c)(4) (relating to termination) is amended by striking "September 30, 1997" and inserting "June 30, 1998".

(b) MODIFICATION OF ELIGIBILITY REQUIREMENT BASED ON PERIOD ON WELFARE.—

(1) IN GENERAL.—Subparagraph (A) of section 51(d)(2) (defining qualified IV–A recipient) is amended by striking all that follows "a IV–A program" and inserting "for any 9 months during the 18-month period ending on the hiring date.".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 51(d)(3) is amended to read as follows:

"(A) IN GENERAL.—The term 'qualified veteran' means any veteran who is certified by the designated local agency as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for at least a 3-month period ending during the 12-month period ending on the hiring date.".

(c) QUALIFIED SSI RECIPIENTS TREATED AS MEMBERS OF TARGETED GROUPS.—

(1) IN GENERAL.—Section 51(d)(1) (relating to members of targeted groups) is amended by striking "or" at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting ", or", and by adding at the end the following new subparagraph:

"(H) a qualified SSI recipient.".

(2) QUALIFIED SSI RECIPIENTS.—Section 51(d) is amended by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively, and by inserting after paragraph (8) the following new paragraph:

"(9) QUALIFIED SSI RECIPIENT.—The term 'qualified SSI recipient' means any individual who is certified by the designated local agency as receiving supplemental security income benefits under title XVI of the Social Security Act (including supplemental security income benefits of the type described in section 1616 of such Act or section 212 of Public Law 93-66) for any month ending within the 60-day period ending on the hiring date.".

(d) PERCENTAGE OF WAGES ALLOWED AS CREDIT.—

(1) IN GENERAL.—Subsection (a) of section 51 (relating to determination of amount) is amended by striking "35 percent" and inserting "40 percent".

(2) APPLICATION OF CREDIT FOR INDIVIDUALS PERFORMING FEWER THAN 400 HOURS OF SERVICES.—Paragraph (3) of section 51(i) is amended to read as follows:

"(3) INDIVIDUALS NOT MEETING MINIMUM EMPLOYMENT PERIODS.—

"(A) REDUCTION OF CREDIT FOR INDIVIDUALS PERFORMING FEWER THAN 400 HOURS OF SERVICE.—In the case of an individual who has performed at least 120 hours, but less than 400 hours, of service for the employer, subsection (a) shall be applied by substituting '25 percent' for '40 percent'.

"(B) DENIAL OF CREDIT FOR INDIVIDUALS PERFORMING FEWER THAN 120 HOURS OF SERVICE.—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual has performed at least 120 hours of service for the employer.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after September 30, 1997.

SEC. 604. ORPHAN DRUG TAX CREDIT.

(a) IN GENERAL.—Section 45C (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking subsection (e).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid or incurred after May 31, 1997.

TITLE VII—INCENTIVES FOR REVITALIZATION OF THE DISTRICT OF COLUMBIA

SEC. 701. TAX INCENTIVES FOR REVITALIZATION OF THE DISTRICT OF COLUMBIA.

(a) IN GENERAL.—Chapter 1 is amended by adding at the end the following new subchapter:

"Subchapter W—District of Columbia Enterprise Zone

"Sec. 1400. Establishment of DC Zone.

"Sec. 1400A. Tax-exempt economic development bonds.

"Sec. 1400B. Zero percent capital gains rate.

"Sec. 1400C. First-time homebuyer credit for District of Columbia.

"SEC. 1400. ESTABLISHMENT OF DC ZONE.

"(a) IN GENERAL.—For purposes of this title—

"(1) the applicable DC area is hereby designated as the District of Columbia Enterprise Zone, and

"(2) except as otherwise provided in this subchapter, the District of Columbia Enterprise Zone shall be treated as an empowerment zone designated under subchapter U.

"(b) APPLICABLE DC AREA.—For purposes of subsection (a), the term 'applicable DC area' means the area consisting of—

"(1) the census tracts located in the District of Columbia which are part of an enterprise community designated under subchapter U before the date of the enactment of this subchapter, and

"(2) all other census tracts—

"(A) which are located in the District of Columbia, and

"(B) for which the poverty rate is not less than than 20 percent.

"(c) DISTRICT OF COLUMBIA ENTERPRISE ZONE.—For purposes of this subchapter, the terms 'District of Columbia Enterprise Zone' and 'DC Zone' mean the District of Columbia Enterprise Zone designated by subsection (a).

"(d) SPECIAL RULES FOR APPLICATION OF EMPLOYMENT CREDIT.—

"(1) EMPLOYEES WHOSE PRINCIPAL PLACE OF ABODE IS IN DISTRICT OF COLUMBIA.—With respect to the DC Zone, section 1396(d)(1)(B) (relating to empowerment zone employment credit) shall be applied by substituting 'the District of Columbia' for 'such empowerment zone'.

"(2) NO DECREASE OF PERCENTAGE IN 2002.—In the case of the DC Zone, section 1396 (relating to empowerment zone employment credit) shall be applied by substituting "20" for "15" in the table contained in section 1396(b). The preceding sentence shall apply only with respect to qualified zone employees, as defined in section 1396(d), determined by treating no area other than the DC Zone as an empowerment zone or enterprise community.

"(e) SPECIAL RULE FOR APPLICATION OF ENTERPRISE ZONE BUSINESS DEFINITION.—For purposes of this subchapter and for purposes of applying subchapter U with respect to the DC Zone, section 1397B shall be applied without regard to subsections (b)(6) and (c)(5) thereof.

"(f) TIME FOR WHICH DESIGNATION APPLICABLE.—

"(1) IN GENERAL.—The designation made by subsection (a) shall apply for the period beginning on January 1, 1998, and ending on December 31, 2002.

"(2) COORDINATION WITH DC ENTERPRISE COMMUNITY DESIGNATED UNDER SUBCHAPTER U.—The designation under subchapter U of the census tracts referred to in subsection (b)(1) as an enterprise community shall terminate on December 31, 2002.

"SEC. 1400A. TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.

"(a) IN GENERAL.—In the case of the District of Columbia Enterprise Zone, subparagraph (A) of section 1394(c)(1) (relating to limitation on amount of bonds) shall be applied by substituting '$15,000,000' for '$3,000,000'.

"(b) PERIOD OF APPLICABILITY.—This section shall apply to bonds issued during the period beginning on January 1, 1998, and ending on December 31, 2002.

"SEC. 1400B. ZERO PERCENT CAPITAL GAINS RATE.

"(a) EXCLUSION.—Gross income shall not include qualified capital gain from the sale or exchange of any DC Zone asset held for more than 5 years.

"(b) DC ZONE ASSET.—For purposes of this section—

"(1) IN GENERAL.—The term 'DC Zone asset' means—

"(A) any DC Zone business stock,

"(B) any DC Zone partnership interest, and

"(C) any DC Zone business property.

"(2) DC ZONE BUSINESS STOCK.—

"(A) IN GENERAL.—The term 'DC Zone business stock' means any stock in a domestic corporation which is originally issued after December 31, 1997, if—

"(i) such stock is acquired by the taxpayer, before January 1, 2003, at its original issue (directly or through an underwriter) solely in exchange for cash,

"(ii) as of the time such stock was issued, such corporation was a DC Zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a DC Zone business), and

"(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a DC Zone business.

"(B) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

"(3) DC ZONE PARTNERSHIP INTEREST.—The term 'DC Zone partnership interest' means any capital or profits interest in a domestic partnership which is originally issued after December 31, 1997, if—

"(A) such interest is acquired by the taxpayer, before January 1, 2003, from the partnership solely in exchange for cash,

"(B) as of the time such interest was acquired, such partnership was a DC Zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a DC Zone business), and

"(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a DC Zone business.

A rule similar to the rule of paragraph (2)(B) shall apply for purposes of this paragraph.

"(4) DC ZONE BUSINESS PROPERTY.—

"(A) IN GENERAL.—The term 'DC Zone business property' means tangible property if—

"(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 1997, and before January 1, 2003,

"(ii) the original use of such property in the DC Zone commences with the taxpayer, and

"(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a DC Zone business of the taxpayer.

"(B) SPECIAL RULE FOR BUILDINGS WHICH ARE SUBSTANTIALLY IMPROVED.—

"(i) IN GENERAL.—The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met with respect to—

"(I) property which is substantially improved by the taxpayer before January 1, 2003, and

"(II) any land on which such property is located.

"(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of clause (i), property shall be treated as substantially improved by the taxpayer only if, during any 24-month period beginning after December 31, 1997, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of—

"(I) an amount equal to the adjusted basis of such property at the beginning of such 24-month period in the hands of the taxpayer, or

"(II) $5,000.

"(6) TREATMENT OF SUBSEQUENT PURCHASERS, ETC.—The term 'DC Zone asset' includes any property which would be a DC Zone asset but for paragraph (2)(A)(i), (3)(A), or (4)(A)(ii) in the hands of the taxpayer if such property was a DC Zone asset in the hands of a prior holder.

"(7) 5-YEAR SAFE HARBOR.—If any property ceases to be a DC Zone asset by reason of paragraph (2)(A)(iii), (3)(C), or (4)(A)(iii) after the 5-year period beginning on the date the taxpayer acquired such property, such property shall continue to be treated as meeting the requirements of such paragraph; except that the amount of gain to which subsection (a) applies on any sale or exchange of such property shall not exceed the amount which would be qualified capital gain had such property been sold on the date of such cessation.

"(c) DC ZONE BUSINESS.—For purposes of this section, the term 'DC Zone business' means any entity which is an enterprise zone business (as defined in section 1397B), determined—

"(1) after the application of section 1400(e),

"(2) by substituting "80 percent" for "50 percent" in subsections (b)(2) and (c)(1) of section 1397B, and

"(3) by treating no area other than the DC Zone as an empowerment zone or enterprise community.

"(d) TREATMENT OF ZONE AS INCLUDING CENSUS TRACTS WITH 10 PERCENT POVERTY RATE.—For purposes of applying this section (and for purposes of applying this subchapter and subchapter U with respect to this section), the DC Zone shall be treated as including all census tracts—

"(1) which are located in the District of Columbia, and

"(2) for which the poverty rate is not less than 10 percent.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED CAPITAL GAIN.—Except as otherwise provided in this subsection, the term 'qualified capital gain' means any gain recognized on the sale or exchange of—

"(A) a capital asset, or

"(B) property used in the trade or business (as defined in section 1231(b)).

"(2) GAIN BEFORE 1998 OR AFTER 2007 NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain attributable to periods before January 1, 1998, or after December 31, 2007.

"(3) CERTAIN GAIN NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain which would be treated as ordinary income under section 1245 or under section 1250 if section 1250 applied to all depreciation rather than the additional depreciation.

"(4) INTANGIBLES AND LAND NOT INTEGRAL PART OF DC ZONE BUSINESS.—The term 'qualified capital gain' shall not include any gain which is attributable to real property, or an intangible asset, which is not an integral part of a DC Zone business.

"(5) RELATED PARTY TRANSACTIONS.—The term 'qualified capital gain' shall not include any gain attributable, directly or indirectly, in whole or in part, to a transaction with a related person. For purposes of this paragraph, persons are related to each other if such persons are described in section 267(b) or 707(b)(1).

"(f) CERTAIN OTHER RULES TO APPLY.—Rules similar to the rules of subsections (g), (h), (i)(2), and (j) of section 1202 shall apply for purposes of this section.

"(g) SALES AND EXCHANGES OF INTERESTS IN PARTNERSHIPS AND S CORPORATIONS WHICH ARE DC ZONE BUSINESSES.—In the case of the sale or exchange of an interest in a partnership, or of stock in an S corporation, which was a DC Zone business during substantially all of the period the taxpayer held such interest or stock, the amount of qualified capital gain shall be determined without regard to—

"(1) any gain which is attributable to real property, or an intangible asset, which is not an integral part of a DC Zone business, and

"(2) any gain attributable to periods before January 1, 1998, or after December 31, 2007.

"SEC. 1400C. FIRST-TIME HOMEBUYER CREDIT FOR DISTRICT OF COLUMBIA.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual who is a first-time homebuyer of a principal residence in the District of Columbia during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to so much of the purchase price of the residence as does not exceed $5,000.

"(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this subsection) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the credit so allowable as—

"(A) the excess (if any) of—

"(i) the taxpayer's modified adjusted gross income for such taxable year, over

"(ii) $70,000 ($110,000 in the case of a joint return), bears to

"(B) $20,000.

"(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of paragraph (1), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

"(c) FIRST-TIME HOMEBUYER.—For purposes of this section—

"(1) IN GENERAL.—The term 'first-time homebuyer' has the same meaning as when used in section 72(t)(8)(D)(i), except that 'principal residence in the District of Columbia during the 1-year period' shall be substituted for 'principal residence during the 2-year period' in subclause (I) thereof.

"(2) ONE-TIME ONLY.—If an individual is treated as a first-time homebuyer with respect to any principal residence, such individual may not be treated as a first-time homebuyer with respect to any other principal residence.

"(3) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 121.

"(d) CARRYOVER OF CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

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

"(1) ALLOCATION OF DOLLAR LIMITATION.—

"(A) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing a separate return, subsection (a) shall be applied by substituting '$2,500' for '$5,000'.

"(B) OTHER TAXPAYERS.—If 2 or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $5,000.

"(2) PURCHASE.—

"(A) IN GENERAL.—The term 'purchase' means any acquisition, but only if—

"(i) 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) (but, in applying section 267 (b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants), and

"(ii) 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).

"(B) CONSTRUCTION.—A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer.

"(3) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the principal residence on the date of acquisition (within the meaning of section 72(t)(8)(D)(iii)).

"(f) REPORTING.—If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e)(5) shall not apply.

"(g) CREDIT TREATED AS NONREFUNDABLE PERSONAL CREDIT.—For purposes of this title, the credit allowed by this section shall be treated as a credit allowable under subpart A of part IV of subchapter A of this chapter.

"(h) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to the purchase of any residence, the basis of such residence shall be reduced by the amount of the credit so allowed.

"(i) TERMINATION.—This section shall not apply to any property purchased after December 31, 2000."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 39 is amended by adding at the end the following new paragraph:

"(8) NO CARRYBACK OF DC ZONE CREDITS BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credits allowable under subchapter U by reason of section 1400 may be carried back to a taxable year ending before the date of the enactment of section 1400."

(2) Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (25), by striking the period at the end of paragraph (26) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(27) in the case of a residence with respect to which a credit was allowed under section 1400C, to the extent provided in section 1400C(h)."

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 is amended by adding at the end the following new item:

"Subchapter W. District of Columbia Enterprise Zone.".

(d) EFFECTIVE DATE.—Except as provided in subsection (c), the amendments made by this section shall take effect on the date of the enactment of this Act.

TITLE VIII—WELFARE-TO-WORK INCENTIVES

SEC. 801. INCENTIVES FOR EMPLOYING LONG-TERM FAMILY ASSISTANCE RECIPIENTS.

(a) IN GENERAL.—Subpart F of part IV of subchapter A of chapter 1 is amended by inserting after section 51 the following new section:

"SEC. 51A. TEMPORARY INCENTIVES FOR EMPLOYING LONG-TERM FAMILY ASSISTANCE RECIPIENTS.

"(a) DETERMINATION OF AMOUNT.—For purposes of section 38, the amount of the welfare-to-work credit determined under this section for the taxable year shall be equal to—

"(1) 35 percent of the qualified first-year wages for such year, and

"(2) 50 percent of the qualified second-year wages for such year.

"(b) QUALIFIED WAGES DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified wages' means the wages paid or incurred by the employer during the taxable year to individuals who are long-term family assistance recipients.

"(2) QUALIFIED FIRST-YEAR WAGES.—The term 'qualified first-year wages' means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer.

"(3) QUALIFIED SECOND-YEAR WAGES.—The term 'qualified second-year wages' means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such individual determined under paragraph (2).

"(4) ONLY FIRST $10,000 OF WAGES PER YEAR TAKEN INTO ACCOUNT.—The amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to any individual shall not exceed $10,000 per year.

"(5) WAGES.—

"(A) IN GENERAL.—The term 'wages' has the meaning given such term by section 51(c), without regard to paragraph (4) thereof.

"(B) CERTAIN AMOUNTS TREATED AS WAGES.—The term 'wages' includes amounts paid or incurred by the employer which are excludable from such recipient's gross income under—

"(i) section 105 (relating to amounts received under accident and health plans),

"(ii) section 106 (relating to contributions by employer to accident and health plans),

"(iii) section 127 (relating to educational assistance programs) or would be so excludable but for section 127(d), but only to the extent paid or incurred to a person not related to the employer, or

"(iv) section 129 (relating to dependent care assistance programs).

The amount treated as wages by clause (i) or (ii) for any period shall be based on the reasonable cost of coverage for the period, but shall not exceed the applicable premium for the period under section 4980B(f)(4).

"(C) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If such recipient is an employee to whom subparagraph (A) or (B) of section 51(h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

"(i) such subparagraph (A) shall be applied by substituting '$10,000' for '$6,000', and

"(ii) such subparagraph (B) shall be applied by substituting '$833.33' for '$500'.

"(c) LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'long-term family assistance recipient' means any individual who is certified by the designated local agency (as defined in section 51(d)(10))—

"(A) as being a member of a family receiving assistance under a IV-A program (as defined in section 51(d)(2)(B)) for at least the 18-month period ending on the hiring date,

"(B)(i) as being a member of a family receiving such assistance for 18 months beginning after the date of the enactment of this section, and

"(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

"(C)(i) as being a member of a family which ceased to be eligible after the date of the enactment of this section for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

"(ii) as having a hiring date which is not more than 2 years after the date of such cessation.

"(2) HIRING DATE.—The term 'hiring date' has the meaning given such term by section 51(d).

"(d) CERTAIN RULES TO APPLY.—

"(1) IN GENERAL.—Rules similar to the rules of section 52, and subsections (d)(11), (f), (g), (i) (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997), (j), and (k) of section 51, shall apply for purposes of this section.

"(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT, ETC.—References to section 51 in section 38(b), 280C(a), and 1396(c)(3) shall be treated as including references to this section.

"(e) COORDINATION WITH WORK OPPORTUNITY CREDIT.—If a credit is allowed under this section to an employer with respect to an individual for any taxable year, then for purposes of applying section 51 to such employer, such individual shall not be treated as a member of a targeted group for such taxable year.

"(f) TERMINATION.—This section shall not apply to individuals who begin work for the employer after April 30, 1999.".

(b) CLERICAL AMENDMENT.—The table of sections for subpart F of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 51 the following new item:

"Sec. 51A. Temporary incentives for employing long-term family assistance recipients.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 1997.

TITLE IX—MISCELLANEOUS PROVISIONS

Subtitle A—Provisions Relating to Excise Taxes

SEC. 901. GENERAL REVENUE PORTION OF HIGHWAY MOTOR FUELS TAXES DEPOSITED INTO HIGHWAY TRUST FUND.

(a) IN GENERAL.—Paragraph (4) of section 9503(b) (relating to certain additional taxes not transferred to Highway Trust Fund) is amended to read as follows:

"(4) CERTAIN TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by—

"(A) section 4041(d),

"(B) section 4081 to the extent attributable to the rate specified in section 4081(a)(2)(B),

"(C) section 4041 or 4081 to the extent attributable to fuel used in a train,

"(D) in the case of fuels used as described in paragraph (4)(D), (5)(B), or (6)(D) of subsection (c), section 4041 or 4081—

"(i) with respect to so much of the rate of tax on gasoline or special motor fuels as exceeds 11.5 cents per gallon, and

"(ii) with respect to so much of the rate of tax on diesel fuel or kerosene as exceeds 17.5 cents per gallon,

"(E) in the case of fuels described in section 4041(b)(2)(A), 4041(k), or 4081(c), section 4041 or 4081 before October 1, 1999, with respect to a rate equal to 2.5 cents per gallon, or

"(F) in the case of fuels described in section 4081(c)(2), such section before October 1, 1999, with respect to a rate equal to 2.8 cents per gallon.".

(b) MASS TRANSIT PORTION.—Section 9503(e)(2) (relating to transfers to Mass Transit Account) is amended by striking "2 cents" and inserting "2.85 cents".

(c) LIMITATION ON EXPENDITURES.—Subsection (c) of section 9503 is amended by adding at the end the following new paragraph:

"(7) LIMITATION ON EXPENDITURES.—Notwithstanding any other provision of law, in calculating amounts under section 157(a) of title 23, United States Code, and sections 1013(c), 1015(a), and 1015(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 1914), deposits in the Highway Trust Fund resulting from the amendments made by the Taxpayer Relief Act of 1997 shall not be taken into account.".

(d) TECHNICAL AMENDMENTS.—

(1) Section 9503 is amended by striking subsection (f).

(2) The last sentence of subparagraph (A) of section 9503(c)(2) is amended by striking "by taking into account only the Highway Trust Fund financing rate applicable to any fuel" and inserting "by taking into account only the portion of the taxes which are deposited into the Highway Trust Fund".

(3) Paragraphs (4)(D), (5)(B), and (6)(D) of section 9503(c) are each amended by striking "attributable to the Highway Trust Fund financing rate" and inserting "deposited into the Highway Trust Fund".

(e) DELAYED DEPOSITS OF HIGHWAY MOTOR FUEL TAX REVENUES.—Notwithstanding section 6302 of the Internal Revenue Code of 1986, in the case of deposits of taxes imposed by sections 4041 and 4081 (other than subsection (a)(2)(A)(ii)) of the Internal Revenue Code of 1986, the due date for any deposit which would (but for this subsection) be required to be made after July 31, 1998, and before October 1, 1998, shall be October 5, 1998.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes received in the Treasury after September 30, 1997.

SEC. 902. REPEAL OF TAX ON DIESEL FUEL USED IN RECREATIONAL BOATS.

(a) IN GENERAL.—Subparagraph (B) of section 6421(e)(2) (defining off-highway business use) is amended by striking clauses (iii) and (iv).

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 4041(a)(1) is amended—

(A) by striking ", a diesel-powered train, or a diesel-powered boat" each place it appears and inserting "or a diesel-powered train", and

(B) by striking "vehicle, train, or boat" and inserting "vehicle or train".

(2) Paragraph (1) of section 4041(a) is amended by striking subparagraph (D).

(3) Paragraph (3) of section 4083(a) is amended by striking ", a diesel-powered train, or a diesel-powered boat" and inserting "or a diesel-powered train".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1998.

SEC. 903. CONTINUED APPLICATION OF TAX ON IMPORTED RECYCLED HALON-1211.

(a) IN GENERAL.—Paragraph (1) of section 4682(d) is amended by striking "recycled halon" and inserting "recycled Halon-1301 or recycled Halon-2402".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 904. UNIFORM RATE OF TAX ON VACCINES.

(a) IN GENERAL.—Subsection (b) of section 4131 is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be 75 cents per dose of any taxable vaccine.

"(2) COMBINATIONS OF VACCINES.—If any taxable vaccine is described in more than 1 subparagraph of section 4132(a)(1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts for the vaccines which are so included.".

(b) TAXABLE VACCINES.—Paragraph (1) of section 4132(a) is amended to read as follows:

"(1) TAXABLE VACCINE.—The term 'taxable vaccine' means any of the following vaccines which are manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing:

"(A) Any vaccine containing diphtheria toxoid.

"(B) Any vaccine containing tetanus toxoid.

"(C) Any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.

"(D) Any vaccine against measles.

"(E) Any vaccine against mumps.

"(F) Any vaccine against rubella.

"(G) Any vaccine containing polio virus.

"(H) Any HIV vaccine.

"(I) Any vaccine against hepatitis B.

"(J) Any vaccine against chicken pox.".

(c) CONFORMING AMENDMENT.—Subsection (a) of section 4132 is amended by striking paragraphs (2), (3), (4), and (5) and by redesignating paragraphs (6) through (8) as paragraphs (2) through (4), respectively.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day after the date of the enactment of this Act.

(e) LIMITATION ON CERTAIN CREDITS OR REFUNDS.—For purposes of applying section 4132(b) of the Internal Revenue Code of 1986 with respect to any claim for credit or refund

filed before January 1, 1999, the amount of tax taken into account shall not exceed the tax computed under the rate in effect on the day after the date of the enactment of this Act.

SEC. 905. OPERATORS OF MULTIPLE GASOLINE RETAIL OUTLETS TREATED AS WHOLESALE DISTRIBUTOR FOR REFUND PURPOSES.

(a) IN GENERAL.—Subparagraph (B) of section 6416(a)(4) (defining wholesale distributor) is amended by adding at the end the following new sentence: "Such term includes any person who makes retail sales of gasoline at 10 or more retail motor fuel outlets.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales after the date of the enactment of this Act.

SEC. 906. EXEMPTION OF ELECTRIC AND OTHER CLEAN-FUEL MOTOR VEHICLES FROM LUXURY AUTOMOBILE CLASSIFICATION.

(a) IN GENERAL.—Subsection (a) of section 4001 (relating to imposition of tax) is amended to read as follows:

"(a) IMPOSITION OF TAX.—

"(1) IN GENERAL.—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 the applicable amount.

"(2) APPLICABLE AMOUNT.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the applicable amount is $30,000.

"(B) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—In the case of a passenger vehicle which is propelled by a fuel which is not a clean-burning fuel and to which is installed qualified clean-fuel vehicle property (as defined in section 179A(c)(1)(A)) for purposes of permitting such vehicle to be propelled by a clean-burning fuel, the applicable amount is equal to the sum of—

"(i) the dollar amount in effect under subparagraph (A), plus

"(ii) the increase in the price for which the passenger vehicle was sold (within the meaning of section 4002) due to the installation of such property.

"(C) PURPOSE BUILT PASSENGER VEHICLE.—

"(i) IN GENERAL.—In the case of a purpose built passenger vehicle, the applicable amount is equal to 150 percent of the dollar amount in effect under subparagraph (A).

"(ii) PURPOSE BUILT PASSENGER VEHICLE.—For purposes of clause (i), the term 'purpose built passenger vehicle' means a passenger vehicle produced by an original equipment manufacturer and designed so that the vehicle may be propelled primarily by electricity.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4001 (relating to inflation adjustment) is amended by striking "and section 4003(a)".

(2) Subsection (f) of section 4001 (relating to phasedown) is amended by striking "subsection (a)" and inserting "subsection (a)(1)".

(3) Subparagraph (A) of section 4003(a)(1) is amended by inserting "(other than property described in section 4001(a)(2)(B))" after "part or accessory".

(4) Subparagraph (B) of section 4003(a)(2) is amended to read as follows:

"(B) the appropriate applicable amount as determined under section 4001(a)(2).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and installations occurring after the date of the enactment of this Act.

SEC. 907. RATE OF TAX ON CERTAIN SPECIAL FUELS DETERMINED ON BASIS OF BTU EQUIVALENCY WITH GASOLINE.

(a) SPECIAL MOTOR FUELS.—

(1) IN GENERAL.—Paragraph (2) of section 4041(a) (relating to special motor fuels) is amended to read as follows:

"(2) SPECIAL MOTOR FUELS.—

"(A) IN GENERAL.—There is hereby imposed a tax on any liquid (other than kerosene, gas oil, fuel oil, or any product taxable under section 4081)—

"(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

"(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under clause (i).

"(B) RATE OF TAX.—The rate of the tax imposed by this paragraph shall be—

"(i) except as otherwise provided in this subparagraph, the rate of tax specified in section 4081(a)(2)(A)(i) which is in effect at the time of such sale or use,

"(ii) 13.6 cents per gallon in the case of liquefied petroleum gas, and

"(iii) 11.9 cents per gallon in the case of liquefied natural gas.

In the case of any sale or use after September 30, 1999, clause (ii) shall be applied by substituting '3.2 cents' for '13.6 cents', and clause (iii) shall be applied by substituting '2.8 cents' for '11.9 cents'.".

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 4041(d) is amended by inserting "and other than liquefied natural gas" after "liquefied petroleum gas".

(b) METHANOL FUEL PRODUCED FROM NATURAL GAS.—Subparagraph (A) of section 4041(m)(1) is amended to read as follows:

"(A) the rate of the tax imposed by subsection (a)(2) shall be—

"(i) after September 30, 1997, and before October 1, 1999—

"(I) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

"(II) in any other case, 11.3 cents per gallon, and

"(ii) after September 30, 1999—

"(I) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

"(II) in any other case, 4.3 cents per gallon, and".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1997.

SEC. 908. MODIFICATION OF TAX TREATMENT OF HARD CIDER.

(a) HARD CIDER CONTAINING LESS THAN 7 PERCENT ALCOHOL TAXED AS WINE.—Subsection (b) of section 5041 (relating to imposition and rate of tax) 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 the following new paragraph:

"(6) On hard cider derived primarily from apples or apple concentrate and water, containing no other fruit product, and containing at least one-half of 1 percent and less than 7 percent alcohol by volume, 22.6 cents per wine gallon.".

(b) APPLICATION OF SMALL PRODUCER CREDIT.—Paragraph (1) of section 5041(c) (relating to credit for small domestic producers) is amended by adding at the end the following new sentence: "In the case of wine described in subsection (b)(6), the preceding sentence shall be applied by substituting '5.6 cents' for '90 cents'."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1997.

SEC. 909. STUDY OF FEASIBILITY OF MOVING COLLECTION POINT FOR DISTILLED SPIRITS EXCISE TAX.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of options for changing the event on which the tax imposed by section 5001 of the Internal Revenue Code of 1986 is determined. One such option which shall be studied is determining such tax on removal from registered wholesale warehouses. In studying each such option, such Secretary shall focus on administrative issues including—

(1) tax compliance,

(2) the number of taxpayers required to pay the tax,

(3) the types of financial responsibility requirements that might be required, and

(4) special requirements regarding segregation of non-tax-paid distilled spirits from other products.

Such study shall review the effects of each such option on the Department of the Treasury (including staffing and other demands on budgetary resources) and the change in the period between the time such tax is currently paid and the time such tax would be paid under each such option.

(b) REPORT.—The report of such study shall be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than March 31, 1998.

SEC. 910. CLARIFICATION OF AUTHORITY TO USE SEMI-GENERIC DESIGNATIONS ON WINE LABELS.

(a) IN GENERAL.—Section 5388 (relating to designation of wines) is amended by adding at the end the following new subsection:

"(c) USE OF SEMI-GENERIC DESIGNATIONS.—

"(1) IN GENERAL.—Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if—

"(A) there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine, and

"(B) the wine so designated conforms to the standard of identity, if any, for such wine contained in the regulations under this section or, if there is no such standard, to the trade understanding of such class or type.

"(2) DETERMINATION OF WHETHER NAME IS SEMI-GENERIC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a name of geographic significance, which is also the designation of a class or type of wine, shall be deemed to have become semi-generic only if so found by the Secretary.

"(B) CERTAIN NAMES TREATED AS SEMI-GENERIC.—The following names shall be treated as semi-generic: Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine or Hock, Sauterne, Haut Sauterne, Sherry, Tokay.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Revisions Relating to Disasters

SEC. 911. AUTHORITY TO POSTPONE CERTAIN TAX-RELATED DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER.

(a) IN GENERAL.—Chapter 77 is amended by inserting after section 7508 the following new section:

"SEC. 7508A. AUTHORITY TO POSTPONE CERTAIN TAX-RELATED DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER.

"(a) IN GENERAL.—In the case of a taxpayer determined by the Secretary to be affected by a Presidentially declared disaster (as defined by section 1033(h)(3)), the Secretary may prescribe regulations under which a period of up to 90 days may be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any penalty, additional amount, or addition to the tax) of such taxpayer—

"(1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor, and

"(2) the amount of any credit or refund.

"(b) INTEREST ON OVERPAYMENTS AND UNDERPAYMENTS.—Subsection (a) shall not apply for the purpose of determining interest on any overpayment or underpayment.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by inserting after the item relating to section 7508 the following new item:

"Sec. 7508A. Authority to postpone certain tax-related deadlines by reason of presidentially declared disaster.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any period for performing an act that has not expired before the date of the enactment of this Act.

SEC. 912. USE OF CERTAIN APPRAISALS TO ESTABLISH AMOUNT OF DISASTER LOSS.

(a) IN GENERAL.—Subsection (i) of section 165 is amended by adding at the end the following new paragraph:

"(4) USE OF DISASTER LOAN APPRAISALS TO ESTABLISH AMOUNT OF LOSS.—Nothing in this title shall be construed to prohibit the Secretary from prescribing regulations or other guidance under which an appraisal for the purpose of obtaining a loan of Federal funds or a loan guarantee from the Federal Government as a result of a Presidentially declared disaster (as defined by section 1033(h)(3)) may be used to establish the amount of any loss described in paragraph (1) or (2).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 913. TREATMENT OF LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) DEFERRAL OF INCOME INCLUSION.—Subsection (e) of section 451 (relating to special rules for proceeds from livestock sold on account of drought) is amended—

(1) by striking "drought conditions, and that these drought conditions" in paragraph (1) and inserting "drought, flood, or other weather-related conditions, and that such conditions"; and

(2) by inserting ", FLOOD, OR OTHER WEATHER-RELATED CONDITIONS" after "DROUGHT" in the subsection heading.

(b) INVOLUNTARY CONVERSIONS.—Subsection (e) of section 1033 (relating to livestock sold on account of drought) is amended—

(1) by inserting ", flood, or other weather-related conditions" before the period at the end thereof; and

(2) by inserting ", FLOOD, OR OTHER WEATHER-RELATED CONDITIONS" after "DROUGHT" in the subsection heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and exchanges after December 31, 1996.

SEC. 914. MORTGAGE FINANCING FOR RESIDENCES LOCATED IN DISASTER AREAS.

Subsection (k) of section 143 (relating to mortgage revenue bonds; qualified mortgage bond and qualified veteran's mortgage bond) is amended by adding at the end the following new paragraph:

"(11) SPECIAL RULES FOR RESIDENCES LOCATED IN DISASTER AREAS.—In the case of a residence located in an area determined by the President to warrant assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of the Taxpayer Relief Act of 1997), this section shall be applied with the following modifications to financing provided with respect to such residence within 2 years after the date of the disaster declaration:

"(A) Subsection (d) (relating to 3-year requirement) shall not apply.

"(B) Subsections (e) and (f) (relating to purchase price requirement and income requirement) shall be applied as if such residence were a targeted area residence.

The preceding sentence shall apply only with respect to bonds issued after December 31, 1996, and before January 1, 1999.".

SEC. 915. ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.

(a) IN GENERAL.—If the Secretary of the Treasury extends for any period the time for filing income tax returns under section 6081 of the Internal Revenue Code of 1986 and the time for paying income tax with respect to such returns under section 6161 of such Code (and waives any penalties relating to the failure to so file or so pay) for any individual located in a Presidentially declared disaster area, the Secretary shall, notwithstanding section 7508A(b) of such Code, abate for such period the assessment of any interest prescribed under section 6601 of such Code on such income tax.

(b) PRESIDENTIALLY DECLARED DISASTER AREA.—For purposes of subsection (a), the term "Presidentially declared disaster area" means, with respect to any individual, any area which the President has determined during 1997 warrants assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(c) INDIVIDUAL.—For purposes of this section, the term "individual" shall not include any estate or trust.

(d) EFFECTIVE DATE.—This section shall apply to disasters declared after December 31, 1996.

Subtitle C—Provisions Relating to Employment Taxes

SEC. 921. CLARIFICATION OF STANDARD TO BE USED IN DETERMINING EMPLOYMENT TAX STATUS OF SECURITIES BROKERS.

(a) IN GENERAL.—In determining for purposes of the Internal Revenue Code of 1986 whether a registered representative of a securities broker-dealer is an employee (as defined in section 3121(d) of the Internal Revenue Code of 1986), no weight shall be given to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to services performed after December 31, 1997.

SEC. 922. CLARIFICATION OF EXEMPTION FROM SELF-EMPLOYMENT TAX FOR CERTAIN TERMINATION PAYMENTS RECEIVED BY FORMER INSURANCE SALESMEN.

(a) INTERNAL REVENUE CODE.—Section 1402 (relating to definitions) is amended by adding at the end the following new subsection:

"(k) CODIFICATION OF TREATMENT OF CERTAIN TERMINATION PAYMENTS RECEIVED BY FORMER INSURANCE SALESMEN.—Nothing in subsection (a) shall be construed as including in the net earnings from self-employment of an individual any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if—

"(1) such amount is received after termination of such individual's agreement to perform such services for such company,

"(2) such individual performs no services for such company after such termination and before the close of such taxable year,

"(3) such individual enters into a covenant not to compete against such company which applies to at least the 1-year period beginning on the date of such termination, and

"(4) the amount of such payment—

"(A) depends primarily on policies sold by or credited to the account of such individual during the last year of such agreement or the extent to which such policies remain in force for some period after such termination, or both, and

"(B) does not depend to any extent on length of service or overall earnings from services performed for such company (without regard to whether eligibility for payment depends on length of service).".

(b) SOCIAL SECURITY ACT.—Section 211 of the Social Security Act is amended by adding at the end the following new subsection:

"Codification of Treatment of Certain Termination Payments Received by Former Insurance Salesmen

"(j) Nothing in subsection (a) shall be construed as including in the net earnings from self-employment of an individual any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if—

"(1) such amount is received after termination of such individual's agreement to perform such services for such company,

"(2) such individual performs no services for such company after such termination and before the close of such taxable year,

"(3) such individual enters into a covenant not to compete against such company which applies to at least the 1-year period beginning on the date of such termination, and

"(4) the amount of such payment—

"(A) depends primarily on policies sold by or credited to the account of such individual during the last year of such agreement or the extent to which such policies remain in force for some period after such termination, or both, and

"(B) does not depend to any extent on length of service or overall earnings from services performed for such company (without regard to whether eligibility for payment depends on length of service).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments after December 31, 1997.

Subtitle D—Provisions Relating to Small Businesses

SEC. 931. WAIVER OF PENALTY THROUGH JUNE 30, 1998, ON SMALL BUSINESSES FAILING TO MAKE ELECTRONIC FUND TRANSFERS OF TAXES.

No penalty shall be imposed under the Internal Revenue Code of 1986 solely by reason of a failure by a person to use the electronic fund transfer system established under section 6302(h) of such Code if—

(1) such person is a member of a class of taxpayers first required to use such system on or after July 1, 1997, and

(2) such failure occurs before July 1, 1998.

SEC. 932. CLARIFICATION OF TREATMENT OF HOME OFFICE USE FOR ADMINISTRATIVE AND MANAGEMENT ACTIVITIES.

(a) IN GENERAL.—Paragraph (1) of section 280A(c) is amended by adding at the end the following new sentence: "For purposes of subparagraph (A), the term 'principal place of business' includes a place of business which is used by the taxpayer for the administrative or management activities of any trade or business of the taxpayer if there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1998.

SEC. 933. AVERAGING OF FARM INCOME OVER 3 YEARS.

(a) IN GENERAL.—Subchapter Q of chapter 1 (relating to readjustment of tax between years and special limitations) is amended by adding the following new part:

"PART I—INCOME AVERAGING

"Sec. 1301. Averaging of farm income.

"SEC. 1301. AVERAGING OF FARM INCOME.

"(a) IN GENERAL.—At the election of an individual engaged in a farming business, the tax imposed by section 1 for such taxable year shall be equal to the sum of—

"(1) a tax computed under such section on taxable income reduced by elected farm income, plus

"(2) the increase in tax imposed by section 1 which would result if taxable income for each of the 3 prior taxable years were increased by an amount equal to one-third of the elected farm income.

Any adjustment under this section for any taxable year shall be taken into account in applying this section for any subsequent taxable year.

"(b) DEFINITIONS.—In this section—

"(1) ELECTED FARM INCOME.—

"(A) IN GENERAL.—The term 'elected farm income' means so much of the taxable income for the taxable year—

"(i) which is attributable to any farming business; and

"(ii) which is specified in the election under subsection (a).

"(B) TREATMENT OF GAINS.—For purposes of subparagraph (A), gain from the sale or other disposition of property (other than land) regularly used by the taxpayer in such a farming business for a substantial period shall be treated as attributable to such a farming business.

"(2) INDIVIDUAL.—The term 'individual' shall not include any estate or trust.

"(3) FARMING BUSINESS.—The term 'farming business' has the meaning given such term by section 263A(e)(4).

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations regarding—

"(1) the order and manner in which items of income, gain, deduction, or loss, or limitations on tax, shall be taken into account in computing the tax imposed by this chapter on the income of any taxpayer to whom this section applies for any taxable year, and

"(2) the treatment of any short taxable year.".

(b) CLERICAL AMENDMENT.—The table of parts for such subchapter Q is amended by inserting before the item relating to part II the following new item:

"Part I. Income averaging.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997, and before January 1, 2001.

SEC. 934. INCREASE IN DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—The table contained in section 162(l)(1)(B) is amended to read as follows:

"For taxable years beginning in calendar year—	The applicable percentage is—
1997	40
1998 and 1999	45
2000 and 2001	50
2002	60
2003 through 2005	80
2006	90
2007 and thereafter	100.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 935. MORATORIUM ON CERTAIN REGULATIONS.

No temporary or final regulation with respect to the definition of a limited partner under section 1402(a)(13) of the Internal Revenue Code of 1986 may be issued or made effective before July 1, 1998.

Subtitle E—Brownfields

SEC. 941. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by adding at the end the following new section:

"SEC. 198. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

"(a) IN GENERAL.—A taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

"(b) QUALIFIED ENVIRONMENTAL REMEDIATION EXPENDITURE.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified environmental remediation expenditure' means any expenditure—

"(A) which is otherwise chargeable to capital account, and

"(B) which is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

"(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY.—Such term shall not include any expenditure for the acquisition of property of a character subject to the allowance for depreciation which is used in connection with the abatement or control of hazardous substances at a qualified contaminated site; except that the portion of the allowance under section 167 for such property which is otherwise allocated to such site shall be treated as a qualified environmental remediation expenditure.

"(c) QUALIFIED CONTAMINATED SITE.—For purposes of this section—

"(1) QUALIFIED CONTAMINATED SITE.—

"(A) IN GENERAL.—The term 'qualified contaminated site' means any area—

"(i) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(1) in the hands of the taxpayer,

"(ii) which is within a targeted area, and

"(iii) at or on which there has been a release (or threat of release) or disposal of any hazardous substance.

"(B) TAXPAYER MUST RECEIVE STATEMENT FROM STATE ENVIRONMENTAL AGENCY.—An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirements of clauses (ii) and (iii) of subparagraph (A).

"(C) APPROPRIATE STATE AGENCY.—For purposes of subparagraph (B), the chief executive officer of each State may, in consultation with the Administrator of the Environmental Protection Agency, designate the appropriate State environmental agency within 60 days of the date of the enactment of this section. If the chief executive officer of a State has not designated an appropriate State environmental agency within such 60-day period, the appropriate environmental agency for such State shall be designated by the Administrator of the Environmental Protection Agency.

"(2) TARGETED AREA.—

"(A) IN GENERAL.—The term 'targeted area' means—

"(i) any population census tract with a poverty rate of not less than 20 percent,

"(ii) a population census tract with a population of less than 2,000 if—

"(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

"(II) such tract is contiguous to 1 or more other population census tracts which meet the requirement of clause (i) without regard to this clause,

"(iii) any empowerment zone or enterprise community (and any supplemental zone designated on December 21, 1994), and

"(iv) any site announced before February 1, 1997, as being included as a brownfields pilot project of the Environmental Protection Agency.

"(B) NATIONAL PRIORITIES LISTED SITES NOT INCLUDED.—Such term shall not include any site which is on, or proposed for, the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

"(C) CERTAIN RULES TO APPLY.—For purposes of this paragraph the rules of sections 1392(b)(4) and 1393(a)(9) shall apply.

"(d) HAZARDOUS SUBSTANCE.—For purposes of this section—

"(1) IN GENERAL.—The term 'hazardous substance' means—

"(A) any substance which is a hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(B) any substance which is designated as a hazardous substance under section 102 of such Act.

"(2) EXCEPTION.—Such term shall not include any substance with respect to which a removal or remedial action is not permitted under section 104 of such Act by reason of subsection (a)(3) thereof.

"(e) DEDUCTION RECAPTURED AS ORDINARY INCOME ON SALE, ETC.—Solely for purposes of section 1245, in the case of property to which a qualified environmental remediation expenditure would have been capitalized but for this section—

"(1) the deduction allowed by this section for such expenditure shall be treated as a deduction for depreciation, and

"(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

"(f) COORDINATION WITH OTHER PROVISIONS.—Sections 280B and 468 shall not apply to amounts which are treated as expenses under this section.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

"(h) TERMINATION.—This section shall not apply to expenditures paid or incurred after December 31, 2000.".

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

"Sec. 198. Expensing of environmental remediation costs.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

Subtitle F—Empowerment Zones, Enterprise Communities, Brownfields, and Community Development Financial Institutions

CHAPTER 1—ADDITIONAL EMPOWERMENT ZONES

SEC. 951. ADDITIONAL EMPOWERMENT ZONES.

(a) IN GENERAL.—Paragraph (2) of section 1391(b) (relating to designations of empowerment zones and enterprise communities) is amended—

(1) by striking "9" and inserting "11",

(2) by striking "6" and inserting "8", and

(3) by striking "750,000" and inserting "1,000,000".

(b) SPECIAL RULES FOR APPLICATION OF EMPLOYMENT CREDIT.—Subsection (b) of section 1396 (relating to empowerment zone employment credit) is amended—

(1) by striking so much of the subsection as precedes the table and inserting the following:

"(b) APPLICABLE PERCENTAGE.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'applicable percentage' means the percentage determined in accordance with the following table:", and

(2) by adding at the end the following new paragraph:

"(2) SPECIAL RULE.—With respect to each empowerment zone designated pursuant to the amendments made by the Taxpayer Relief Act of 1997 to section 1391(b)(2), the following table shall apply in lieu of the table in paragraph (1):

"In the case of wages paid or incurred during calendar year—	The applicable percentage is:
2000 through 2004	20
2005	15
2006	10
2007	5."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, except that designations of new empowerment zones made pursuant to such amendments shall be made during the 180-day period beginning on the date of the enactment of this Act. No designation pursuant to such amendments shall take effect before January 1, 2000.

CHAPTER 2—NEW EMPOWERMENT ZONES

SEC. 952. DESIGNATION OF NEW EMPOWERMENT ZONES.

(a) IN GENERAL.—Section 1391 (relating to designation procedure for empowerment zones and enterprise communities) is amended by adding at the end the following new subsection:

"(g) ADDITIONAL DESIGNATIONS PERMITTED.—

"(1) IN GENERAL.—In addition to the areas designated under subsection (a), the appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

"(2) PERIOD DESIGNATIONS MAY BE MADE AND TAKE EFFECT.—A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

"(3) MODIFICATIONS TO ELIGIBILITY CRITERIA, ETC.—

"(A) POVERTY RATE REQUIREMENT.—

"(i) IN GENERAL.—A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

"(ii) TREATMENT OF CENSUS TRACTS WITH SMALL POPULATIONS.—A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

"(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

"(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

"(iii) EXCEPTION FOR DEVELOPABLE SITES.—Clause (i) shall not apply to up to 3 noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 2,000 acres.

"(iv) CERTAIN PROVISIONS NOT TO APPLY.—Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to an area nominated for designation under this subsection.

"(v) SPECIAL RULE FOR RURAL EMPOWERMENT ZONE.—The Secretary of Agriculture may designate not more than 1 empowerment zone in a rural area without regard to clause (i) if such area satisfies emigration criteria specified by the Secretary of Agriculture.

"(B) SIZE LIMITATION.—

"(i) IN GENERAL.—The parcels described in subparagraph (A)(iii) shall not be taken into account in determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

"(ii) SPECIAL RULE FOR RURAL AREAS.—If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

"(C) AGGREGATE POPULATION LIMITATION.—The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1)(B).

"(D) PREVIOUSLY DESIGNATED ENTERPRISE COMMUNITIES MAY BE INCLUDED.—Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a) that is also nominated for designation under this subsection.

"(E) INDIAN RESERVATIONS MAY BE NOMINATED.—

"(i) IN GENERAL.—Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

"(ii) SPECIAL RULE.—An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of Interior)."

(b) EMPLOYMENT CREDIT NOT TO APPLY TO NEW EMPOWERMENT ZONES.—Section 1396 (relating to empowerment zone employment credit) is amended by adding at the end the following new subsection:

"(e) CREDIT NOT TO APPLY TO EMPOWERMENT ZONES DESIGNATED UNDER SECTION 1391(g).—This section shall be applied without regard to any empowerment zone designated under section 1391(g)."

(c) INCREASED EXPENSING UNDER SECTION 179 NOT TO APPLY IN DEVELOPABLE SITES.—Section 1397A (relating to increase in expensing under section 179) is amended by adding at the end the following new subsection:

"(c) LIMITATION.—For purposes of this section, qualified zone property shall not include any property substantially all of the use of which is in any parcel described in section 1391(g)(3)(A)(iii)."

(d) CONFORMING AMENDMENTS.—

(1) Subsections (e) and (f) of section 1391 are each amended by striking "subsection (a)" and inserting "this section".

(2) Section 1391(c) is amended by striking "this section" and inserting "subsection (a)".

SEC. 953. VOLUME CAP NOT TO APPLY TO ENTERPRISE ZONE FACILITY BONDS WITH RESPECT TO NEW EMPOWERMENT ZONES.

(a) IN GENERAL.—Section 1394 (relating to tax-exempt enterprise zone facility bonds) is amended by adding at the end the following new subsection:

"(f) BONDS FOR EMPOWERMENT ZONES DESIGNATED UNDER SECTION 1391(g).—

"(1) IN GENERAL.—In the case of a new empowerment zone facility bond—

"(A) such bond shall not be treated as a private activity bond for purposes of section 146, and

"(B) subsection (c) of this section shall not apply.

"(2) LIMITATION ON AMOUNT OF BONDS.—

"(A) IN GENERAL.—Paragraph (1) shall apply to a new empowerment zone facility bond only if such bond is designated for purposes of this subsection by the local government which nominated the area to which such bond relates.

"(B) LIMITATION ON BONDS DESIGNATED.—The aggregate face amount of bonds which may be designated under subparagraph (A) with respect to any empowerment zone shall not exceed—

"(i) $60,000,000 if such zone is in a rural area,

"(ii) $130,000,000 if such zone is in an urban area and the zone has a population of less than 100,000, and

"(iii) $230,000,000 if such zone is in an urban area and the zone has a population of at least 100,000.

"(C) SPECIAL RULES.—

"(i) COORDINATION WITH LIMITATION IN SUBSECTION (c).—Bonds to which paragraph (1) applies shall not be taken into account in applying the limitation of subsection (c) to other bonds.

"(ii) CURRENT REFUNDING NOT TAKEN INTO ACCOUNT.—In the case of a refunding (or series of refundings) of a bond designated under this paragraph, the refunding obligation shall be treated as designated under this paragraph (and shall not be taken into account in applying subparagraph (B)) if—

"(I) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(II) the refunded bond is redeemed not later than 90 days after the date of issuance of the refunding bond.

"(3) NEW EMPOWERMENT ZONE FACILITY BOND.—For purposes of this subsection, the term 'new empowerment zone facility bond' means any bond which would be described in subsection (a) if only empowerment zones designated under section 1391(g) were taken into account under sections 1397B and 1397C."

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

SEC. 954. MODIFICATION TO ELIGIBILITY CRITERIA FOR DESIGNATION OF FUTURE ENTERPRISE ZONES IN ALASKA OR HAWAII.

Section 1392 (relating to eligibility criteria) is amended by adding at the end the following new subsection:

"(d) SPECIAL ELIGIBILITY FOR NOMINATED AREAS LOCATED IN ALASKA OR HAWAII.—A nominated area in Alaska or Hawaii shall be treated as meeting the requirements of paragraphs (2), (3), and (4) of subsection (a) if for each census tract or block group within such area 20 percent or more of the families have income which is 50 percent or less of the statewide median family income (as determined under section 143).".

CHAPTER 3—TREATMENT OF EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

SEC. 955. MODIFICATIONS TO ENTERPRISE ZONE FACILITY BOND RULES FOR ALL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.

(a) MODIFICATIONS RELATING TO ENTERPRISE ZONE BUSINESS.—Paragraph (3) of section 1394(b) (defining enterprise zone business) is amended to read as follows:

"(3) ENTERPRISE ZONE BUSINESS.—

"(A) IN GENERAL.—Except as modified in this paragraph, the term 'enterprise zone business' has the meaning given such term by section 1397B.

"(B) MODIFICATIONS.—In applying section 1397B for purposes of this section—

"(i) BUSINESSES IN ENTERPRISE COMMUNITIES ELIGIBLE.—References in section 1397B to empowerment zones shall be treated as including references to enterprise communities.

"(ii) WAIVER OF REQUIREMENTS DURING STARTUP PERIOD.—A business shall not fail to be treated as an enterprise zone business during the startup period if—

"(I) as of the beginning of the startup period, it is reasonably expected that such business will be an enterprise zone business (as defined in section 1397B as modified by this paragraph) at the end of such period, and

"(II) such business makes bona fide efforts to be such a business.

"(iii) REDUCED REQUIREMENTS AFTER TESTING PERIOD.—A business shall not fail to be treated as an enterprise zone business for any taxable year beginning after the testing period by reason of failing to meet any requirement of subsection (b) or (c) of section 1397B if at least 35 percent of the employees of such business for such year are residents of an empowerment zone or an enterprise community. The preceding sentence shall not apply to any business which is not a qualified business by reason of paragraph (1), (4), or (5) of section 1397B(d).

"(C) DEFINITIONS RELATING TO SUBPARAGRAPH (B).—For purposes of subparagraph (B)—

"(i) STARTUP PERIOD.—The term 'startup period' means, with respect to any property being provided for any business, the period before the first taxable year beginning more than 2 years after the later of—

"(I) the date of issuance of the issue providing such property, or

"(II) the date such property is first placed in service after such issuance (or, if earlier, the date which is 3 years after the date described in subclause (I)).

"(ii) TESTING PERIOD.—The term 'testing period' means the first 3 taxable years beginning after the startup period.

"(D) PORTIONS OF BUSINESS MAY BE ENTERPRISE ZONE BUSINESS.—The term 'enterprise zone business' includes any trades or businesses which would qualify as an enterprise zone business (determined after the modifications of subparagraph (B)) if such trades or businesses were separately incorporated."

(b) MODIFICATIONS RELATING TO QUALIFIED ZONE PROPERTY.—Paragraph (2) of section 1394(b) (defining qualified zone property) is amended to read as follows:

"(2) QUALIFIED ZONE PROPERTY.—The term 'qualified zone property' has the meaning given such term by section 1397C; except that—

"(A) the references to empowerment zones shall be treated as including references to enterprise communities, and

"(B) section 1397C(a)(2) shall be applied by substituting 'an amount equal to 15 percent of the adjusted basis' for 'an amount equal to the adjusted basis'."

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

SEC. 956. MODIFICATIONS TO ENTERPRISE ZONE BUSINESS DEFINITION FOR ALL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.

(a) IN GENERAL.—Section 1397B (defining enterprise zone business) is amended—

(1) by striking "80 percent" in subsections (b)(2) and (c)(1) and inserting "50 percent",

(2) by striking "substantially all" each place it appears in subsections (b) and (c) and inserting "a substantial portion",

(3) by striking ", and exclusively related to," in subsections (b)(4) and (c)(3),

(4) by adding at the end of subsection (d)(2) the following new flush sentence:

"For purposes of subparagraph (B), the lessor of the property may rely on a lessee's certification that such lessee is an enterprise zone business.",

(5) by striking "substantially all" in subsection (d)(3) and inserting "at least 50 percent", and

(6) by adding at the end the following new subsection:

"(f) TREATMENT OF BUSINESSES STRADDLING CENSUS TRACT LINES.—For purposes of this section, if—

"(1) a business entity or proprietorship uses real property located within an empowerment zone,

"(2) the business entity or proprietorship also uses real property located outside the empowerment zone,

"(3) the amount of real property described in paragraph (1) is substantial compared to the amount of real property described in paragraph (2), and

"(4) the real property described in paragraph (2) is contiguous to part or all of the real property described in paragraph (1),

then all the services performed by employees, all business activities, all tangible property, and all intangible property of the business entity or proprietorship that occur in or is located on the real property described in paragraphs (1) and (2) shall be treated as occurring or situated in an empowerment zone."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

(2) SPECIAL RULE FOR ENTERPRISE ZONE FACILITY BONDS.—For purposes of section 1394(b) of the Internal Revenue Code of 1986, the amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

Subtitle G—Other Provisions

SEC. 961. USE OF ESTIMATES OF SHRINKAGE FOR INVENTORY ACCOUNTING.

(a) IN GENERAL.—Section 471 (relating to general rule for inventories) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) ESTIMATES OF INVENTORY SHRINKAGE PERMITTED.—A method of determining inventories shall not be treated as failing to clearly reflect income solely because it utilizes estimates of inventory shrinkage that are confirmed by a physical count only after the last day of the taxable year if—

"(1) the taxpayer normally does a physical count of inventories at each location on a regular and consistent basis, and

"(2) the taxpayer makes proper adjustments to such inventories and to its estimating methods to the extent such estimates are greater than or less than the actual shrinkage.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) COORDINATION WITH SECTION 481.—In the case of any taxpayer permitted by this section to change its method of accounting to a permissible method for any taxable year—

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

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

(C) the period for taking into account the adjustments under section 481 by reason of such change shall be 4 years.

SEC. 962. ASSIGNMENT OF WORKMEN'S COMPENSATION LIABILITY ELIGIBLE FOR EXCLUSION RELATING TO PERSONAL INJURY LIABILITY ASSIGNMENTS.

(a) IN GENERAL.—Subsection (c) of section 130 (relating to certain personal injury liability assignments) is amended—

(1) by inserting ", or as compensation under any workmen's compensation act," after "(whether by suit or agreement)" in the material preceding paragraph (1),

(2) by inserting "or the workmen's compensation claim," after "agreement," in paragraph (1), and

(3) by striking "section 104(a)(2)" in paragraph (2)(D) and inserting "paragraph (1) or (2) of section 104(a)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to claims under workmen's compensation acts filed after the date of the enactment of this Act.

SEC. 963. TAX-EXEMPT STATUS FOR CERTAIN STATE WORKER'S COMPENSATION ACT COMPANIES.

(a) IN GENERAL.—Section 501(c)(27) (relating to membership organizations under workmen's compensation acts) is amended by adding at the end the following:

"(B) Any organization (including a mutual insurance company) if—

"(i) such organization is created by State law and is organized and operated under State law exclusively to—

"(I) provide workmen's compensation insurance which is required by State law or with respect to which State law provides significant disincentives if such insurance is not purchased by an employer, and

"(II) provide related coverage which is incidental to workmen's compensation insurance,

"(ii) such organization must provide workmen's compensation insurance to any employer in the State (for employees in the State or temporarily assigned out-of-State) which seeks such insurance and meets other reasonable requirements relating thereto,

"(iii)(I) the State makes a financial commitment with respect to such organization either by extending the full faith and credit of the State to the initial debt of such organization or by providing the initial operating capital of such organization, and (II) in the case of periods after the date of enactment of this subparagraph, the assets of such organization revert to the State upon dissolution or State law does not permit the dissolution of such organization, and

"(iv) the majority of the board of directors or oversight body of such organization are appointed by the chief executive officer or other executive branch official of the State, by the State legislature, or by both.".

(b) CONFORMING AMENDMENTS.—Section 501(c)(27) is amended by inserting "(A)" after "(27)", by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and by redesignating clauses (i) and (ii) of subparagraphs (B) and (C) (before redesignation) as subclauses (I) and (II), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 964. ELECTION FOR 1987 PARTNERSHIPS TO CONTINUE EXCEPTION FROM TREATMENT OF PUBLICLY TRADED PARTNERSHIPS AS CORPORATIONS.

(a) IN GENERAL.—Section 7704 is amended by adding at the end the following new subsection:

"(g) EXCEPTION FOR ELECTING 1987 PARTNERSHIPS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to an electing 1987 partnership.

"(2) ELECTING 1987 PARTNERSHIP.—For purposes of this subsection, the term 'electing 1987 partnership' means any publicly traded partnership if—

"(A) such partnership is an existing partnership (as defined in section 10211(c)(2) of the Revenue Reconciliation Act of 1987),

"(B) subsection (a) has not applied (and without regard to subsection (c)(1) would not have applied) to such partnership for all prior taxable years beginning after December 31, 1987, and before January 1, 1998, and

"(C) such partnership elects the application of this subsection, and consents to the application of the tax imposed by paragraph (3), for its first taxable year beginning after December 31, 1997.

A partnership which, but for this sentence, would be treated as an electing 1987 partnership shall cease to be so treated (and the election under subparagraph (C) shall cease to be in effect) as of the 1st day after December 31, 1997, on which there has been an addition of a substantial new line of business with respect to such partnership.

"(3) ADDITIONAL TAX ON ELECTING PARTNERSHIPS.—

"(A) IMPOSITION OF TAX.—There is hereby imposed for each taxable year on the income of each electing 1987 partnership a tax equal to 3.5 percent of such partnership's gross income for the taxable year from the active conduct of trades and businesses by the partnership.

"(B) ADJUSTMENTS IN THE CASE OF TIERED PARTNERSHIPS.—For purposes of this paragraph, in the case of a partnership which is a partner in another partnership, the gross income referred to in subparagraph (A) shall include the partnership's distributive share of the gross income of such other partnership from the active conduct of trades and businesses of such other partnership. A similar rule shall apply in the case of lower-tiered partnerships.

"(C) TREATMENT OF TAX.—For purposes of this title, the tax imposed by this paragraph shall be treated as imposed by chapter 1 other than for purposes of determining the amount of any credit allowable under chapter 1.

"(4) ELECTION.—An election and consent under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the partnership. Such revocation may be made without the consent of the Secretary, but, once so revoked, may not be reinstated.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 965. EXCLUSION FROM UNRELATED BUSINESS TAXABLE INCOME FOR CERTAIN SPONSORSHIP PAYMENTS.

(a) IN GENERAL.—Section 513 (relating to unrelated trade or business income) is amended by adding at the end the following new subsection:

"(i) TREATMENT OF CERTAIN SPONSORSHIP PAYMENTS.—

"(1) IN GENERAL.—The term 'unrelated trade or business' does not include the activity of soliciting and receiving qualified sponsorship payments.

"(2) QUALIFIED SPONSORSHIP PAYMENTS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified sponsorship payment' means any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo (or product lines) of such person's trade or business in connection with the activities of the organization that receives such payment. Such a use or acknowledgement does not include advertising such person's products or services (including messages containing qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use such products or services).

"(B) LIMITATIONS.—

"(i) CONTINGENT PAYMENTS.—The term 'qualified sponsorship payment' does not include any payment if the amount of such payment is contingent upon the level of attendance at one or more events, broadcast ratings, or other factors indicating the degree of public exposure to one or more events.

"(ii) SAFE HARBOR DOES NOT APPLY TO PERIODICALS AND QUALIFIED CONVENTION AND TRADE SHOW ACTIVITIES.—The term 'qualified sponsorship payment' does not include—

"(I) any payment which entitles the payor to the use or acknowledgement of the name or logo (or product lines) of the payor's trade or business in regularly scheduled and printed material published by or on behalf of the payee organization that is not related to and primarily distributed in connection with a specific event conducted by the payee organization, or

"(II) any payment made in connection with any qualified convention or trade show activity (as defined in subsection (d)(3)(B)).

"(3) ALLOCATION OF PORTIONS OF SINGLE PAYMENT.—For purposes of this subsection, to the extent that a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, such portion of such payment and the other portion of such payment shall be treated as separate payments.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments solicited or received after December 31, 1997.

SEC. 966. ASSOCIATIONS OF HOLDERS OF TIMESHARE INTERESTS TO BE TAXED LIKE OTHER HOMEOWNERS ASSOCIATIONS.

(a) TIMESHARE ASSOCIATIONS INCLUDED AS HOMEOWNER ASSOCIATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 528(c) (defining homeowners association) is amended—

(A) by striking "or a residential real estate management association" and inserting ", a residential real estate management association, or a timeshare association" in the material preceding subparagraph (A),

(B) by striking "or" at the end of clause (i) of subparagraph (B), by striking the period at the end of clause (ii) of subparagraph (B) and inserting ", or", and by adding at the end of subparagraph (B) the following new clause:

"(iii) owners of timeshare rights to use, or timeshare ownership interests in, association property in the case of a timeshare association,", and

(C) by inserting "and, in the case of a timeshare association, for activities provided to or on behalf of members of the association" before the comma at the end of subparagraph (C).

(2) TIMESHARE ASSOCIATION DEFINED.—Subsection (c) of section 528 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) TIMESHARE ASSOCIATION.—The term 'timeshare association' means any organization (other than a condominium management association) meeting the requirement of subparagraph (A) of paragraph (1) if any member thereof holds a timeshare right to use, or a timeshare ownership interest in, real property constituting association property.".

(b) EXEMPT FUNCTION INCOME.—Paragraph (3) of section 528(d) 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 the following new subparagraph:

"(C) owners of timeshare rights to use, or timeshare ownership interests in, real property in the case of a timeshare association.".

(c) ASSOCIATION PROPERTY.—Paragraph (5) of section 528(c), as redesignated by subsection (a)(2), is amended by adding at the end the following new flush sentence:

"In the case of a timeshare association, such term includes property in which the timeshare association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the timeshare project.".

(d) RATE OF TAX.—Subsection (b) of section 528 (relating to certain homeowners associations) is amended by inserting before the period "(32 percent of such income in the case of a timeshare association)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

SEC. 967. ADDITIONAL ADVANCE REFUNDING OF CERTAIN VIRGIN ISLAND BONDS.

Subclause (I) of section 149(d)(3)(A)(i) of the Internal Revenue Code of 1986 shall not apply to the second advance refunding of any issue of the Virgin Islands which was first advance refunded before June 9, 1997, if the debt provisions of the refunding bonds are changed to repeal the priority first lien requirement of the refunded bonds.

SEC. 968. NONRECOGNITION OF GAIN ON SALE OF STOCK TO CERTAIN FARMERS' COOPERATIVES.

(a) IN GENERAL.—Section 1042 (relating to sales of stock to employee stock ownership plans or certain cooperatives) is amended by adding at the end the following new subsection:

"(g) APPLICATION OF SECTION TO SALES OF STOCK IN AGRICULTURAL REFINERS AND PROCESSORS TO ELIGIBLE FARM COOPERATIVES.—

"(1) IN GENERAL.—This section shall apply to the sale of stock of a qualified refiner or processor to an eligible farmers' cooperative.

"(2) QUALIFIED REFINER OR PROCESSOR.—For purposes of this subsection, the term 'qualified refiner or processor' means a domestic corporation—

"(A) substantially all of the activities of which consist of the active conduct of the trade or business of refining or processing agricultural or horticultural products, and

"(B) which, during the 1-year period ending on the date of the sale, purchases more than one-half of such products to be refined or processed from—

"(i) farmers who make up the eligible farmers' cooperative which is purchasing stock in the corporation in a transaction to which this subsection is to apply, or

"(ii) such cooperative.

"(3) ELIGIBLE FARMERS' COOPERATIVE.—For purposes of this section, the term 'eligible farmers' cooperative' means an organization to which part I of subchapter T applies and which is engaged in the marketing of agricultural or horticultural products.

"(4) SPECIAL RULES.—In applying this section to a sale to which paragraph (1) applies—

"(A) the eligible farmers' cooperative shall be treated in the same manner as a cooperative described in subsection (b)(1)(B),

"(B) subsection (b)(2) shall be applied by substituting '100 percent' for '30 percent' each place it appears,

"(C) the determination as to whether any stock in the domestic corporation is a qualified security shall be made without regard to whether the stock is an employer security or to subsection (c)(1)(A), and

"(D) paragraphs (2)(D) and (7) of subsection (c) shall not apply.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales after December 31, 1997.

SEC. 969. INCREASED DEDUCTIBILITY OF BUSINESS MEAL EXPENSES FOR INDIVIDUALS SUBJECT TO FEDERAL HOURS OF SERVICE.

(a) IN GENERAL.—Section 274(n) (relating to only 50 percent of meal and entertainment expenses allowed as deduction) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR INDIVIDUALS SUBJECT TO FEDERAL HOURS OF SERVICE.—

"(A) IN GENERAL.—In the case of any expenses for food or beverages consumed while away from home (within the meaning of section 162(a)(2)) by an individual during, or incident to, the period of duty subject to the hours of service limitations of the Department of Transportation, paragraph (1) shall be applied by substituting 'the applicable percentage' for '50 percent'.

"(B) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the term 'applicable percentage' means the percentage determined under the following table:

"For taxable years beginning in calendar year—	The applicable percentage is—
1998 or 1999	55
2000 or 2001	60
2002 or 2003	65
2004 or 2005	70
2006 or 2007	75
2008 or thereafter	80.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1997.

SEC. 970. CLARIFICATION OF DE MINIMIS FRINGE BENEFIT RULES TO NO-CHARGE EMPLOYEE MEALS.

(a) IN GENERAL.—Paragraph (2) of section 132(e) (defining de minimis fringe) is amended by adding at the end the following new sentence: "For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 971. EXEMPTION OF THE INCREMENTAL COST OF A CLEAN FUEL VEHICLE FROM THE LIMITS ON DEPRECIATION FOR VEHICLES.

(a) IN GENERAL.—Section 280F(a)(1) (relating to limiting depreciation on luxury automobiles) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE FOR CERTAIN CLEAN-FUEL PASSENGER AUTOMOBILES.—

"(i) MODIFIED AUTOMOBILES.—In the case of a passenger automobile which is propelled by a fuel which is not a clean-burning fuel and to which is installed qualified clean-fuel vehicle property (as defined in section 179A(c)(1)(A)) for purposes of permitting such vehicle to be propelled by a clean burning fuel (as defined in section 179A(e)(1)), subparagraph (A) shall not apply to the cost of the installed qualified clean burning vehicle property.

"(ii) PURPOSE BUILT PASSENGER VEHICLES.—In the case of a purpose built passenger vehicle (as defined in section 4001(a)(2)(C)(ii)), each of the annual limitations specified in subparagraph (A) shall be tripled.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of enactment of this Act and before January 1, 2005.

SEC. 972. TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR MARGINAL PRODUCTION.

(a) IN GENERAL.—Paragraph (6) of section 613A(c) is amended by adding at the end the following new subparagraph:

"(H) TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.—The second sentence of subsection (a) of section 613 shall not apply to so much of the allowance for depletion as is determined under subparagraph (A) for any taxable year beginning after December 31, 1997, and before January 1, 2000.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1997.

SEC. 973. INCREASE IN STANDARD MILEAGE RATE EXPENSE DEDUCTION FOR CHARITABLE USE OF PASSENGER AUTOMOBILE.

(a) IN GENERAL.—Section 170(i) (relating to standard mileage rate for use of passenger automobile) is amended to read as follows:

"(i) STANDARD MILEAGE RATE FOR USE OF PASSENGER AUTOMOBILE.—For purposes of computing the deduction under this section for use of a passenger automobile, the standard mileage rate shall be 14 cents per mile.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1997.

SEC. 974. CLARIFICATION OF TREATMENT OF CERTAIN RECEIVABLES PURCHASED BY COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.

(a) IN GENERAL.—Subparagraph (A) of section 501(e)(1) is amended by inserting "(including the purchase of patron accounts receivable on a recourse basis)" after "billing and collection".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1996.

SEC. 975. DEDUCTION IN COMPUTING ADJUSTED GROSS INCOME FOR EXPENSES IN CONNECTION WITH SERVICE PERFORMED BY CERTAIN OFFICIALS.

(a) IN GENERAL.—Paragraph (2) of section 62(a) (defining adjusted gross income) is amended by adding at the end the following new subparagraph:

"(C) CERTAIN EXPENSES OF OFFICIALS.—The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred in taxable years beginning after December 31, 1986.

SEC. 976. COMBINED EMPLOYMENT TAX REPORTING DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of the Treasury shall provide for a demonstration project to assess the feasibility and desirability of expanding combined Federal and State tax reporting.

(b) DESCRIPTION OF DEMONSTRATION PROJECT.—The demonstration project under subsection (a) shall be—

(1) carried out between the Internal Revenue Service and the State of Montana for a period ending with the date which is 5 years after the date of the enactment of this Act,

(2) limited to the reporting of employment taxes, and

(3) limited to the disclosure of the taxpayer identity (as defined in section 6103(b)(6) of such Code) and the signature of the taxpayer.

(c) CONFORMING AMENDMENT.—Section 6103(d) is amended by adding at the end the following new paragraph:

"(5) DISCLOSURE FOR CERTAIN COMBINED REPORTING PROJECT.—The Secretary shall disclose taxpayer identities and signatures for purposes of the demonstration project described in section 967 of the Taxpayer Relief Act of 1997.".

SEC. 977. ELECTIVE CARRYBACK OF EXISTING CARRYOVERS OF NATIONAL RAILROAD PASSENGER CORPORATION.

(a) ELECTIVE CARRYBACK.—

(1) IN GENERAL.—If the National Railroad Passenger Corporation (in this section referred to as the "Corporation")—

(A) makes an election under this section for its first taxable year ending after September 30, 1997, and

(B) agrees to the conditions specified in paragraph (2),

then the Corporation shall be treated as having made a payment of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for such first taxable year and the succeeding taxable year in an amount (for each such taxable year) equal to 50 percent of the amount determined under paragraph (3). Each such payment shall be treated as having been made by the Corporation on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for the taxable year to which such payment relates.

(2) CONDITIONS.—

(A) IN GENERAL.—This section shall only apply to the Corporation if it agrees (in such manner as the Secretary of the Treasury or his delegate may prescribe) to—

(i) except as provided in clause (ii), use any refund of the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the Corporation, and

(ii) make the payments to non-Amtrak States as described in subsection (c).

(B) REPAYMENT.—

(i) IN GENERAL.—The Corporation shall repay to the United States any amount not used in accordance with this paragraph and any amount remaining unused as of January 1, 2010.

(ii) SPECIAL RULES.—For purposes of clause (i)—

(I) no amount shall be treated as remaining unused as of January 1, 2010, if it is obligated as of such date for a qualified expense, and

(II) the Corporation shall not be treated as failing to meet the requirements of clause (i) by reason of investing any amount for a temporary period.

(3) AMOUNT.—For purposes of paragraph (1)—

(A) IN GENERAL.—The amount determined under this paragraph shall be the lesser of—

(i) 35 percent of the Corporation's existing qualified carryovers, or

(ii) the Corporation's net tax liability for the carryback period.

(B) DOLLAR LIMIT.—Such amount shall not exceed $2,323,000,000.

(b) EXISTING QUALIFIED CARRYOVERS; NET TAX LIABILITY.—For purposes of this section—

(1) EXISTING QUALIFIED CARRYOVERS.—The term "existing qualified carryovers" means the aggregate of the amounts which are net operating loss carryovers under section 172(b) of the Internal Revenue Code of 1986 to the Corporation's first taxable year ending after September 30, 1997.

(2) NET TAX LIABILITY FOR CARRYBACK PERIOD.—

(A) IN GENERAL.—The Corporation's net tax liability for the carryback period is the aggregate of the net tax liability of the Corporation's railroad predecessors for taxable years in the carryback period.

(B) NET TAX LIABILITY.—The term "net tax liability" means, with respect to any taxable year, the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (or any corresponding provision of prior law) for such taxable year, reduced by the sum of the credits allowable against such tax under such Code (or any corresponding provision of prior law).

(C) CARRYBACK PERIOD.—The term "carryback period" means the period—

(i) which begins with the first taxable year of any railroad predecessor beginning before January 1, 1971, for which there is a net tax liability, and

(ii) which ends with the last taxable year of any railroad predecessor beginning before January 1, 1971.

(3) RAILROAD PREDECESSOR.—

(A) IN GENERAL.—The term "railroad predecessor" means—

(i) any railroad which entered into a contract under section 401 or 404(a) of the Rail Passenger Service Act of 1970 relieving the railroad of its entire responsibility for the provision of intercity rail passenger service, and

(ii) any predecessor thereof.

(B) CONSOLIDATED RETURNS.—If any railroad described in subparagraph (A) was a member of an affiliated group which filed a consolidated return for any taxable year in the carryback period, each member of such group shall be treated as a railroad predecessor for such year.

(c) PAYMENTS TO NON-AMTRAK STATES.—

(1) IN GENERAL.—Within 30 days after receipt of any refund of any payment described in subsection (a)(1), the Corporation shall pay to each non-Amtrak State an amount equal to 1 percent of the amount of such refund.

(2) USE OF PAYMENT.—Each non-Amtrak State shall use the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the State.

(3) REPAYMENT.—A non-Amtrak State shall pay to the United States—

(A) any portion of the payment received by the State under paragraph (1) (and any interest thereon) which is used for a purpose other than to finance qualified expenses of the State or which remains unused as of January 1, 2010, or

(B) if such State ceases to be a non-Amtrak State, the portion of such payment (and any interest thereon) remaining as of the date of the cessation.

Rules similar to the rules of subsection (a)(2)(B) shall apply for purposes of this paragraph.

(d) TAX CONSEQUENCES.—

(1) REDUCTION IN CARRYOVERS.—If the Corporation elects the application of this section, the Corporation's existing qualified carryovers shall be reduced by an amount equal to the amount determined under subsection (a)(3) divided by 0.35.

(2) REDUCTION IN TAX PAID BY RAILROAD PREDECESSORS.—

(A) IN GENERAL.—The Secretary of the Treasury or his delegate shall appropriately adjust the tax account of each railroad predecessor to reduce the net tax liability of such predecessor for taxable years beginning in the carryback period which is offset by reason of the application of this section.

(B) FIFO ORDERING RULE.—The Secretary shall make the adjustments under subparagraph (A) first for the earliest year in the carryback period and then for each subsequent year in such period.

(C) NO EFFECT ON OTHER TAXPAYERS.—In no event shall any taxpayer other than the Corporation be allowed a refund or credit by reason of this section.

(D) WAIVER OF LIMITATIONS.—If the adjustment under subparagraph (A) is barred by the operation of any law or rule of law, such law or rule of law shall be waived solely for purposes of making such adjustment.

(3) TAX TREATMENT OF EXPENDITURES.—With respect to any payment by the Corporation of qualified expenses described in subsection (e)(1)(A) during any taxable year from the amount of any refund of the payment described in subsection (a)(1)—

(A) no deduction shall be allowed to the Corporation with respect to any amount paid or incurred which is attributable to such amount, and

(B) the basis of any property shall be reduced by the portion of the cost of such property which is attributable to such amount.

(4) PAYMENTS TO A NON-AMTRAK STATE.—No deduction shall be allowed to the Corporation under chapter 1 of the Internal Revenue Code of 1986 for any payment to a non-Amtrak State required under subsection (a)(2)(A)(ii).

(e) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED EXPENSES.—The term "qualified expenses" means expenses incurred for—

(A) in the case of the Corporation—

(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service, and

(ii) the payment of interest and principal on obligations incurred for such acquisition, upgrading, and maintenance, and

(B) in the case of a non-Amtrak State—

(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service,

(ii) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity bus service,

(iii) the purchase of intercity passenger rail services from the Corporation, and

(iv) the payment of interest and principal on obligations incurred for such acquisition, upgrading, maintenance, and purchase.

In the case of a non-Amtrak State which provides its own intercity passenger rail service on the date of the enactment of this paragraph, subparagraph (B) shall be applied by only taking into account clauses (i) and (iv).

(2) NON-AMTRAK STATE.—The term "non-Amtrak State" means, with respect to any payment, any State which does not receive intercity passenger rail service from the Corporation at any time during the period beginning on the date of the enactment of this Act and ending on the date of the payment.

(f) AUTHORIZING REFORM REQUIRED.—

(1) IN GENERAL.—The Secretary of the Treasury shall not make payment of any refund of any payment described in subsection (a)(1) earlier than the date of the enactment of Federal legislation, other than legislation included in this section, which is enacted after July 29, 1997, and which authorizes reforms of the National Railroad Passenger Corporation.

(2) NO INTEREST.—Notwithstanding any other provision of law, if the payment of any refund is delayed by reason of paragraph (1), no interest shall accrue with respect to such payment prior to the 45th day following the date of the enactment of Federal legislation described in paragraph (1).

(3) ESTIMATE OF REVENUE.—For purposes of estimating revenues under budget reconciliation, the impact of this section on Federal revenues shall be determined without regard to this subsection.

Subtitle H—Extension of Duty-Free Treatment Under Generalized System of Preferences

SEC. 981. GENERALIZED SYSTEM OF PREFERENCES.

(a) EXTENSION OF DUTY-FREE TREATMENT UNDER SYSTEM.—Section 505 of the Trade Act of 1974 (19 U.S.C. 2465) is amended by striking "May 31, 1997" and inserting "June 30, 1998".

(b) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law and subject to paragraph (2), the entry—

(A) of any article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on May 31, 1997, and

(B) that was made after May 31, 1997, and before the date of the enactment of this Act,

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry. As used in this subsection, the term "entry" includes a withdrawal from warehouse for consumption.

(2) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.

TITLE X—REVENUES

Subtitle A—Financial Products

SEC. 1001. CONSTRUCTIVE SALES TREATMENT FOR APPRECIATED FINANCIAL POSITIONS.

(a) IN GENERAL.—Part IV of subchapter P of chapter 1 is amended by adding at the end the following new section:

"SEC. 1259. CONSTRUCTIVE SALES TREATMENT FOR APPRECIATED FINANCIAL POSITIONS.

"(a) IN GENERAL.—If there is a constructive sale of an appreciated financial position—

"(1) the taxpayer shall recognize gain as if such position were sold, assigned, or otherwise terminated at its fair market value on the date of such constructive sale (and any gain shall be taken into account for the taxable year which includes such date), and

"(2) for purposes of applying this title for periods after the constructive sale—

"(A) proper adjustment shall be made in the amount of any gain or loss subsequently realized with respect to such position for any gain taken into account by reason of paragraph (1), and

"(B) the holding period of such position shall be determined as if such position were originally acquired on the date of such constructive sale.

"(b) APPRECIATED FINANCIAL POSITION.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'appreciated financial position' means any position with respect to any stock, debt instrument, or partnership interest if there would be gain were such position sold, assigned, or otherwise terminated at its fair market value.

"(2) EXCEPTIONS.—The term 'appreciated financial position' shall not include—

"(A) any position with respect to debt if—

"(i) the debt unconditionally entitles the holder to receive a specified principal amount,

"(ii) the interest payments (or other similar amounts) with respect to such debt meet the requirements of clause (i) of section 860G(a)(1)(B), and

"(iii) such debt is not convertible (directly or indirectly) into stock of the issuer or any related person, and

"(B) any position which is marked to market under any provision of this title or the regulations thereunder.

"(3) POSITION.—The term 'position' means an interest, including a futures or forward contract, short sale, or option.

"(c) CONSTRUCTIVE SALE.—For purposes of this section—

"(1) IN GENERAL.—A taxpayer shall be treated as having made a constructive sale of an appreciated financial position if the taxpayer (or a related person)—

"(A) enters into a short sale of the same or substantially identical property,

"(B) enters into an offsetting notional principal contract with respect to the same or substantially identical property,

"(C) enters into a futures or forward contract to deliver the same or substantially identical property,

"(D) in the case of an appreciated financial position that is a short sale or a contract described in subparagraph (B) or (C) with respect to any property, acquires the same or substantially identical property, or

"(E) to the extent prescribed by the Secretary in regulations, enters into 1 or more other transactions (or acquires 1 or more positions) that have substantially the same effect as a transaction described in any of the preceding subparagraphs.

"(2) EXCEPTION FOR SALES OF NONPUBLICLY TRADED PROPERTY.—The term 'constructive sale' shall not include any contract for sale of any stock, debt instrument, or partnership interest which is not a marketable security (as defined in section 453(f)) if the contract settles within 1 year after the date such contract is entered into.

"(3) EXCEPTION FOR CERTAIN CLOSED TRANSACTIONS.—

"(A) IN GENERAL.—In applying this section, there shall be disregarded any transaction (which would otherwise be treated as a constructive sale) during the taxable year if—

"(i) such transaction is closed before the end of the 30th day after the close of such taxable year,

"(ii) the taxpayer holds the appreciated financial position throughout the 60-day period beginning on the date such transaction is closed, and

"(iii) at no time during such 60-day period is the taxpayer's risk of loss with respect to such position reduced by reason of a circumstance which would be described in section 246(c)(4) if references to stock included references to such position.

"(B) TREATMENT OF POSITIONS WHICH ARE REESTABLISHED.—If—

"(i) a transaction, which would otherwise be treated as a constructive sale of an appreciated financial position, is closed during the taxable year or during the 30 days thereafter, and

"(ii) another substantially similar transaction is entered into during the 60-day period beginning on the date the transaction referred to in clause (i) is closed—

"(I) which also would otherwise be treated as a constructive sale of such position,

"(II) which is closed before the 30th day after the close of the taxable year in which the transaction referred to in clause (i) occurs, and

"(III) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

the transaction referred to in clause (ii) shall be disregarded for purposes of determining whether the requirements of subparagraph (A)(iii) are met with respect to the transaction described in clause (i).

"(4) RELATED PERSON.—A person is related to another person with respect to a transaction if—

"(A) the relationship is described in section 267(b) or 707(b), and

"(B) such transaction is entered into with a view toward avoiding the purposes of this section.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) FORWARD CONTRACT.—The term 'forward contract' means a contract to deliver a substantially fixed amount of property for a substantially fixed price.

"(2) OFFSETTING NOTIONAL PRINCIPAL CONTRACT.—The term 'offsetting notional principal contract' means, with respect to any property, an agreement which includes—

"(A) a requirement to pay (or provide credit for) all or substantially all of the investment yield (including appreciation) on such property for a specified period, and

"(B) a right to be reimbursed for (or receive credit for) all or substantially all of any decline in the value of such property.

"(e) SPECIAL RULES.—

"(1) TREATMENT OF SUBSEQUENT SALE OF POSITION WHICH WAS DEEMED SOLD.—If—

"(A) there is a constructive sale of any appreciated financial position,

"(B) such position is subsequently disposed of, and

"(C) at the time of such disposition, the transaction resulting in the constructive sale of such position is open with respect to the taxpayer or any related person,

solely for purposes of determining whether the taxpayer has entered into a constructive sale of any other appreciated financial position held by the taxpayer, the taxpayer shall be treated as entering into such transaction immediately after such disposition. For purposes of the preceding sentence, an assignment or other termination shall be treated as a disposition.

"(2) CERTAIN TRUST INSTRUMENTS TREATED AS STOCK.—For purposes of this section, an interest in a trust which is actively traded (within the meaning of section 1092(d)(1)) shall be treated as stock unless substantially all (by value) of the property held by the trust is debt described in subsection (b)(2)(A).

"(3) MULTIPLE POSITIONS IN PROPERTY.—If a taxpayer holds multiple positions in property, the determination of whether a specific transaction is a constructive sale and, if so, which appreciated financial position is deemed sold shall be made in the same manner as actual sales.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) ELECTION OF MARK TO MARKET FOR DEALERS IN COMMODITIES AND FOR TRADERS IN SECURITIES OR COMMODITIES.—Section 475 (relating to mark to market accounting method for dealers in securities) is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsections:

"(e) ELECTION OF MARK TO MARKET FOR DEALERS IN COMMODITIES.—

"(1) IN GENERAL.—In the case of a dealer in commodities who elects the application of this subsection, this section shall apply to commodities held by such dealer in the same manner as this section applies to securities held by a dealer in securities.

"(2) COMMODITY.—For purposes of this subsection and subsection (f), the term 'commodity' means—

"(A) any commodity which is actively traded (within the meaning of section 1092(d)(1));

"(B) any notional principal contract with respect to any commodity described in subparagraph (A);

"(C) any evidence of an interest in, or a derivative instrument in, any commodity described in subparagraph (A) or (B), including any option, forward contract, futures contract, short position, and any similar instrument in such a commodity; and

"(D) any position which—

"(i) is not a commodity described in subparagraph (A), (B), or (C),

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

"(iii) is clearly identified in the taxpayer's records 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) ELECTION.—An election under this subsection may be made without the consent of the Secretary. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(f) ELECTION OF MARK TO MARKET FOR TRADERS IN SECURITIES OR COMMODITIES.—

"(1) TRADERS IN SECURITIES.—

"(A) IN GENERAL.—In the case of a person who is engaged in a trade or business as a trader in securities and who elects to have this paragraph apply to such trade or business—

"(i) such person shall recognize gain or loss on any security held in connection with such trade or business at the close of any taxable year as if such security were sold for its fair market value on the last business day of such taxable year, and

"(ii) 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 subparagraph at times other than the times provided in this subparagraph.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any security—

"(i) which is established to the satisfaction of the Secretary as having no connection to the activities of such person as a trader, and

"(ii) which is clearly identified in such person's records as being described in clause (i) 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).

If a security ceases to be described in clause (i) at any time after it was identified as such under clause (ii), subparagraph (A) shall apply to any changes in value of the security occurring after the cessation.

"(C) COORDINATION WITH SECTION 1259.—Any security to which subparagraph (A) applies and which was acquired in the normal course of the taxpayer's activities as a trader in securities shall not be taken into account in applying section 1259 to any position to which subparagraph (A) does not apply.

"(D) OTHER RULES TO APPLY.—Rules similar to the rules of subsections (b)(4) and (d) shall apply to securities held by a person in any trade or business with respect to which an election under this paragraph is in effect.

"(2) TRADERS IN COMMODITIES.—In the case of a person who is engaged in a trade or business as a trader in commodities and who elects to have this paragraph apply to such trade or business, paragraph (1) shall apply to commodities held by such trader in connection with such trade or business in the same manner as paragraph (1) applies to securities held by a trader in securities.

"(3) ELECTION.—The elections under paragraphs (1) and (2) may be made separately for each trade or business and without the consent of the Secretary. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.".

(c) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter P of chapter 1 is amended by adding at the end the following new item:

"Sec. 1259. Constructive sales treatment for appreciated financial positions.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to any constructive sale after June 8, 1997.

(2) EXCEPTION FOR SALES OF POSITIONS, ETC. HELD BEFORE JUNE 9, 1997.—If—

(A) before June 9, 1997, the taxpayer entered into any transaction which is a constructive sale of any appreciated financial position, and

(B) before the close of the 30-day period beginning on the date of the enactment of this Act or before such later date as may be specified by the Secretary of the Treasury, such transaction and position are clearly identified in the taxpayer's records as offsetting,

such transaction and position shall not be taken into account in determining whether any other constructive sale after June 8, 1997, has occurred. The preceding sentence shall cease to

apply as of the date such transaction is closed or the taxpayer ceases to hold such position.

(3) SPECIAL RULE.—In the case of a decedent dying after June 8, 1997, if—

(A) there was a constructive sale on or before such date of any appreciated financial position,

(B) the transaction resulting in such constructive sale of such position remains open (with respect to the decedent or any related person)—

(i) for not less than 2 years after the date of such transaction (whether such period is before or after June 8, 1997), and

(ii) at any time during the 3-year period ending on the date of the decedent's death, and

(C) such transaction is not closed within the 30-day period beginning on the date of the enactment of this Act,

then, for purposes of such Code, such position (and the transaction resulting in such constructive sale) shall be treated as property constituting rights to receive an item of income in respect of a decedent under section 691 of such Code. Section 1014(c) of such Code shall not apply to so much of such position's or property's value (as included in the decedent's estate for purposes of chapter 11 of such Code) as exceeds its fair market value as of the date such transaction is closed.

(4) ELECTION OF MARK TO MARKET BY SECURITIES TRADERS AND TRADERS AND DEALERS IN COMMODITIES.—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to taxable years ending after the date of the enactment of this Act.

(B) 4-YEAR SPREAD OF ADJUSTMENTS.—In the case of a taxpayer who elects under subsection (e) or (f) of section 475 of the Internal Revenue Code of 1986 (as added by this section) to change its method of accounting for the taxable year which includes the date of the enactment of this Act—

(i) any identification required under such subsection with respect to securities and commodities held on the date of the enactment of this Act shall be treated as timely made if made on or before the 30th day after such date of enactment, and

(ii) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of such Code shall be taken into account ratably over the 4-taxable year period beginning with such first taxable year.

SEC. 1002. LIMITATION ON EXCEPTION FOR INVESTMENT COMPANIES UNDER SECTION 351.

(a) IN GENERAL.—Paragraph (1) of section 351(e) (relating to exceptions) is amended by adding at the end the following: "For purposes of the preceding sentence, the determination of whether a company is an investment company shall be made—

"(A) by taking into account all stock and securities held by the company, and

"(B) by treating as stock and securities—

"(i) money,

"(ii) stocks and other equity interests in a corporation, evidences of indebtedness, options, forward or futures contracts, notional principal contracts and derivatives,

"(iii) any foreign currency,

"(iv) any interest in a real estate investment trust, a common trust fund, a regulated investment company, a publicly-traded partnership (as defined in section 7704(b)) or any other equity interest (other than in a corporation) which pursuant to its terms or any other arrangement is readily convertible into, or exchangeable for, any asset described in any preceding clause, this clause or clause (v) or (viii),

"(v) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal, unless such metal is used or held in the active conduct of a trade or business after the contribution,

"(vi) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of any assets described in any preceding clause or clause (viii),

"(vii) to the extent provided in regulations prescribed by the Secretary, any interest in any entity not described in clause (vi), but only to the extent of the value of such interest that is attributable to assets listed in clauses (i) through (v) or clause (viii), or

"(viii) any other asset specified in regulations prescribed by the Secretary.

The Secretary may prescribe regulations that, under appropriate circumstances, treat any asset described in clauses (i) through (v) as not so listed.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to transfers after June 8, 1997, in taxable years ending after such date.

(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such transfer if such contract provides for the transfer of a fixed amount of property.

SEC. 1003. GAINS AND LOSSES FROM CERTAIN TERMINATIONS WITH RESPECT TO PROPERTY.

(a) APPLICATION OF CAPITAL TREATMENT TO PROPERTY OTHER THAN PERSONAL PROPERTY.—

(1) IN GENERAL.—Paragraph (1) of section 1234A (relating to gains and losses from certain terminations) is amended by striking "personal property (as defined in section 1092(d)(1))" and inserting "property".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to terminations more than 30 days after the date of the enactment of this Act.

(b) TREATMENT OF SHORT SALES OF PROPERTY WHICH BECOMES SUBSTANTIALLY WORTHLESS.—

(1) IN GENERAL.—Section 1233 is amended by adding at the end the following new subsection:

"(h) SHORT SALES OF PROPERTY WHICH BECOMES SUBSTANTIALLY WORTHLESS.—

"(1) IN GENERAL.—If—

"(A) the taxpayer enters into a short sale of property, and

"(B) such property becomes substantially worthless,

the taxpayer shall recognize gain in the same manner as if the short sale were closed when the property becomes substantially worthless. To the extent provided in regulations prescribed by the Secretary, the preceding sentence also shall apply with respect to any option with respect to property, any offsetting notional principal contract with respect to property, any futures or forward contract to deliver any property, and any other similar transaction.

"(2) STATUTE OF LIMITATIONS.—If property becomes substantially worthless during a taxable year and any short sale of such property remains open at the time such property becomes substantially worthless, then—

"(A) the statutory period for the assessment of any deficiency attributable to any part of the gain on such transaction shall not expire before the earlier of—

"(i) the date which is 3 years after the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the substantial worthlessness of such property, or

"(ii) the date which is 6 years after the date the return for such taxable year is filed, and

"(B) such deficiency may be assessed before the date applicable under subparagraph (A) notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to property which becomes substantially worthless after the date of the enactment of this Act.

(c) APPLICATION OF CAPITAL TREATMENT, ETC. TO OBLIGATIONS ISSUED BY NATURAL PERSONS.—

(1) IN GENERAL.—Section 1271(b) is amended to read as follows:

"(b) EXCEPTION FOR CERTAIN OBLIGATIONS.—

"(1) IN GENERAL.—This section shall not apply to—

"(A) any obligation issued by a natural person before June 9, 1997, and

"(B) any obligation issued before July 2, 1982, by an issuer which is not a corporation and is not a government or political subdivision thereof.

"(2) TERMINATION.—Paragraph (1) shall not apply to any obligation purchased (within the meaning of section 1272(d)(1)) after June 8, 1997.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales, exchanges, and retirements after the date of enactment of this Act.

SEC. 1004. DETERMINATION OF ORIGINAL ISSUE DISCOUNT WHERE POOLED DEBT OBLIGATIONS SUBJECT TO ACCELERATION.

(a) IN GENERAL.—Subparagraph (C) of section 1272(a)(6) (relating to debt instruments to which the paragraph applies) 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 inserting after clause (ii) the following:

"(iii) any pool of debt instruments the yield on which may be affected by reason of prepayments (or to the extent provided in regulations, by reason of other events).

To the extent provided in regulations prescribed by the Secretary, in the case of a small business engaged in the trade or business of selling tangible personal property at retail, clause (iii) shall not apply to debt instruments incurred in the ordinary course of such trade or business while held by such business.".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

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

(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 of the Treasury, 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 4-taxable year period beginning with such first taxable year.

SEC. 1005. DENIAL OF INTEREST DEDUCTIONS ON CERTAIN DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest), as amended by title V, is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) DISALLOWANCE OF DEDUCTION ON CERTAIN DEBT INSTRUMENTS OF CORPORATIONS.—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for any interest paid or accrued on a disqualified debt instrument.

"(2) DISQUALIFIED DEBT INSTRUMENT.—For purposes of this subsection, the term 'disqualified debt instrument' means any indebtedness of a corporation which is payable in equity of the issuer or a related party.

"(3) SPECIAL RULES FOR AMOUNTS PAYABLE IN EQUITY.—For purposes of paragraph (2), indebtedness shall be treated as payable in equity of the issuer or a related party only if—

"(A) a substantial amount of the principal or interest is required to be paid or converted, or at the option of the issuer or a related party is payable in, or convertible into, such equity,

"(B) a substantial amount of the principal or interest is required to be determined, or at the option of the issuer or a related party is determined, by reference to the value of such equity, or

"(C) the indebtedness is part of an arrangement which is reasonably expected to result in a transaction described in subparagraph (A) or (B).

For purposes of this paragraph, principal or interest shall be treated as required to be so paid, converted, or determined if it may be required at the option of the holder or a related party and there is a substantial certainty the option will be exercised.

"(4) RELATED PARTY.—For purposes of this subsection, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through the use of an issuer other than a corporation.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to disqualified debt instruments issued after June 8, 1997.

(2) TRANSITION RULE.—The amendment made by this section shall not apply to any instrument issued after June 8, 1997, if such instrument is—

(A) issued pursuant to a written agreement which was binding on such date and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the issuance.

Subtitle B—Corporate Organizations and Reorganizations

SEC. 1011. TAX TREATMENT OF CERTAIN EXTRAORDINARY DIVIDENDS.

(a) TREATMENT OF EXTRAORDINARY DIVIDENDS IN EXCESS OF BASIS.—Paragraph (2) of section 1059(a) (relating to corporate shareholder's recognition of gain attributable to nontaxed portion of extraordinary dividends) is amended to read as follows:

"(2) AMOUNTS IN EXCESS OF BASIS.—If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock for the taxable year in which the extraordinary dividend is received.".

(b) TREATMENT OF REDEMPTIONS WHERE OPTIONS INVOLVED.—Paragraph (1) of section 1059(e) (relating to treatment of partial liquidations and non-pro rata redemptions) is amended to read as follows:

"(1) TREATMENT OF PARTIAL LIQUIDATIONS AND CERTAIN REDEMPTIONS.—Except as otherwise provided in regulations—

"(A) REDEMPTIONS.—In the case of any redemption of stock—

"(i) which is part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation,

"(ii) which is not pro rata as to all shareholders, or

"(iii) which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4),

any amount treated as a dividend with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock. In the case of a redemption described in clause (iii), only the basis in the stock redeemed shall be taken into account under subsection (a).

"(B) REORGANIZATIONS, ETC.—An exchange described in section 356 which is treated as a dividend shall be treated as a redemption of stock for purposes of applying subparagraph (A).".

(c) TIME FOR REDUCTION.—Paragraph (1) of section 1059(d) is amended to read as follows:

"(1) TIME FOR REDUCTION.—Any reduction in basis under subsection (a)(1) shall be treated as occurring at the beginning of the ex-dividend date of the extraordinary dividend to which the reduction relates.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions after May 3, 1995.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution made pursuant to the terms of—

(A) a written binding contract in effect on May 3, 1995, and at all times thereafter before such distribution, or

(B) a tender offer outstanding on May 3, 1995.

(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting "September 13, 1995" for "May 3, 1995".

SEC. 1012. APPLICATION OF SECTION 355 TO DISTRIBUTIONS IN CONNECTION WITH ACQUISITIONS AND TO INTRAGROUP TRANSACTIONS.

(a) DISTRIBUTIONS IN CONNECTION WITH ACQUISITIONS.—Section 355 (relating to distributions of stock and securities of a controlled corporation) is amended by adding at the end the following new subsection:

"(e) RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONNECTION WITH ACQUISITIONS.—

"(1) GENERAL RULE.—If there is a distribution to which this subsection applies, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

"(2) DISTRIBUTIONS TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any distribution—

"(i) to which this section (or so much of section 356 as relates to this section) applies, and

"(ii) which is part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.

"(B) PLAN PRESUMED TO EXIST IN CERTAIN CASES.—If 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation during the 4-year period beginning on the date which is 2 years before the date of the distribution, such acquisition shall be treated as pursuant to a plan described in subparagraph (A)(ii) unless it is established that the distribution and the acquisition are not pursuant to a plan or series of related transactions.

"(C) CERTAIN PLANS DISREGARDED.—A plan (or series of related transactions) shall not be treated as described in subparagraph (A)(ii) if, immediately after the completion of such plan or transactions, the distributing corporation and all controlled corporations are members of a single affiliated group (as defined in section 1504 without regard to subsection (b) thereof).

"(D) COORDINATION WITH SUBSECTION (d).—This subsection shall not apply to any distribution to which subsection (d) applies.

"(3) SPECIAL RULES RELATING TO ACQUISITIONS.—

"(A) CERTAIN ACQUISITIONS NOT TAKEN INTO ACCOUNT.—Except as provided in regulations, the following acquisitions shall not be treated as described in paragraph (2)(A)(ii):

"(i) The acquisition of stock in any controlled corporation by the distributing corporation.

"(ii) The acquisition by a person of stock in any controlled corporation by reason of holding stock or securities in the distributing corporation.

"(iii) The acquisition by a person of stock in any successor corporation of the distributing corporation or any controlled corporation by reason of holding stock or securities in such distributing or controlled corporation.

"(iv) The acquisition of stock in a corporation if shareholders owning directly or indirectly stock possessing—

"(I) more than 50 percent of the total combined voting power of all classes of stock entitled to vote, and

"(II) more than 50 percent of the total value of shares of all classes of stock,

in the distributing corporation or any controlled corporation before such acquisition own directly or indirectly stock possessing such vote and value in such distributing or controlled corporation after such acquisition.

This subparagraph shall not apply to any acquisition if the stock held before the acquisition was acquired pursuant to a plan (or series of related transactions) described in paragraph (2)(A)(ii).

"(B) ASSET ACQUISITIONS.—Except as provided in regulations, for purposes of this subsection, if the assets of the distributing corporation or any controlled corporation are acquired by a successor corporation in a transaction described in subparagraph (A), (C), or (D) of section 368(a)(1) or any other transaction specified in regulations by the Secretary, the shareholders (immediately before the acquisition) of the corporation acquiring such assets shall be treated as acquiring stock in the corporation from which the assets were acquired.

"(4) DEFINITION AND SPECIAL RULES.—For purposes of this subsection—

"(A) 50-PERCENT OR GREATER INTEREST.—The term '50-percent or greater interest' has the meaning given such term by subsection (d)(4).

"(B) DISTRIBUTIONS IN TITLE 11 OR SIMILAR CASE.—Paragraph (1) shall not apply to any distribution made in a title 11 or similar case (as defined in section 368(a)(3)).

"(C) AGGREGATION AND ATTRIBUTION RULES.—

"(i) AGGREGATION.—The rules of paragraph (7)(A) of subsection (d) shall apply.

"(ii) ATTRIBUTION.—Section 318(a)(2) shall apply in determining whether a person holds stock or securities in any corporation. Except as provided in regulations, section 318(a)(2)(C) shall be applied without regard to the phrase '50 percent or more in value' for purposes of the preceding sentence.

"(D) SUCCESSORS AND PREDECESSORS.—For purposes of this subsection, any reference to a controlled corporation or a distributing corporation shall include a reference to any predecessor or successor of such corporation.

"(E) STATUTE OF LIMITATIONS.—If there is a distribution to which paragraph (1) applies—

"(i) the statutory period for the assessment of any deficiency attributable to any part of the gain recognized under this subsection by reason of such distribution shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) that such distribution occurred, and

"(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

"(A) providing for the application of this subsection where there is more than 1 controlled corporation,

"(B) treating 2 or more distributions as 1 distribution where necessary to prevent the avoidance of such purposes, and

"(C) providing for the application of rules similar to the rules of subsection (d)(6) where appropriate for purposes of paragraph (2)(B).".

(b) SPECIAL RULES FOR CERTAIN INTRAGROUP TRANSACTIONS.—

(1) SECTION 355 NOT TO APPLY.—Section 355, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(f) SECTION NOT TO APPLY TO CERTAIN INTRAGROUP DISTRIBUTIONS.—Except as provided in regulations, this section (or so much of section 356 as relates to this section) shall not apply to the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a)) to another member of such group if such distribution is part of a plan (or series of related transactions) described in subsection (e)(2)(A)(ii) (determined after the application of subsection (e)).".

(2) ADJUSTMENTS TO BASIS.—Section 358 (relating to basis to distributees) is amended by adding at the end the following new subsection:

"(g) ADJUSTMENTS IN INTRAGROUP TRANSACTIONS INVOLVING SECTION 355.—In the case of a distribution to which section 355 (or so much of section 356 as relates to section 355) applies and which involves the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a) without regard to subsection (b) thereof) to another member of such group, the Secretary may, notwithstanding any other provision of this section, provide adjustments to the adjusted basis of any stock which—

"(1) is in a corporation which is a member of such group, and

"(2) is held by another member of such group, to appropriately reflect the proper treatment of such distribution.".

(c) DETERMINATION OF CONTROL IN CERTAIN DIVISIVE TRANSACTIONS.—

(1) SECTION 351 TRANSACTIONS.—Section 351(c) (relating to special rule) is amended to read as follows:

"(c) SPECIAL RULES WHERE DISTRIBUTION TO SHAREHOLDERS.—In determining control for purposes of this section—

"(1) the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account, and

"(2) if the requirements of section 355 are met with respect to such distribution, the shareholders shall be treated as in control of such corporation immediately after the exchange if the shareholders own (immediately after the distribution) stock possessing—

"(A) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

"(B) more than 50 percent of the total value of shares of all classes of stock of such corporation.".

(2) D REORGANIZATIONS.—Section 368(a)(2)(H) (relating to special rule for determining whether certain transactions are qualified under paragraph (1)(D)) is amended to read as follows:

"(H) SPECIAL RULES FOR DETERMINING WHETHER CERTAIN TRANSACTIONS ARE QUALIFIED UNDER PARAGRAPH (1)(D).—For purposes of determining whether a transaction qualifies under paragraph (1)(D)—

"(i) in the case of a transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, the term 'control' has the meaning given such term by section 304(c), and

"(ii) in the case of a transaction with respect to which the requirements of section 355 are met, the shareholders described in paragraph (1)(D) shall be treated as having control of the corporation to which the assets are transferred if such shareholders own (immediately after the distribution) stock possessing—

"(I) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

"(II) more than 50 percent of the total value of shares of all classes of stock of such corporation.".

(d) EFFECTIVE DATES.—

(1) SECTION 355 RULES.—The amendments made by subsections (a) and (b) shall apply to distributions after April 16, 1997, pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 occurring after such date.

(2) DIVISIVE TRANSACTIONS.—The amendments made by subsection (c) shall apply to transfers after the date of the enactment of this Act.

(3) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 (or, in the case of the amendments made by subsection (c), any transfer) occurring after April 16, 1997, if such acquisition or transfer is—

(A) made pursuant to an agreement which was binding on such date and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the acquisition or transfer.

This paragraph shall not apply to any agreement, ruling request, or public announcement or filing unless it identifies the acquirer of the distributing corporation or any controlled corporation, or the transferee, whichever is applicable.

SEC. 1013. TAX TREATMENT OF REDEMPTIONS INVOLVING RELATED CORPORATIONS.

(a) STOCK PURCHASES BY RELATED CORPORATIONS.—The last sentence of section 304(a)(1) (relating to acquisition by related corporation other than subsidiary) is amended to read as follows: "To the extent that such distribution is treated as a distribution to which section 301 applies, the transferor and the acquiring corporation shall be treated in the same manner as if the transferor had transferred the stock so acquired to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and then the acquiring corporation had redeemed the stock it was treated as issuing in such transaction.".

(b) COORDINATION WITH SECTION 1059.—Clause (iii) of section 1059(e)(1)(A), as amended by this title, is amended to read as follows:

"(iii) which would not have been treated (in whole or in part) as a dividend if—

"(I) any options had not been taken into account under section 318(a)(4), or

"(II) section 304(a) had not applied,".

(c) SPECIAL RULE FOR ACQUISITIONS BY FOREIGN CORPORATIONS.—Section 304(b) (relating to special rules for application of subsection (a)) is amended by adding at the end the following new paragraph:

"(5) ACQUISITIONS BY FOREIGN CORPORATIONS.—

"(A) IN GENERAL.—In the case of any acquisition to which subsection (a) applies in which the acquiring corporation is a foreign corporation, the only earnings and profits taken into account under paragraph (2)(A) shall be those earnings and profits—

"(i) which are attributable (under regulations prescribed by the Secretary) to stock of the acquiring corporation owned (within the meaning of section 958(a)) by a corporation or individual which is—

"(I) a United States shareholder (within the meaning of section 951(b)) of the acquiring corporation, and

"(II) the transferor or a person who bears a relationship to the transferor described in section 267(b) or 707(b), and

"(ii) which were accumulated during the period or periods such stock was owned by such person while the acquiring corporation was a controlled foreign corporation.

"(B) APPLICATION OF SECTION 1248.—For purposes of subparagraph (A), the rules of section 1248(d) shall apply except to the extent otherwise provided by the Secretary.

"(C) REGULATIONS.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of this paragraph.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions and acquisitions after June 8, 1997.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution or acquisition after June 8, 1997, if such distribution or acquisition is—

(A) made pursuant to a written agreement which was binding on such date and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described in a public announcement or filing with the Securities and Exchange Commission on or before such date.

SEC. 1014. CERTAIN PREFERRED STOCK TREATED AS BOOT.

(a) SECTION 351.—Section 351 (relating to transfer to corporation controlled by transferor) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) NONQUALIFIED PREFERRED STOCK NOT TREATED AS STOCK.—

"(1) IN GENERAL.—In the case of a person who transfers property to a corporation and receives nonqualified preferred stock—

"(A) subsection (a) shall not apply to such transferor,

"(B) subsection (b) shall apply to such transferor, and

"(C) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).

"(2) NONQUALIFIED PREFERRED STOCK.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'nonqualified preferred stock' means preferred stock if—

"(i) the holder of such stock has the right to require the issuer or a related person to redeem or purchase the stock,

"(ii) the issuer or a related person is required to redeem or purchase such stock,

"(iii) the issuer or a related person has the right to redeem or purchase the stock and, as of

the issue date, it is more likely than not that such right will be exercised, or

"(iv) the dividend rate on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices.

"(B) LIMITATIONS.—Clauses (i), (ii), and (iii) of subparagraph (A) shall apply only if the right or obligation referred to therein may be exercised within the 20-year period beginning on the issue date of such stock and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

"(C) EXCEPTIONS FOR CERTAIN RIGHTS OR OBLIGATIONS.—

"(i) IN GENERAL.—A right or obligation shall not be treated as described in clause (i), (ii), or (iii) of subparagraph (A) if—

"(I) it may be exercised only upon the death, disability, or mental incompetency of the holder, or

"(II) in the case of a right or obligation to redeem or purchase stock transferred in connection with the performance of services for the issuer or a related person (and which represents reasonable compensation), it may be exercised only upon the holder's separation from service from the issuer or a related person.

"(ii) EXCEPTION.—Clause (i)(I) shall not apply if the stock relinquished in the exchange, or the stock acquired in the exchange is in—

"(I) a corporation if any class of stock in such corporation or a related party is readily tradable on an established securities market or otherwise, or

"(II) any other corporation if such exchange is part of a transaction or series of transactions in which such corporation is to become a corporation described in subclause (I).

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) PREFERRED STOCK.—The term 'preferred stock' means stock which is limited and preferred as to dividends and does not participate in corporate growth to any significant extent.

"(B) RELATED PERSON.—A person shall be treated as related to another person if they bear a relationship to such other person described in section 267(b) or 707(b).

"(4) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and sections 354(a)(2)(C), 355(a)(3)(D), and 356(e). The Secretary may also prescribe regulations, consistent with the treatment under this subsection and such sections, for the treatment of nonqualified preferred stock under other provisions of this title.".

(b) SECTION 354.—Paragraph (2) of section 354(a) (relating to exchanges of stock and securities in certain reorganizations) is amended by adding at the end the following new subparagraph:

"(C) NONQUALIFIED PREFERRED STOCK.—

"(i) IN GENERAL.—Nonqualified preferred stock (as defined in section 351(g)(2)) received in exchange for stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

"(ii) RECAPITALIZATIONS OF FAMILY-OWNED CORPORATIONS.—

"(I) IN GENERAL.—Clause (i) shall not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation.

"(II) FAMILY-OWNED CORPORATION.—For purposes of this clause, except as provided in regulations, the term 'family-owned corporation' means any corporation which is described in clause (i) of section 447(d)(2)(C) throughout the 8-year period beginning on the date which is 5 years before the date of the recapitalization. For purposes of the preceding sentence, stock shall not be treated as owned by a family member during any period described in section 355(d)(6)(B).".

(c) SECTION 355.—Paragraph (3) of section 355(a) is amended by adding at the end the following new subparagraph:

"(D) NONQUALIFIED PREFERRED STOCK.—Nonqualified preferred stock (as defined in section 351(g)(2)) received in a distribution with respect to stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.".

(d) SECTION 356.—Section 356 is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

"(e) NONQUALIFIED PREFERRED STOCK TREATED AS OTHER PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'other property' includes nonqualified preferred stock (as defined in section 351(g)(2)).

"(2) EXCEPTION.—The term 'other property' does not include nonqualified preferred stock (as so defined) to the extent that, under section 354 or 355, such preferred stock would be permitted to be received without the recognition of gain.".

(e) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 354(a)(2) and subparagraph (C) of section 355(a)(3)(C) are each amended by inserting "(including nonqualified preferred stock, as defined in section 351(g)(2))" after "stock".

(2) Subparagraph (A) of section 354(a)(3) and subparagraph (A) of section 355(a)(4) are each amended by inserting "nonqualified preferred stock and" after "including".

(3) Section 1036 is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) NONQUALIFIED PREFERRED STOCK NOT TREATED AS STOCK.—For purposes of this section, nonqualified preferred stock (as defined in section 351(g)(2)) shall be treated as property other than stock.".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transactions after June 8, 1997.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any transaction after June 8, 1997, if such transaction is—

(A) made pursuant to a written agreement which was binding on such date and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the transaction.

SEC. 1015. MODIFICATION OF HOLDING PERIOD APPLICABLE TO DIVIDENDS RECEIVED DEDUCTION.

(a) IN GENERAL.—Subparagraph (A) of section 246(c)(1) is amended to read as follows:

"(A) which is held by the taxpayer for 45 days or less during the 90-day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend, or".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 246(c) is amended to read as follows:

"(2) 90-DAY RULE IN THE CASE OF CERTAIN PREFERENCE DIVIDENDS.—In the case of stock having preference in dividends, if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A) shall be applied—

"(A) by substituting '90 days' for '45 days' each place it appears, and

"(B) by substituting '180-day period' for '90-day period'.".

(2) Paragraph (3) of section 246(c) is amended by adding "and" at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to dividends received or accrued after the 30th day after the date of the enactment of this Act.

(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to dividends received or accrued during the 2-year period beginning on the date of the enactment of this Act if—

(A) the dividend is paid with respect to stock held by the taxpayer on June 8, 1997, and all times thereafter until the dividend is received,

(B) such stock is continuously subject to a position described in section 246(c)(4) of the Internal Revenue Code of 1986 on June 8, 1997, and all times thereafter until the dividend is received, and

(C) such stock and position are clearly identified in the taxpayer's records within 30 days after the date of the enactment of this Act.

Stock shall not be treated as meeting the requirement of subparagraph (B) if the position is sold, closed, or otherwise terminated and reestablished.

Subtitle C—Administrative Provisions

SEC. 1021. REPORTING OF CERTAIN PAYMENTS MADE TO ATTORNEYS.

(a) IN GENERAL.—Section 6045 (relating to returns of brokers) is amended by adding at the end the following new subsection:

"(f) RETURN REQUIRED IN THE CASE OF PAYMENTS TO ATTORNEYS.—

"(1) IN GENERAL.—Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

"(2) APPLICATION OF SUBSECTION.—

"(A) IN GENERAL.—This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

"(B) EXCEPTION.—This subsection shall not apply to the portion of any payment which is required to be reported under section 6041(a) (or would be so required but for the dollar limitation contained therein) or section 6051.".

(b) REPORTING OF ATTORNEYS' FEES PAYABLE TO CORPORATIONS.—The regulations providing an exception under section 6041 of the Internal Revenue Code of 1986 for payments made to corporations shall not apply to payments of attorneys' fees.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 1997.

SEC. 1022. DECREASE OF THRESHOLD FOR REPORTING PAYMENTS TO CORPORATIONS PERFORMING SERVICES FOR FEDERAL AGENCIES.

(a) IN GENERAL.—Subsection (d) of section 6041A (relating to returns regarding payments of remuneration for services and direct sales) is amended by adding at the end the following new paragraph:

"(3) PAYMENTS TO CORPORATIONS BY FEDERAL EXECUTIVE AGENCIES.—

"(A) IN GENERAL.—Notwithstanding any regulation prescribed by the Secretary before the date of the enactment of this paragraph, subsection (a) shall apply to remuneration paid to a corporation by any Federal executive agency (as defined in section 6050M(b)).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to—

"(i) services under contracts described in section 6050M(e)(3) with respect to which the requirements of section 6050M(e)(2) are met, and

"(ii) such other services as the Secretary may specify in regulations prescribed after the date of the enactment of this paragraph.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns the due date for which (determined without regard to any extension) is more than 90 days after the date of the enactment of this Act.

SEC. 1023. DISCLOSURE OF RETURN INFORMATION FOR ADMINISTRATION OF CERTAIN VETERANS PROGRAMS.

(a) GENERAL RULE.—Clause (viii) of section 6103(l)(7)(D) (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended by striking "1998" and inserting "2003".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1024. CONTINUOUS LEVY ON CERTAIN PAYMENTS.

(a) IN GENERAL.—Section 6331 (relating to levy and distraint) is amended—

(1) by redesignating subsection (h) as subsection (i), and

(2) by inserting after subsection (g) the following new subsection:

"(h) CONTINUING LEVY ON CERTAIN PAYMENTS.—

"(1) IN GENERAL.—The effect of a levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, such continuous levy shall attach to up to 15 percent of any specified payment due to the taxpayer.

"(2) SPECIFIED PAYMENT.—For the purposes of paragraph (1), the term 'specified payment' means—

"(A) any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,

"(B) any payment described in paragraph (4), (7), (9), or (11) of section 6334(a), and

"(C) any annuity or pension payment under the Railroad Retirement Act or benefit under the Railroad Unemployment Insurance Act.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to levies issued after the date of the enactment of this Act.

SEC. 1025. MODIFICATION OF LEVY EXEMPTION.

(a) IN GENERAL.—Section 6334 (relating to property exempt from levy) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) LEVY ALLOWED ON CERTAIN SPECIFIED PAYMENTS.—Any payment described in subparagraph (B) or (C) of section 6331(h)(2) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to levies issued after the date of the enactment of this Act.

SEC. 1026. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) IN GENERAL.—Subsection (k) of section 6103 is amended by adding at the end the following new paragraph:

"(8) LEVIES ON CERTAIN GOVERNMENT PAYMENTS.—

"(A) DISCLOSURE OF RETURN INFORMATION IN LEVIES ON FINANCIAL MANAGEMENT SERVICE.—In serving a notice of levy, or release of such levy, with respect to any applicable government payment, the Secretary may disclose to officers and employees of the Financial Management Service—

"(i) return information, including taxpayer identity information,

"(ii) the amount of any unpaid liability under this title (including penalties and interest), and

"(iii) the type of tax and tax period to which such unpaid liability relates.

"(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under subparagraph (A) may be used by officers and employees of the Financial Management Service only for the purpose of, and to the extent necessary in, transferring levied funds in satisfaction of the levy, maintaining appropriate agency records in regard to such levy or the release thereof, notifying the taxpayer and the agency certifying such payment that the levy has been honored, or in the defense of any litigation ensuing from the honor of such levy.

"(C) APPLICABLE GOVERNMENT PAYMENT.—For purposes of this paragraph, the term 'applicable government payment' means—

"(i) any Federal payment (other than a payment for which eligibility is based on the income or assets (or both) of a payee) certified to the Financial Management Service for disbursement, and

"(ii) any other payment which is certified to the Financial Management Service for disbursement and which the Secretary designates by published notice.".

(b) CONFORMING AMENDMENTS.—

(1) Section 6103(p) is amended—

(A) in paragraph (3)(A), by striking "(2), or (6)" and inserting "(2), (6), or (8)", and

(B) in paragraph (4), by inserting "(k)(8)," after "(j) (1) or (2)," each place it appears.

(2) Section 552a(a)(8)(B) of title 5, United States Code, is amended by striking "or" at the end of clause (v), by adding "or" at the end of clause (vi), and by adding at the end the following new clause:

"(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986;".

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

SEC. 1027. RETURNS OF BENEFICIARIES OF ESTATES AND TRUSTS REQUIRED TO FILE RETURNS CONSISTENT WITH ESTATE OR TRUST RETURN OR TO NOTIFY SECRETARY OF INCONSISTENCY.

(a) DOMESTIC ESTATES AND TRUSTS.—Section 6034A (relating to information to beneficiaries of estates and trusts) is amended by adding at the end the following new subsection:

"(c) BENEFICIARY'S RETURN MUST BE CONSISTENT WITH ESTATE OR TRUST RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—

"(1) IN GENERAL.—A beneficiary of any estate or trust to which subsection (a) applies shall, on such beneficiary's return, treat any reported item in a manner which is consistent with the treatment of such item on the applicable entity's return.

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—

"(A) IN GENERAL.—In the case of any reported item, if—

"(i)(I) the applicable entity has filed a return but the beneficiary's treatment on such beneficiary's return is (or may be) inconsistent with the treatment of the item on the applicable entity's return, or

"(II) the applicable entity has not filed a return, and

"(ii) the beneficiary files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

"(B) BENEFICIARY RECEIVING INCORRECT INFORMATION.—A beneficiary shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a reported item if the beneficiary—

"(i) demonstrates to the satisfaction of the Secretary that the treatment of the reported item on the beneficiary's return is consistent with the treatment of the item on the statement furnished under subsection (a) to the beneficiary by the applicable entity, 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 beneficiary does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such beneficiary consistent with the treatment of the items on the applicable entity's 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) DEFINITIONS.—For purposes of this subsection—

"(A) REPORTED ITEM.—The term 'reported item' means any item for which information is required to be furnished under subsection (a).

"(B) APPLICABLE ENTITY.—The term 'applicable entity' means the estate or trust of which the taxpayer is the beneficiary.

"(5) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—For addition to tax in the case of a beneficiary's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68.".

(b) FOREIGN TRUSTS.—Subsection (d) of section 6048 (relating to information with respect to certain foreign trusts) is amended by adding at the end the following new paragraph:

"(5) UNITED STATES PERSON'S RETURN MUST BE CONSISTENT WITH TRUST RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—Rules similar to the rules of section 6034A(c) shall apply to items reported by a trust under subsection (b)(1)(B) and to United States persons referred to in such subsection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns of beneficiaries and owners filed after the date of the enactment of this Act.

SEC. 1028. REGISTRATION AND OTHER PROVISIONS RELATING TO CONFIDENTIAL CORPORATE TAX SHELTERS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN CONFIDENTIAL ARRANGEMENTS TREATED AS TAX SHELTERS.—

"(1) IN GENERAL.—For purposes of this section, the term 'tax shelter' includes any entity, plan, arrangement, or transaction—

"(A) a significant purpose of the structure of which is the avoidance or evasion of Federal income tax for a direct or indirect participant which is a corporation,

"(B) which is offered to any potential participant under conditions of confidentiality, and

"(C) for which the tax shelter promoters may receive fees in excess of $100,000 in the aggregate.

"(2) CONDITIONS OF CONFIDENTIALITY.—For purposes of paragraph (1)(B), an offer is under conditions of confidentiality if—

"(A) the potential participant to whom the offer is made (or any other person acting on behalf of such participant) has an understanding or agreement with or for the benefit of any promoter of the tax shelter that such participant (or such other person) will limit disclosure of the tax shelter or any significant tax features of the tax shelter, or

"(B) any promoter of the tax shelter—

"(i) claims, knows, or has reason to know,

"(ii) knows or has reason to know that any other person (other than the potential participant) claims, or

"(iii) causes another person to claim,

that the tax shelter (or any aspect thereof) is proprietary to any person other than the potential participant or is otherwise protected from disclosure to or use by others.

For purposes of this subsection, the term 'promoter' means any person or any related person (within the meaning of section 267 or 707) who participates in the organization, management, or sale of the tax shelter.

"(3) PERSONS OTHER THAN PROMOTER REQUIRED TO REGISTER IN CERTAIN CASES.—

"(A) IN GENERAL.—If—

"(i) the requirements of subsection (a) are not met with respect to any tax shelter (as defined in paragraph (1)) by any tax shelter promoter, and

"(ii) no tax shelter promoter is a United States person,

then each United States person who discussed participation in such shelter shall register such shelter under subsection (a).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a United States person who discussed participation in a tax shelter if—

"(i) such person notified the promoter in writing (not later than the close of the 90th day after the day on which such discussions began) that such person would not participate in such shelter, and

"(ii) such person does not participate in such shelter.

"(4) OFFER TO PARTICIPATE TREATED AS OFFER FOR SALE.—For purposes of subsections (a) and (b), an offer to participate in a tax shelter (as defined in paragraph (1)) shall be treated as an offer for sale.".

(b) PENALTY.—Subsection (a) of section 6707 (relating to failure to furnish information regarding tax shelters) is amended by adding at the end the following new paragraph:

"(3) CONFIDENTIAL ARRANGEMENTS.—

"(A) IN GENERAL.—In the case of a tax shelter (as defined in section 6111(d)), the penalty imposed under paragraph (1) shall be an amount equal to the greater of—

"(i) 50 percent of the fees paid to all promoters of the tax shelter with respect to offerings made before the date such shelter is registered under section 6111, or

"(ii) $10,000

Clause (i) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in paragraph (1).

"(B) SPECIAL RULE FOR PARTICIPANTS REQUIRED TO REGISTER SHELTER.—In the case of a person required to register such a tax shelter by reason of section 6111(d)(3)—

"(i) such person shall be required to pay the penalty under paragraph (1) only if such person actually participated in such shelter,

"(ii) the amount of such penalty shall be determined by taking into account under subparagraph (A)(i) only the fees paid by such person, and

"(iii) such penalty shall be in addition to the penalty imposed on any other person for failing to register such shelter.".

(c) MODIFICATIONS TO SUBSTANTIAL UNDERSTATEMENT PENALTY.—

(1) RESTRICTION ON REASONABLE BASIS FOR CORPORATE UNDERSTATEMENT OF INCOME TAX.—Subparagraph (B) of section 6662(d)(2) is amended by adding at the end the following new flush sentence:

"For purposes of clause (ii)(II), in no event shall a corporation be treated as having a reasonable basis for its tax treatment of an item attributable to a multiple-party financing transaction if such treatment does not clearly reflect the income of the corporation.".

(2) MODIFICATION TO DEFINITION OF TAX SHELTER.—Clause (iii) of section 6662(d)(2)(C) is amended by striking "the principal purpose" and inserting "a significant purpose".

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6707(a) is amended by striking "The penalty" and inserting "Except as provided in paragraph (3), the penalty".

(2) Subparagraph (A) of section 6707(a)(1) is amended by striking "paragraph (2)" and inserting "paragraph (2) or (3), as the case may be".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to any tax shelter (as defined in section 6111(d) of the Internal Revenue Code of 1986, as amended by this section) interests in which are offered to potential participants after the Secretary of the Treasury prescribes guidance with respect to meeting requirements added by such amendments.

(2) MODIFICATIONS TO SUBSTANTIAL UNDERSTATEMENT PENALTY.—The amendments made by subsection (c) shall apply to items with respect to transactions entered into after the date of the enactment of this Act.

Subtitle D—Excise and Employment Tax Provisions

SEC. 1031. EXTENSION AND MODIFICATION OF TAXES FUNDING AIRPORT AND AIRWAY TRUST FUND; INCREASED DEPOSITS INTO SUCH FUND.

(a) FUEL TAXES.—

(1) AVIATION FUEL.—Clause (ii) of section 4091(b)(3)(A) is amended by striking "September 30, 1997" and inserting "September 30, 2007".

(2) AVIATION GASOLINE.—Subparagraph (B) of section 4081(d)(2) is amended by striking "September 30, 1997" and inserting "September 30, 2007".

(3) NONCOMMERCIAL AVIATION.—Subparagraph (B) of section 4041(c)(3) is amended by striking "September 30, 1997" and inserting "September 30, 2007".

(b) TICKET TAXES.—

(1) PERSONS.—Clause (ii) of section 4261(g)(1)(A) is amended by striking "September 30, 1997" and inserting "September 30, 2007".

(2) PROPERTY.—Clause (ii) of section 4271(d)(1)(A) is amended by striking "September 30, 1997" and inserting "September 30, 2007".

(c) MODIFICATIONS TO TAX ON TRANSPORTATION OF PERSONS BY AIR.—

(1) IN GENERAL.—Section 4261 (relating to imposition of tax) is amended by striking subsections (a), (b), and (c) and inserting the following new subsections:

"(a) IN GENERAL.—There is hereby imposed on the amount paid for taxable transportation of any person a tax equal to 7.5 percent of the amount so paid.

"(b) DOMESTIC SEGMENTS OF TAXABLE TRANSPORTATION.—

"(1) IN GENERAL.—There is hereby imposed on the amount paid for each domestic segment of taxable transportation by air a tax in the amount determined in accordance with the following table for the period in which the segment begins:

In the case of segments beginning:	*The tax is:*
After September 30, 1997, and before October 1, 1998	$1.00
After September 30, 1998, and before October 1, 1999	$2.00
After September 30, 1999, and before January 1, 2000	$2.25
During 2000	$2.50
During 2001	$2.75
During 2002 or thereafter	$3.00.

"(2) DOMESTIC SEGMENT.—For purposes of this section, the term 'domestic segment' means any segment consisting of 1 takeoff and 1 landing and which is taxable transportation described in section 4262(a)(1).

"(3) CHANGES IN SEGMENTS BY REASON OF REROUTING.—If—

"(A) transportation is purchased between 2 locations on specified flights, and

"(B) there is a change in the route taken between such 2 locations which changes the number of domestic segments, but there is no change in the amount charged for such transportation,

the tax imposed by paragraph (1) shall be determined without regard to such change in route.

"(c) USE OF INTERNATIONAL TRAVEL FACILITIES.—

"(1) IN GENERAL.—There is hereby imposed a tax of $12.00 on any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins or ends in the United States.

"(2) EXCEPTION FOR TRANSPORTATION ENTIRELY TAXABLE UNDER SUBSECTION (a).—This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).

"(3) SPECIAL RULE FOR ALASKA AND HAWAII.—In any case in which the tax imposed by paragraph (1) applies to a domestic segment beginning or ending in Alaska or Hawaii, such tax shall apply only to departures and shall be at the rate of $6.".

(2) SPECIAL RULES.—Section 4261 is amended by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively, and by inserting after subsection (d) the following new subsection:

"(e) SPECIAL RULES.—

"(1) SEGMENTS TO AND FROM RURAL AIRPORTS.—

"(A) EXCEPTION FROM SEGMENT TAX.—The tax imposed by subsection (b)(1) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

"(B) RURAL AIRPORT.—For purposes of this paragraph, the term 'rural airport' means, with respect to any calendar year, any airport if—

"(i) there were fewer than 100,000 commercial passengers departing by air during the second preceding calendar year from such airport, and

"(ii) such airport—

"(I) is not located within 75 miles of another airport which is not described in clause (i), or

"(II) is receiving essential air service subsidies as of the date of the enactment of this paragraph.

"(C) NO PHASEIN OF REDUCED TICKET TAX.—In the case of transportation beginning before October 1, 1999—

"(i) IN GENERAL.—Paragraph (5) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

"(ii) TRANSPORTATION INVOLVING MULTIPLE SEGMENTS.—In the case of transportation involving more than 1 domestic segment at least 1 of which does not begin or end at a rural airport, the 7.5 percent rate applicable by reason of clause (i) shall be applied by taking into account only an amount which bears the same ratio to the amount paid for such transportation as the number of specified miles in domestic segments which begin or end at a rural airport bears to the total number of specified miles in such transportation.

"(2) AMOUNTS PAID OUTSIDE THE UNITED STATES.—In the case of amounts paid outside the United States for taxable transportation, the

taxes imposed by subsections (a) and (b) shall apply only if such transportation begins and ends in the United States.

"(3) AMOUNTS PAID FOR RIGHT TO AWARD FREE OR REDUCED RATE AIR TRANSPORTATION.—

"(A) IN GENERAL.—Any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air shall be treated for purposes of subsection (a) as an amount paid for taxable transportation, and such amount shall be taxable under subsection (a) without regard to any other provision of this subchapter.

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), a corporation and all wholly owned subsidiaries of such corporation shall be treated as 1 corporation.

"(C) REGULATIONS.—The Secretary shall prescribe rules which reallocate items of income, deduction, credit, exclusion, or other allowance to the extent necessary to prevent the avoidance of tax imposed by reason of this paragraph. The Secretary may prescribe rules which exclude from the tax imposed by subsection (a) amounts attributable to mileage awards which are used other than for transportation of persons by air.

"(4) INFLATION ADJUSTMENT OF DOLLAR RATES OF TAX.—

"(A) IN GENERAL.—In the case of taxable events in a calendar year after the last nonindexed year, the $3.00 amount contained in subsection (b) and each dollar amount contained in subsection (c) 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 the year before the last nonindexed year for 'calendar year 1992' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of 10 cents, such increase shall be rounded to the nearest multiple of 10 cents.

"(B) LAST NONINDEXED YEAR.—For purposes of subparagraph (A), the last nonindexed year is—

"(i) 2002 in the case of the $3.00 amount contained in subsection (b), and

"(ii) 1998 in the case of the dollar amounts contained in subsection (c).

"(C) TAXABLE EVENT.—For purposes of subparagraph (A), in the case of the tax imposed subsection (b), the beginning of the domestic segment shall be treated as the taxable event.

"(5) RATES OF TICKET TAX FOR TRANSPORTATION BEGINNING BEFORE OCTOBER 1, 1999.—Subsection (a) shall be applied by substituting for '7.5 percent'—

"(A) '9 percent' in the case of transportation beginning after September 30, 1997, and before October 1, 1998, and

"(B) '8 percent' in the case of transportation beginning after September 30, 1998, and before October 1, 1999.".

(3) SECONDARY LIABILITY OF CARRIER FOR UNPAID TAX.—Subsection (c) of section 4263 is amended by striking "subchapter—" and all that follows and inserting "subchapter, such tax shall be paid by the carrier providing the initial segment of such transportation which begins or ends in the United States.".

(d) INCREASED AIRPORT AND AIRWAY TRUST FUND DEPOSITS.—

(1) Paragraph (1) of section 9502(b) is amended—

(A) by striking "(to the extent that the rate of the tax on such gasoline exceeds 4.3 cents per gallon)" in subparagraph (C),

(B) by striking "to the extent attributable to the Airport and Airway Trust Fund financing rate" in subparagraph (D), and

(C) by adding at the end the following flush sentence:

"There shall not be taken into account under paragraph (1) so much of the taxes imposed by sections 4081 and 4091 as are determined at the rates specified in section 4081(a)(2)(B) or 4091(b)(2).".

(2) Section 9502 is amended by striking subsection (f).

(e) EFFECTIVE DATES.—

(1) FUEL TAXES.—The amendments made by subsection (a) shall apply take effect on October 1, 1997.

(2) TICKET TAXES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsections (b) and (c) shall apply to transportation beginning on or after October 1, 1997.

(B) TREATMENT OF AMOUNTS PAID FOR TICKETS PURCHASED BEFORE DATE OF ENACTMENT.—The amendments made by subsection (c) shall not apply to amounts paid for a ticket purchased before the date of the enactment of this Act for a specified flight beginning on or after October 1, 1997.

(C) AMOUNTS PAID FOR RIGHT TO AWARD MILEAGE AWARDS.—

(i) IN GENERAL.—Paragraph (3) of section 4261(e) of the Internal Revenue Code of 1986 (as added by the amendment made by subsection (c)) shall apply to amounts paid (and other benefits provided) after September 30, 1997.

(ii) PAYMENTS WITHIN CONTROLLED GROUP.—For purposes of clause (i), any amount paid after June 11, 1997, and before October 1, 1997, by 1 member of a controlled group for a right which is described in such section 4261(e)(3) and is furnished by another member of such group after September 30, 1997, shall be treated as paid after September 30, 1997. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 of such Code shall be treated as members of a controlled group.

(3) INCREASED DEPOSITS INTO AIRPORT AND AIRWAY TRUST FUND.—The amendments made by subsection (d) shall apply with respect to taxes received in the Treasury on and after October 1, 1997.

(g) DELAYED DEPOSITS OF AIRPORT TRUST FUND TAX REVENUES.—Notwithstanding section 6302 of the Internal Revenue Code of 1986—

(1) in the case of deposits of taxes imposed by section 4261 of such Code, the due date for any such deposit which would (but for this subsection) be required to be made after August 14, 1997, and before October 1, 1997, shall be October 10, 1997,

(2) in the case of deposits of taxes imposed by section 4261 of such Code, the due date for any such deposit which would (but for this subsection) be required to be made after August 14, 1998, and before October 1, 1998, shall be October 5, 1998, and

(3) in the case of deposits of taxes imposed by sections 4081(a)(2)(A)(ii), 4091, and 4271 of such Code, the due date for any such deposit which would (but for this subsection) be required to be made after July 31, 1998, and before October 1, 1998, shall be October 5, 1998.

SEC. 1032. KEROSENE TAXED AS DIESEL FUEL.

(a) IN GENERAL.—Subsection (a) of section 4083 (defining taxable fuel) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) kerosene.".

(b) RATE OF TAX.—Clause (iii) of section 4081(a)(2)(A) is amended by inserting "or kerosene" after "diesel fuel".

(c) EXEMPTIONS FROM TAX; REFUNDS TO VENDORS.—

(1) IN GENERAL.—Section 4082 (relating to exemptions for diesel fuel) is amended by striking "diesel fuel" each place it appears in subsections (a), (c), and (d) and inserting "diesel fuel and kerosene".

(2) CERTAIN KEROSENE EXEMPT FROM DYEING REQUIREMENT.—Section 4082 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL EXCEPTIONS TO DYEING REQUIREMENTS FOR KEROSENE.—

"(1) AVIATION-GRADE KEROSENE.—Subsection (a)(2) shall not apply to a removal, entry, or sale of aviation-grade kerosene (as determined under regulations prescribed by the Secretary) if the person receiving the kerosene is registered under section 4101 with respect to the tax imposed by section 4091.

"(2) USE FOR NON-FUEL FEEDSTOCK PURPOSES.—Subsection (a)(2) shall not apply to kerosene—

"(A) received by pipeline or vessel for use by the person receiving the kerosene in the manufacture or production of any substance (other than gasoline, diesel fuel, or special fuels referred to in section 4041), or

"(B) to the extent provided in regulations, removed or entered—

"(i) for such a use by the person removing or entering the kerosene, or

"(ii) for resale by such person for such a use by the purchaser,

but only if the person receiving, removing, or entering the kerosene and such purchaser (if any) are registered under section 4101 with respect to the tax imposed by section 4081.

"(3) WHOLESALE DISTRIBUTORS.—To the extent provided in regulations, subsection (a)(2) shall not apply to a removal, entry, or sale of kerosene to a wholesale distributor of kerosene if such distributor—

"(A) is registered under section 4101 with respect to the tax imposed by section 4081 on kerosene, and

"(B) sells kerosene exclusively to ultimate vendors described in section 6427(l)(5)(B) with respect to kerosene."

(3) REFUNDS.—

(A) Subsection (l) of section 6427 is amended by inserting "or kerosene" after "diesel fuel" each place it appears in paragraphs (1), (2), and (5) (including the heading for paragraph (5)).

(B) Paragraph (5) of section 6427(l) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) SALES OF KEROSENE NOT FOR USE IN MOTOR FUEL.—Paragraph (1)(A) shall not apply to kerosene sold by a vendor—

"(i) for any use if such sale is from a pump which (as determined under regulations prescribed by the Secretary) is not suitable for use in fueling any diesel-powered highway vehicle or train, or

"(ii) to the extent provided by the Secretary, for blending with heating oil to be used during periods of extreme or unseasonable cold.".

(C) Subparagraph (C) of section 6427(l)(5), as redesignated by subparagraph (B) of this paragraph, is amended by striking "subparagraph (A)" and inserting "subparagraph (A) or (B)".

(D) The heading for subsection (l) of section 6427 is amended by inserting ", KEROSENE," after "DIESEL FUEL".

(E) Clause (i) of section 6427(i)(5)(A) is amended by inserting "($100 or more in the case of kerosene)" after "$200 or more".

(d) CERTAIN APPROVED TERMINALS OF REGISTERED PERSONS REQUIRED TO OFFER DYED DIESEL FUEL AND KEROSENE FOR NONTAXABLE PURPOSES.—Section 4101 is amended by adding at the end the following new subsection:

"(e) CERTAIN APPROVED TERMINALS OF REGISTERED PERSONS REQUIRED TO OFFER DYED

DIESEL FUEL AND KEROSENE FOR NONTAXABLE PURPOSES.—

"(1) IN GENERAL.—A terminal for kerosene or diesel fuel may not be an approved facility for storage of non-tax-paid diesel fuel or kerosene under this section unless the operator of such terminal offers dyed diesel fuel and kerosene for removal for nontaxable use in accordance with section 4082(a).

"(2) EXCEPTION.—Paragraph (1) shall not apply to any terminal exclusively providing aviation-grade kerosene by pipeline to an airport.".

(e) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 4041(a), as amended by title IX, is amended by striking "kerosene,".

(2) Paragraph (1) of section 4041(c) is amended by striking "any liquid" and inserting "kerosene and any other liquid".

*(3)(A) The heading for section 4082 is amended by inserting "**AND KEROSENE**" after "**DIESEL FUEL**".*

(B) The table of sections for subpart A of part III of subchapter A of chapter 32 is amended by inserting "and kerosene" after "diesel fuel" in the item relating to section 4082.

(4) Subsection (b) of section 4083 is amended by striking "gasoline, diesel fuel," and inserting "taxable fuels".

(5) Subsection (a) of section 4093 is amended by striking "any liquid" and inserting "kerosene and any other liquid".

(6) The material following subparagraph (F) of section 6416(b)(2) is amended by inserting "or kerosene" after "diesel fuel".

(7) Paragraphs (1) and (3) of section 6427(f), and the heading for section 6427(f), are each amended by inserting "kerosene," after "diesel fuel,".

(8) Paragraph (2) of section 6427(f) is amended by striking "or diesel fuel" each place it appears and inserting ", diesel fuel, or kerosene".

(9) Subparagraph (A) of section 6427(i)(3) is amended by striking "or diesel fuel" and inserting ", diesel fuel, or kerosene".

(10) The heading for paragraph (4) of section 6427(i) is amended to read as follows:

"(4) SPECIAL RULE FOR REFUNDS UNDER SUBSECTION (l).—"

(11) Paragraph (1) of section 6715(c) is amended by inserting "or kerosene" after "diesel fuel".

(12)(A) The text of section 7232 is amended by striking "gasoline, lubricating oil, diesel fuel" and inserting "any taxable fuel (as defined in section 4083)".

(B) The section heading for section 7232 is amended to read as follows:

"SEC. 7232. FAILURE TO REGISTER UNDER SECTION 4101, FALSE REPRESENTATIONS OF REGISTRATION STATUS, ETC.".

(C) The table of sections for part II of subchapter A of chapter 75 is amended by striking the item relating to section 7232 and inserting the following:

"Sec. 7232. Failure to register under section 4101, false representations of registration status, etc.".

(13) Sections 9503(b)(1)(E) and 9508(b)(2) are each amended by striking "and diesel fuel" and inserting ", diesel fuel, and kerosene".

(14) Subparagraph (B) of section 9503(b)(5) is amended by striking "or diesel fuel" and inserting ", diesel fuel, or kerosene".

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1998.

(g) FLOOR STOCK TAXES.—

(1) IMPOSITION OF TAX.—In the case of kerosene which is held on July 1, 1998, by any person, there is hereby imposed a floor stocks tax of 24.4 cents per gallon.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding kerosene on July 1, 1998, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before August 31, 1998.

(3) DEFINITIONS.—For purposes of this subsection—

(A) HELD BY A PERSON.—Kerosene shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to kerosene held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 of the Internal Revenue Code of 1986 is allowable for such use.

(5) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on kerosene held in the tank of a motor vehicle or motorboat.

(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on kerosene held on July 1, 1998, by any person if the aggregate amount of kerosene held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

(C) CONTROLLED GROUPS.—For purposes of this paragraph—

(i) CORPORATIONS.—

(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(II) CONTROLLED GROUP.—The term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(7) COORDINATION WITH SECTION 4081.—No tax shall be imposed by paragraph (1) on kerosene to the extent that tax has been (or will be) imposed on such kerosene under section 4081 or 4091 of such Code.

(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081.

SEC. 1033. RESTORATION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES.

Paragraph (3) of section 4081(d) is amended by striking "shall not apply after December 31, 1995" and inserting "shall apply after September 30, 1997, and before April 1, 2005".

SEC. 1034. APPLICATION OF COMMUNICATIONS TAX TO PREPAID TELEPHONE CARDS.

(a) IN GENERAL.—Section 4251 is amended by adding at the end the following new subsection:

"(d) TREATMENT OF PREPAID TELEPHONE CARDS.—

"(1) IN GENERAL.—For purposes of this subchapter, in the case of communications services acquired by means of a prepaid telephone card—

"(A) the face amount of such card shall be treated as the amount paid for such communications services, and

"(B) that amount shall be treated as paid when the card is transferred by any telecommunications carrier to any person who is not such a carrier.

"(2) DETERMINATION OF FACE AMOUNT IN ABSENCE OF SPECIFIED DOLLAR AMOUNT.—In the case of any prepaid telephone card which entitles the user other than to a specified dollar amount of use, the face amount shall be determined under regulations prescribed by the Secretary.

"(3) PREPAID TELEPHONE CARD.—For purposes of this subsection, the term 'prepaid telephone card' means any card or other similar arrangement which permits its holder to obtain communications services and pay for such services in advance.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid in calendar months beginning more than 60 days after the date of the enactment of this Act.

SEC. 1035. EXTENSION OF TEMPORARY UNEMPLOYMENT TAX.

Section 3301 (relating to rate of unemployment tax) is amended—

(1) by striking "1998" in paragraph (1) and inserting "2007", and

(2) by striking "1999" in paragraph (2) and inserting "2008".

Subtitle E—Provisions Relating to Tax-Exempt Entities

SEC. 1041. EXPANSION OF LOOK-THRU RULE FOR INTEREST, ANNUITIES, ROYALTIES, AND RENTS DERIVED BY SUBSIDIARIES OF TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (13) of section 512(b) is amended to read as follows:

"(13) SPECIAL RULES FOR CERTAIN AMOUNTS RECEIVED FROM CONTROLLED ENTITIES.—

"(A) IN GENERAL.—If an organization (in this paragraph referred to as the 'controlling organization') receives (directly or indirectly) a specified payment from another entity which it controls (in this paragraph referred to as the 'controlled entity'), notwithstanding paragraphs (1), (2), and (3), the controlling organization shall include such payment as an item of gross income derived from an unrelated trade or business to the extent such payment reduces the net unrelated income of the controlled entity (or increases any net unrelated loss of the controlled entity). There shall be allowed all deductions of the controlling organization directly connected with amounts treated as derived from an unrelated trade or business under the preceding sentence.

"(B) NET UNRELATED INCOME OR LOSS.—For purposes of this paragraph—

"(i) NET UNRELATED INCOME.—The term 'net unrelated income' means—

"(I) in the case of a controlled entity which is not exempt from tax under section 501(a), the portion of such entity's taxable income which would be unrelated business taxable income if such entity were exempt from tax under section 501(a) and had the same exempt purposes (as defined in section 513A(a)(5)(A)) as the controlling organization, or

"(II) in the case of a controlled entity which is exempt from tax under section 501(a), the

amount of the unrelated business taxable income of the controlled entity.

"(ii) NET UNRELATED LOSS.—The term 'net unrelated loss' means the net operating loss adjusted under rules similar to the rules of clause (i).

"(C) SPECIFIED PAYMENT.—For purposes of this paragraph, the term 'specified payment' means any interest, annuity, royalty, or rent.

"(D) DEFINITION OF CONTROL.—For purposes of this paragraph—

"(i) CONTROL.—The term 'control' means—

"(I) in the case of a corporation, ownership (by vote or value) of more than 50 percent of the stock in such corporation,

"(II) in the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in such partnership, or

"(III) in any other case, ownership of more than 50 percent of the beneficial interests in the entity.

"(ii) CONSTRUCTIVE OWNERSHIP.—Section 318 (relating to constructive ownership of stock) shall apply for purposes of determining ownership of stock in a corporation. Similar principles shall apply for purposes of determining ownership of interests in any other entity.

"(E) RELATED PERSONS.—The Secretary shall prescribe such rules as may be necessary or appropriate to prevent avoidance of the purposes of this paragraph through the use of related persons.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any payment made during the first 2 taxable years beginning on or after the date of the enactment of this Act if such payment is made pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such payment.

SEC. 1042. TERMINATION OF CERTAIN EXCEPTIONS FROM RULES RELATING TO EXEMPT ORGANIZATIONS WHICH PROVIDE COMMERCIAL-TYPE INSURANCE.

(a) IN GENERAL.—Subparagraphs (A) and (B) of section 1012(c)(4) of the Tax Reform Act of 1986 shall not apply to any taxable year beginning after December 31, 1997.

(b) SPECIAL RULES.—In the case of an organization to which section 501(m) of the Internal Revenue Code of 1986 applies solely by reason of the amendment made by subsection (a)—

(1) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting for its first taxable year beginning after December 31, 1997, and

(2) for purposes of determining gain or loss, the adjusted basis of any asset held on the 1st day of such taxable year shall be treated as equal to its fair market value as of such day.

(c) RESERVE WEAKENING AFTER JUNE 8, 1997.—Any reserve weakening after June 8, 1997, by an organization described in subsection (b) shall be treated as occurring in such organization's 1st taxable year beginning after December 31, 1997.

(d) REGULATIONS.—The Secretary of the Treasury or his delegate may prescribe rules for providing proper adjustments for organizations described in subsection (b) with respect to short taxable years which begin during 1998 by reason of section 843 of the Internal Revenue Code of 1986.

Subtitle F—Foreign Provisions

SEC. 1051. DEFINITION OF FOREIGN PERSONAL HOLDING COMPANY INCOME.

(a) INCOME FROM NOTIONAL PRINCIPAL CONTRACTS AND PAYMENTS IN LIEU OF DIVIDENDS.—

(1) IN GENERAL.—Paragraph (1) of section 954(c) (defining foreign personal holding company income) is amended by adding at the end the following new subparagraphs:

"(F) INCOME FROM NOTIONAL PRINCIPAL CONTRACTS.—Net income from notional principal contracts. Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.

"(G) PAYMENTS IN LIEU OF DIVIDENDS.—Payments in lieu of dividends which are made pursuant to an agreement to which section 1058 applies.".

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 954(c)(1) is amended—

(A) by striking the second sentence, and

(B) by striking "also" in the last sentence.

(b) EXCEPTION FOR DEALERS.—Paragraph (2) of section 954(c) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FOR DEALERS.—Except as provided in subparagraph (A), (E), or (G) of paragraph (1) or by regulations, in the case of a regular dealer in property (within the meaning of paragraph (1)(B)), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding income any item of income, gain, deduction, or loss from any transaction (including hedging transactions) entered into in the ordinary course of such dealer's trade or business as such a dealer.".

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

SEC. 1052. PERSONAL PROPERTY USED PREDOMINANTLY IN THE UNITED STATES TREATED AS NOT PROPERTY OF A LIKE KIND WITH RESPECT TO PROPERTY USED PREDOMINANTLY OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—Subsection (h) of section 1031 (relating to exchange of property held for productive use or investment) is amended to read as follows:

"(h) SPECIAL RULES FOR FOREIGN REAL AND PERSONAL PROPERTY.—For purposes of this section—

"(1) REAL PROPERTY.—Real property located in the United States and real property located outside the United States are not property of a like kind.

"(2) PERSONAL PROPERTY.—

"(A) IN GENERAL.—Personal property used predominantly within the United States and personal property used predominantly outside the United States are not property of a like kind.

"(B) PREDOMINANT USE.—Except as provided in subparagraph (C) and (D), the predominant use of any property shall be determined based on—

"(i) in the case of the property relinquished in the exchange, the 2-year period ending on the date of such relinquishment, and

"(ii) in the case of the property acquired in the exchange, the 2-year period beginning on the date of such acquisition.

"(C) PROPERTY HELD FOR LESS THAN 2 YEARS.—Except in the case of an exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection—

"(i) only the periods the property was held by the person relinquishing the property (or any related person) shall be taken into account under subparagraph (B)(i), and

"(ii) only the periods the property was held by the person acquiring the property (or any related person) shall be taken into account under subparagraph (B)(ii).

"(D) SPECIAL RULE FOR CERTAIN PROPERTY.—Property described in any subparagraph of section 168(g)(4) shall be treated as used predominantly in the United States.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to transfers after June 8, 1997, in taxable years ending after such date.

(2) BINDING CONTRACTS.—The amendment made by this section shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before the disposition of property. A contract shall not fail to meet the requirements of the preceding sentence solely because—

(A) it provides for a sale in lieu of an exchange, or

(B) the property to be acquired as replacement property was not identified under such contract before June 9, 1997.

SEC. 1053. HOLDING PERIOD REQUIREMENT FOR CERTAIN FOREIGN TAXES.

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) MINIMUM HOLDING PERIOD FOR CERTAIN TAXES.—

"(1) WITHHOLDING TAXES.—

"(A) IN GENERAL.—In no event shall a credit be allowed under subsection (a) for any withholding tax on a dividend with respect to stock in a corporation if—

"(i) such stock is held by the recipient of the dividend for 15 days or less during the 30-day period beginning on the date which is 15 days before the date on which such share becomes ex-dividend with respect to such dividend, or

"(ii) to the extent that the recipient of the dividend is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

"(B) WITHHOLDING TAX.—For purposes of this paragraph, the term 'withholding tax' includes any tax determined on a gross basis; but does not include any tax which is in the nature of a prepayment of a tax imposed on a net basis.

"(2) DEEMED PAID TAXES.—In the case of income, war profits, or excess profits taxes deemed paid under section 853, 902, or 960 through a chain of ownership of stock in 1 or more corporations, no credit shall be allowed under subsection (a) for such taxes if—

"(A) any stock of any corporation in such chain (the ownership of which is required to obtain credit under subsection (a) for such taxes) is held for less than the period described in paragraph (1)(A)(i), or

"(B) the corporation holding the stock is under an obligation referred to in paragraph (1)(A)(ii).

"(3) 45-DAY RULE IN THE CASE OF CERTAIN PREFERENCE DIVIDENDS.—In the case of stock having preference in dividends and dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A)(i) shall be applied—

"(A) by substituting '45 days' for '15 days' each place it appears, and

"(B) by substituting '90-day period' for '30-day period'.

"(4) EXCEPTION FOR CERTAIN TAXES PAID BY SECURITIES DEALERS.—

"(A) IN GENERAL.—Paragraphs (1) and (2) shall not apply to any qualified tax with respect to any security held in the active conduct in a foreign country of a securities business of any person—

"(i) who is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934,

"(ii) who is registered as a Government securities broker or dealer under section 15C(a) of such Act, or

"(iii) who is licensed or authorized in such foreign country to conduct securities activities in such country and is subject to bona fide regulation by a securities regulating authority of such country.

"(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term 'qualified tax' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

"(i) the dividend to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

"(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

"(C) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

"(5) CERTAIN RULES TO APPLY.—For purposes of this subsection, the rules of paragraphs (3) and (4) of section 246(c) shall apply.

"(6) TREATMENT OF BONA FIDE SALES.—If a person's holding period is reduced by reason of the application of the rules of section 246(c)(4) to any contract for the bona fide sale of stock, the determination of whether such person's holding period meets the requirements of paragraph (2) with respect to taxes deemed paid under section 902 or 960 shall be made as of the date such contract is entered into.

"(7) TAXES ALLOWED AS DEDUCTION, ETC.—Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.".

(b) NOTICE OF WITHHOLDING TAXES PAID BY REGULATED INVESTMENT COMPANY.—Subsection (c) of section 853 (relating to foreign tax credit allowed to shareholders) is amended by adding at the end the following new sentence: "Such notice shall also include the amount of such taxes which (without regard to the election under this section) would not be allowable as a credit under section 901(a) to the regulated investment company by reason of section 901(k).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends paid or accrued more than 30 days after the date of the enactment of this Act.

SEC. 1054. DENIAL OF TREATY BENEFITS FOR CERTAIN PAYMENTS THROUGH HYBRID ENTITIES.

(a) IN GENERAL.—Section 894 (relating to income affected by treaty) is amended by inserting after subsection (b) the following new subsection:

"(c) DENIAL OF TREATY BENEFITS FOR CERTAIN PAYMENTS THROUGH HYBRID ENTITIES.—

"(1) APPLICATION TO CERTAIN PAYMENTS.—A foreign person shall not be entitled under any income tax treaty of the United States with a foreign country to any reduced rate of any withholding tax imposed by this title on an item of income derived through an entity which is treated as a partnership (or is otherwise treated as fiscally transparent) for purposes of this title if—

"(A) such item is not treated for purposes of the taxation laws of such foreign country as an item of income of such person,

"(B) the treaty does not contain a provision addressing the applicability of the treaty in the case of an item of income derived through a partnership, and

"(C) the foreign country does not impose tax on a distribution of such item of income from such entity to such person.

"(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to determine the extent to which a taxpayer to which paragraph (1) does not apply shall not be entitled to benefits under any income tax treaty of the United States with respect to any payment received by, or income attributable to any activities of, an entity organized in any jurisdiction (including the United States) that is treated as a partnership or is otherwise treated as fiscally transparent for purposes of this title (including a common investment trust under section 584, a grantor trust, or an entity that is disregarded for purposes of this title) and is treated as fiscally nontransparent for purposes of the tax laws of the jurisdiction of residence of the taxpayer.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply upon the date of enactment of this Act.

SEC. 1055. INTEREST ON UNDERPAYMENTS NOT REDUCED BY FOREIGN TAX CREDIT CARRYBACKS.

(a) IN GENERAL.—Subsection (d) of section 6601 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) FOREIGN TAX CREDIT CARRYBACKS.—If any credit allowed for any taxable year is increased by reason of a carryback of tax paid or accrued to foreign countries or possessions of the United States, such increase shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which such taxes were in fact paid or accrued, or, with respect to any portion of such credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the filing date for such subsequent taxable year.".

(b) CONFORMING AMENDMENT TO REFUNDS ATTRIBUTABLE TO FOREIGN TAX CREDIT CARRYBACKS.—

(1) IN GENERAL.—Subsection (f) of section 6611 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) FOREIGN TAX CREDIT CARRYBACKS.—For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of tax paid or accrued to foreign countries or possessions of the United States, such overpayment shall be deemed not to have been made before the filing date for the taxable year in which such taxes were in fact paid or accrued, or, with respect to any portion of such credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made before the filing date for such subsequent taxable year.".

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (4) of section 6611(f) (as so redesignated) is amended—

(i) by striking "PARAGRAPHS (1) AND (2)" and inserting "PARAGRAPHS (1), (2), AND (3)", and

(ii) by striking "paragraph (1) or (2)" each place it appears and inserting "paragraph (1), (2), or (3)".

(B) Clause (ii) of section 6611(f)(4)(B) (as so redesignated) is amended by striking "and" at the end of subclause (I), by redesignating subclause (II) as subclause (III), and by inserting after subclause (I) the following new subclause:

"(II) in the case of a carryback of taxes paid or accrued to foreign countries or possessions of the United States, the taxable year in which such taxes were in fact paid or accrued (or, with respect to any portion of such carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such subsequent taxable year), and".

(C) Subclause (III) of section 6611(f)(4)(B)(ii) (as so redesignated) is amended by inserting "(as defined in paragraph (3)(B))" after "credit carryback" the first place it appears.

(D) Section 6611 is amended by striking subsection (g) and by redesignating subsections (h) and (i) as subsections (g) and (h), respectively.

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

SEC. 1056. CLARIFICATION OF PERIOD OF LIMITATIONS ON CLAIM FOR CREDIT OR REFUND ATTRIBUTABLE TO FOREIGN TAX CREDIT CARRYFORWARD.

(a) IN GENERAL.—Subparagraph (A) of section 6511(d)(3) is amended by striking "for the year with respect to which the claim is made" and inserting "for the year in which such taxes were actually paid or accrued".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxes paid or accrued in taxable years beginning after the date of the enactment of this Act.

SEC. 1057. REPEAL OF EXCEPTION TO ALTERNATIVE MINIMUM FOREIGN TAX CREDIT LIMIT.

(a) IN GENERAL.—Section 59(a)(2) (relating to limitation to 90 percent of tax) is amended by striking subparagraph (C).

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

Subtitle G—Partnership Provisions

SEC. 1061. ALLOCATION OF BASIS AMONG PROPERTIES DISTRIBUTED BY PARTNERSHIP.

(a) IN GENERAL.—Subsection (c) of section 732 is amended to read as follows:

"(c) ALLOCATION OF BASIS.—

"(1) IN GENERAL.—The basis of distributed properties to which subsection (a)(2) or (b) is applicable shall be allocated—

"(A)(i) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership, and

"(ii) if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, then, to the extent any decrease is required in order to have the adjusted bases of such properties equal the basis to be allocated, in the manner provided in paragraph (3), and

"(B) to the extent of any basis remaining after the allocation under subparagraph (A), to other distributed properties—

"(i) first by assigning to each such other property such other property's adjusted basis to the partnership, and

"(ii) then, to the extent any increase or decrease in basis is required in order to have the adjusted bases of such other distributed properties equal such remaining basis, in the manner provided in paragraph (2) or (3), whichever is appropriate.

"(2) METHOD OF ALLOCATING INCREASE.—Any increase required under paragraph (1)(B) shall be allocated among the properties—

"(A) first to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation before such increase (but only to the extent of each property's unrealized appreciation), and

"(B) then, to the extent such increase is not allocated under subparagraph (A), in proportion to their respective fair market values.

"(3) METHOD OF ALLOCATING DECREASE.—Any decrease required under paragraph (1)(A) or (1)(B) shall be allocated—

"(A) first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation before such decrease (but only to the extent of each property's unrealized depreciation), and

"(B) then, to the extent such decrease is not allocated under subparagraph (A), in proportion to their respective adjusted bases (as adjusted under subparagraph (A)).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions after the date of the enactment of this Act.

SEC. 1062. REPEAL OF REQUIREMENT THAT INVENTORY BE SUBSTANTIALLY APPRECIATED WITH RESPECT TO SALE OR EXCHANGE OF PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (2) of section 751(a) is amended to read as follows:

"(2) inventory items of the partnership,".

(b) CONFORMING AMENDMENTS.—

(1)(A) Paragraph (1) of section 751(b) is amended by striking subparagraphs (A) and (B) and inserting the following new subparagraphs:

"(A) partnership property which is—

"(i) unrealized receivables, or

"(ii) inventory items which have appreciated substantially in value,

in exchange for all or a part of his interest in other partnership property (including money), or

"(B) partnership property (including money) other than property described in subparagraph (A)(i) or (ii) in exchange for all or a part of his interest in partnership property described in subparagraph (A)(i) or (ii),".

(B) Subsection (b) of section 751 is amended by adding at the end the following new paragraph:

"(3) SUBSTANTIAL APPRECIATION.—For purposes of paragraph (1)—

"(A) IN GENERAL.—Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property.

"(B) CERTAIN PROPERTY EXCLUDED.—For purposes of subparagraph (A), there shall be excluded any inventory property if a principal purpose for acquiring such property was to avoid the provisions of this subsection relating to inventory items."

(2) Subsection (d) of section 751 is amended to read as follows:

"(d) INVENTORY ITEMS.—For purposes of this subchapter, the term 'inventory items' means—

"(1) property of the partnership of the kind described in section 1221(1),

"(2) any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 1231,

"(3) any other property of the partnership which, if sold or exchanged by the partnership, would result in a gain taxable under subsection (a) of section 1246 (relating to gain on foreign investment company stock), and

"(4) any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in paragraph (1), (2), or (3).".

(3) Sections 724(d)(2), 731(a)(2)(B), 731(c)(6), 732(c)(1)(A) (as amended by the preceding section), 735(a)(2), and 735(c)(1) are each amended by striking "section 751(d)(2)" and inserting "section 751(d)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to sales, exchanges, and distributions after the date of the enactment of this Act.

(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange.

SEC. 1063. EXTENSION OF TIME FOR TAXING PRECONTRIBUTION GAIN.

(a) IN GENERAL.—Sections 704(c)(1)(B) and 737(b)(1) are each amended by striking "5 years" and inserting "7 years".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to property contributed to a partnership after June 8, 1997.

(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property.

Subtitle H—Pension Provisions

SEC. 1071. PENSION ACCRUED BENEFIT DISTRIBUTABLE WITHOUT CONSENT INCREASED TO $5,000.

(a) AMENDMENT TO 1986 CODE.—

(1) IN GENERAL.—Subparagraph (A) of section 411(a)(11) (relating to restrictions on certain mandatory distributions) is amended by striking "$3,500" and inserting "$5,000".

(2) CONFORMING AMENDMENTS.—

(A) Section 411(a)(7)(B), paragraphs (1) and (2) of section 417(e), and section 457(e)(9) are each amended by striking "$3,500" each place it appears (other than the headings) and inserting "the dollar limit under section 411(a)(11)(A)".

(B) The headings for paragraphs (1) and (2) of section 417(e) and subparagraph (A) of section 457(e)(9) are each amended by striking "$3,500" and inserting "DOLLAR LIMIT".

(b) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Section 203(e)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(e)(1)) is amended by striking "$3,500" and inserting "$5,000".

(2) CONFORMING AMENDMENTS.—Sections 204(d)(1) and 205(g) (1) and (2) (29 U.S.C. 1054(d)(1) and 1055(g) (1) and (2)) are each amended by striking "$3,500" and inserting "the dollar limit under section 203(e)(1)".

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

SEC. 1072. ELECTION TO RECEIVE TAXABLE CASH COMPENSATION IN LIEU OF NONTAXABLE PARKING BENEFITS.

(a) IN GENERAL.—Section 132(f)(4) (relating to benefits not in lieu of compensation) is amended by adding at the end the following new sentence: "This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee, and no amount shall be included in the gross income of the employee solely because the employee may choose between the qualified parking and compensation.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 1073. REPEAL OF EXCESS DISTRIBUTION AND EXCESS RETIREMENT ACCUMULATION TAX.

(a) REPEAL OF EXCESS DISTRIBUTION AND EXCESS RETIREMENT ACCUMULATION TAX.—Section 4980A (relating to excess distributions from qualified retirement plans) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 691(c)(1) is amended by striking subparagraph (C).

(2) Section 2013 is amended by striking subsection (g).

(3) Section 2053(c)(1)(B) is amended by striking the last sentence.

(4) Section 6018(a) is amended by striking paragraph (4).

(c) EFFECTIVE DATES.—

(1) EXCESS DISTRIBUTION TAX REPEAL.—Except as provided in paragraph (2), the repeal made by subsection (a) shall apply to excess distributions received after December 31, 1996.

(2) EXCESS RETIREMENT ACCUMULATION TAX REPEAL.—The repeal made by subsection (a) with respect to section 4980A(d) of the Internal Revenue Code of 1986 and the amendments made by subsection (b) shall apply to estates of decedents dying after December 31, 1996.

SEC. 1074. INCREASE IN TAX ON PROHIBITED TRANSACTIONS.

(a) IN GENERAL.—Section 4975(a) is amended by striking "10 percent" and inserting "15 percent".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to prohibited transactions occurring after the date of the enactment of this Act.

SEC. 1075. BASIS RECOVERY RULES FOR ANNUITIES OVER MORE THAN ONE LIFE.

(a) IN GENERAL.—Section 72(d)(1)(B) is amended by adding at the end the following new clause:

"(iv) NUMBER OF ANTICIPATED PAYMENTS WHERE MORE THAN ONE LIFE.—If the annuity is payable over the lives of more than 1 individual, the number of anticipated payments shall be determined as follows:

"If the combined ages of annuitants are:	**The number is:**
Not more than 110	410
More than 110 but not more than 120	360
More than 120 but not more than 130	310
More than 130 but not more than 140	260
More than 140	210.".

(b) CONFORMING AMENDMENT.—Section 72(d)(1)(B)(iii) is amended—

(1) by inserting "If the annuity is payable over the life of a single individual, the number of anticipated payments shall be determined as follows:" after the heading and before the table, and

(2) by striking "primary" in the table.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to annuity starting dates beginning after December 31, 1997.

Subtitle I—Other Revenue Provisions

SEC. 1081. TERMINATION OF SUSPENSE ACCOUNTS FOR FAMILY CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.

(a) IN GENERAL.—Subsection (i) of section 447 (relating to method of accounting for corporations engaged in farming) is amended by striking paragraphs (3) and (4), by redesignating paragraphs (5) and (6) as paragraphs (3) and (4), respectively, and by adding at the end the following new paragraph:

"(5) TERMINATION.—

"(A) IN GENERAL.—No suspense account may be established under this subsection by any corporation required by this section to change its method of accounting for any taxable year ending after June 8, 1997.

"(B) PHASEOUT OF EXISTING SUSPENSE ACCOUNTS.—

"(i) IN GENERAL.—Each suspense account under this subsection shall be reduced (but not below zero) for each taxable year beginning after June 8, 1997, by an amount equal to the lesser of—

"(I) the applicable portion of such account, or

"(II) 50 percent of the taxable income of the corporation for the taxable year, or, if the corporation has no taxable income for such year, the amount of any net operating loss (as defined in section 172(c)) for such taxable year.

For purposes of the preceding sentence, the amount of taxable income and net operating loss

shall be determined without regard to this paragraph.

"(ii) COORDINATION WITH OTHER REDUCTIONS.—The amount of the applicable portion for any taxable year shall be reduced (but not below zero) by the amount of any reduction required for such taxable year under any other provision of this subsection.

"(iv) INCLUSION IN INCOME.—Any reduction in a suspense account under this paragraph shall be included in gross income for the taxable year of the reduction.

"(C) APPLICABLE PORTION.—For purposes of subparagraph (B), the term 'applicable portion' means, for any taxable year, the amount which would ratably reduce the amount in the account (after taking into account prior reductions) to zero over the period consisting of such taxable year and the remaining taxable years in such first 20 taxable years.

"(D) AMOUNTS AFTER 20TH YEAR.—Any amount in the account as of the close of the 20th year referred to in subparagraph (C) shall be treated as the applicable portion for each succeeding year thereafter to the extent not reduced under this paragraph for any prior taxable year after such 20th year.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after June 8, 1997.

SEC. 1082. MODIFICATION OF TAXABLE YEARS TO WHICH NET OPERATING LOSSES MAY BE CARRIED.

(a) IN GENERAL.—Subparagraph (A) of section 172(b)(1) (relating to years to which loss may be carried) is amended—

(1) by striking "3" in clause (i) and inserting "2", and

(2) by striking "15" in clause (ii) and inserting "20".

(b) RETENTION OF 3-YEAR CARRYBACK FOR CERTAIN LOSSES.—Paragraph (1) of section 172(b) is amended by adding at the end the following new subparagraph:

"(F) RETENTION OF 3-YEAR CARRYBACK IN CERTAIN CASES.—

"(i) IN GENERAL.—Subparagraph (A)(i) shall be applied by substituting '3 years' for '2 years' with respect to the portion of the net operating loss for the taxable year which is an eligible loss with respect to the taxpayer.

"(ii) ELIGIBLE LOSS.—For purposes of clause (i), the term 'eligible loss' means—

"(I) in the case of an individual, losses of property arising from fire, storm, shipwreck, or other casualty, or from theft,

"(II) in the case of a taxpayer which is a small business, net operating losses attributable to Presidentially declared disasters (as defined in section 1033(h)(3)), and

"(III) in the case of a taxpayer engaged in the trade or business of farming (as defined in section 263A(e)(4)), net operating losses attributable to such Presidentially declared disasters.

"(iii) SMALL BUSINESS.—For purposes of this subparagraph, the term 'small business' means a corporation or partnership which meets the gross receipts test of section 448(c) for the taxable year in which the loss arose (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation).".

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

SEC. 1083. MODIFICATIONS TO TAXABLE YEARS TO WHICH UNUSED CREDITS MAY BE CARRIED.

(a) IN GENERAL.—Section 39(a) (relating to unused credits) is amended—

(1) in paragraph (1), by striking "3" each place it appears and inserting "1" and by striking "15" each place it appears and inserting "20"; and

(2) in paragraph (2), by striking "18" each place it appears and inserting "22" and by striking "17" each place it appears and inserting "21".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to credits arising in taxable years beginning after December 31, 1997.

SEC. 1084. EXPANSION OF DENIAL OF DEDUCTION FOR CERTAIN AMOUNTS PAID IN CONNECTION WITH INSURANCE.

(a) DENIAL OF DEDUCTION FOR PREMIUMS.—

(1) IN GENERAL.—Paragraph (1) of section 264(a) is amended to read as follows:

"(1) Premiums on any life insurance policy, or endowment or annuity contract, if the taxpayer is directly or indirectly a beneficiary under the policy or contract.".

(2) EXCEPTIONS.—Section 264 is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and by inserting after subsection (a) the following new subsection:

"(b) EXCEPTIONS TO SUBSECTION (a)(1).—Subsection (a)(1) shall not apply to—

"(1) any annuity contract described in section 72(s)(5), and

"(2) any annuity contract to which section 72(u) applies.".

(b) INTEREST ON POLICY LOANS.—

(1) IN GENERAL.—Paragraph (4) of section 264(a) is amended by striking "individual, who" and all that follows and inserting "individual.".

(2) COORDINATION WITH TRANSFERS FOR VALUE.—Paragraph (2) of section 101(a) is amended by adding at the end the following new flush sentence:

"The term 'other amounts' in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).".

(c) PRO RATA ALLOCATION OF INTEREST EXPENSE TO POLICY CASH VALUES.—Section 264 is amended by adding at the end the following new subsection:

"(f) PRO RATA ALLOCATION OF INTEREST EXPENSE TO POLICY CASH VALUES.—

"(1) IN GENERAL.—No deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values.

"(2) ALLOCATION.—For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values is an amount which bears the same ratio to such interest expense as—

"(A) the taxpayer's average unborrowed policy cash values of life insurance policies, and annuity and endowment contracts, issued after June 8, 1997, bears to

"(B) the sum of—

"(i) in the case of assets of the taxpayer which are life insurance policies or annuity or endowment contracts, the average unborrowed policy cash values of such policies and contracts, and

"(ii) in the case of assets of the taxpayer not described in clause (i), the average adjusted bases (within the meaning of section 1016) of such assets.

"(3) UNBORROWED POLICY CASH VALUE.—For purposes of this subsection, the term 'unborrowed policy cash value' means, with respect to any life insurance policy or annuity or endowment contract, the excess of—

"(A) the cash surrender value of such policy or contract determined without regard to any surrender charge, over

"(B) the amount of any loan with respect to such policy or contract.

"(4) EXCEPTION FOR CERTAIN POLICIES AND CONTRACTS.—

"(A) POLICIES AND CONTRACTS COVERING 20-PERCENT OWNERS, OFFICERS, DIRECTORS, AND EMPLOYEES.—Paragraph (1) shall not apply to any policy or contract owned by an entity engaged in a trade or business if such policy or contract covers only 1 individual and if such individual is (at the time first covered by the policy or contract)—

"(i) a 20-percent owner of such entity, or

"(ii) an individual (not described in clause (i)) who is an officer, director, or employee of such trade or business.

A policy or contract covering a 20-percent owner of such entity shall not be treated as failing to meet the requirements of the preceding sentence by reason of covering the joint lives of such owner and such owner's spouse.

"(B) CONTRACTS SUBJECT TO CURRENT INCOME INCLUSION.—Paragraph (1) shall not apply to any annuity contract to which section 72(u) applies.

"(C) COORDINATION WITH PARAGRAPH (2).—Any policy or contract to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2).

"(D) 20-PERCENT OWNER.—For purposes of subparagraph (A), the term '20-percent owner' has the meaning given such term by subsection (e)(4).

"(5) EXCEPTION FOR POLICIES AND CONTRACTS HELD BY NATURAL PERSONS; TREATMENT OF PARTNERSHIPS AND S CORPORATIONS.—

"(A) POLICIES AND CONTRACTS HELD BY NATURAL PERSONS.—

"(i) IN GENERAL.—This subsection shall not apply to any policy or contract held by a natural person.

"(ii) EXCEPTION WHERE BUSINESS IS BENEFICIARY.—If a trade or business is directly or indirectly the beneficiary under any policy or contract, such policy or contract shall be treated as held by such trade or business and not by a natural person.

"(iii) SPECIAL RULES.—

"(I) CERTAIN TRADES OR BUSINESSES NOT TAKEN INTO ACCOUNT.—Clause (ii) shall not apply to any trade or business carried on as a sole proprietorship and to any trade or business performing services as an employee.

"(II) LIMITATION ON UNBORROWED CASH VALUE.—The amount of the unborrowed cash value of any policy or contract which is taken into account by reason of clause (ii) shall not exceed the benefit to which the trade or business is directly or indirectly entitled under the policy or contract.

"(iv) REPORTING.—The Secretary shall require such reporting from policyholders and issuers as is necessary to carry out clause (ii). Any report required under the preceding sentence shall be treated as a statement referred to in section 6724(d)(1).

"(B) TREATMENT OF PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation, this subsection shall be applied at the partnership and corporate levels.

"(6) SPECIAL RULES.—

"(A) COORDINATION WITH SUBSECTION (a) AND SECTION 265.—If interest on any indebtedness is disallowed under subsection (a) or section 265—

"(i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and

"(ii) the amount otherwise taken into account under paragraph (2)(B) shall be reduced (but not below zero) by the amount of such indebtedness.

"(B) COORDINATION WITH SECTION 263A.—This subsection shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property).

"(7) INTEREST EXPENSE.—The term 'interest expense' means the aggregate amount allowable

to the taxpayer as a deduction for interest (within the meaning of section 265(b)(4)) for the taxable year (determined without regard to this subsection, section 265(b), and section 291).

"(8) AGGREGATION RULES.—

"(A) IN GENERAL.—All members of a controlled group (within the meaning of subsection (d)(5)(B)) shall be treated as 1 taxpayer for purposes of this subsection.

"(B) TREATMENT OF INSURANCE COMPANIES.—This subsection shall not apply to an insurance company subject to tax under subchapter L, and subparagraph (A) shall be applied without regard to any member of an affiliated group which is an insurance company.".

(b) TREATMENT OF INSURANCE COMPANIES.—

(1)(A) Clause (ii) of section 805(a)(4)(C) is amended by inserting ", or out of the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies," after "tax-exempt interest".

(B) Clause (iii) of section 805(a)(4)(D) is amended by striking "and" and inserting ", the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, and".

(C) Paragraph (4) of section 805(a) is amended by adding at the end the following new subparagraph:

"(F) INCREASE IN POLICY CASH VALUES.—For purposes of subparagraphs (C) and (D)—

"(i) IN GENERAL.—The increase in the policy cash value for any taxable year with respect to policy or contract is the amount of the increase in the adjusted cash value during such taxable year determined without regard to—

"(I) gross premiums paid during such taxable year, and

"(II) distributions (other than amounts includible in the policyholder's gross income) during such taxable year to which section 72(e) applies.

"(ii) ADJUSTED CASH VALUE.—For purposes of clause (i), the term 'adjusted cash value' means the cash surrender value of the policy or contract increased by the sum of—

"(I) commissions payable with respect to such policy or contract for the taxable year, and

"(II) asset management fees, surrender charges, mortality and expense charges, and any other fees or charges specified in regulations prescribed by the Secretary which are imposed (or which would be imposed were the policy or contract canceled) with respect to such policy or contract for the taxable year.".

(2)(A) Subparagraph (B) of section 807(a)(2) is amended by striking "interest," and inserting "interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,".

(B) Subparagraph (B) of section 807(b)(1) is amended by striking "interest," and inserting "interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,".

(3) Paragraph (1) of section 812(d) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) the increase for any taxable year in the policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies.".

(4) Subparagraph (B) of section 832(b)(5) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end the following new clause:

"(iii) the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies.".

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 265(b)(4) is amended by inserting ", section 264," before "and section 291".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts issued after June 8, 1997, in taxable years ending after such date. For purposes of the preceding sentence, any material increase in the death benefit or other material change in the contract shall be treated as a new contract but the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives. For purposes of this subsection, an increase in the death benefit under a policy or contract issued in connection with a lapse described in section 501(d)(2) of the Health Insurance Portability and Accountability Act of 1996 shall not be treated as a new contract.

SEC. 1085. IMPROVED ENFORCEMENT OF THE APPLICATION OF THE EARNED INCOME CREDIT.

(a) RESTRICTIONS ON AVAILABILITY OF EARNED INCOME CREDIT FOR TAXPAYERS WHO IMPROPERLY CLAIMED CREDIT IN PRIOR YEAR.—

(1) IN GENERAL.—Section 32 is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

"(k) RESTRICTIONS ON TAXPAYERS WHO IMPROPERLY CLAIMED CREDIT IN PRIOR YEAR.—

"(1) TAXPAYERS MAKING PRIOR FRAUDULENT OR RECKLESS CLAIMS.—

"(A) IN GENERAL.—No credit shall be allowed under this section for any taxable year in the disallowance period.

"(B) DISALLOWANCE PERIOD.—For purposes of paragraph (1), the disallowance period is—

"(i) the period of 10 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to fraud, and

"(ii) the period of 2 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to reckless or intentional disregard of rules and regulations (but not due to fraud).

"(2) TAXPAYERS MAKING IMPROPER PRIOR CLAIMS.—In the case of a taxpayer who is denied credit under this section for any taxable year as a result of the deficiency procedures under subchapter B of chapter 63, no credit shall be allowed under this section for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for such credit.".

(2) DUE DILIGENCE REQUIREMENT ON INCOME TAX RETURN PREPARERS.—Section 6695 is amended by adding at the end the following new subsection:

"(g) FAILURE TO BE DILIGENT IN DETERMINING ELIGIBILITY FOR EARNED INCOME CREDIT.—Any person who is an income tax return preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining eligibility for, or the amount of, the credit allowable by section 32 shall pay a penalty of $100 for each such failure.".

(3) EXTENSION PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting ", and", and by inserting after subparagraph (I) the following new subparagraph:

"(J) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit).".

(b) INCREASE IN NET LOSS DISREGARDED FOR MODIFIED ADJUSTED GROSS INCOME.—Section 32(c)(5)(B)(iv) is amended by striking "50 percent" and inserting "75 percent".

(c) WORKFARE PAYMENTS NOT INCLUDED IN EARNED INCOME.—Section 32(c)(2)(B) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding at the end the following new clause:

"(v) no amount described in subparagraph (A) received for service performed in work activities as defined in section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of title IV of such Act, but only to the extent such amount is subsidized under such State program.".

(d) CERTAIN NONTAXABLE INCOME INCLUDED IN MODIFIED ADJUSTED GROSS INCOME.—Section 32(c)(5)(B) is amended—

(1) by striking "and" at the end of clause (iii),

(2) by striking the period at the end of clause (iv)(III),

(3) by inserting after clause (iv)(III) the following new clauses:

"(v) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

"(vi) amounts received as a pension or annuity, and any distributions or payments received from an individual retirement plan, by the taxpayer during the taxable year to the extent not included in gross income.", and

(4) by adding at the end the following new sentence: "Clause (vi) shall not include any amount which is not includible in gross income by reason of section 402(c), 403(a)(4), 403(b), 408(d) (3), (4), or (5), or 457(e)(10).".

(e) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1996.

(2) The amendments made by subsections (b), (c), and (d) shall apply to taxable years beginning after December 31, 1997.

SEC. 1086. LIMITATION ON PROPERTY FOR WHICH INCOME FORECAST METHOD MAY BE USED.

(a) LIMITATION.—Subsection (g) of section 167 is amended by adding at the end the following new paragraph:

"(6) LIMITATION ON PROPERTY FOR WHICH INCOME FORECAST METHOD MAY BE USED.—The depreciation deduction allowable under this section may be determined under the income forecast method or any similar method only with respect to—

"(A) property described in paragraph (3) or (4) of section 168(f),

"(B) copyrights,

"(C) books,

"(D) patents, and

"(E) other property specified in regulations.

Such methods may not be used with respect to any amortizable section 197 intangible (as defined in section 197(c)).".

(b) DEPRECIATION PERIOD FOR RENT-TO-OWN PROPERTY.—

(1) IN GENERAL.—Subparagraph (A) of section 168(e)(3) (relating to 3-year property) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end the following new clause:

"(iii) any qualified rent-to-own property.".

(2) 4-YEAR CLASS LIFE.—The table contained in section 168(g)(3)(B) is amended by inserting before the first item the following new item:

"(A)(iii) ..... 4 ".

(3) DEFINITION OF QUALIFIED RENT-TO-OWN PROPERTY.—Subsection (i) of section 168 is amended by adding at the end the following new paragraph:

"(14) QUALIFIED RENT-TO-OWN PROPERTY.—

"(A) IN GENERAL.—The term 'qualified rent-to-own property' means property held by a rent-to-own dealer for purposes of being subject to a rent-to-own contract.

"(B) RENT-TO-OWN DEALER.—The term 'rent-to-own dealer' means a person that, in the ordinary course of business, regularly enters into rent-to-own contracts with customers for the use of consumer property, if a substantial portion of those contracts terminate and the property is returned to such person before the receipt of all payments required to transfer ownership of the property from such person to the customer.

"(C) CONSUMER PROPERTY.—The term 'consumer property' means tangible personal property of a type generally used within the home for personal use.

"(D) RENT-TO-OWN CONTRACT.—The term 'rent-to-own contract' means any lease for the use of consumer property between a rent-to-own dealer and a customer who is an individual which—

"(i) is titled 'Rent-to-Own Agreement' or 'Lease Agreement with Ownership Option,' or uses other similar language,

"(ii) provides for level (or decreasing where no payment is less than 40 percent of the largest payment), regular periodic payments (for a payment period which is a week or month),

"(iii) provides that legal title to such property remains with the rent-to-own dealer until the customer makes all the payments described in clause (ii) or early purchase payments required under the contract to acquire legal title to the item of property,

"(iv) provides a beginning date and a maximum period of time for which the contract may be in effect that does not exceed 156 weeks or 36 months from such beginning date (including renewals or options to extend),

"(v) provides for payments within the 156-week or 36-month period that, in the aggregate, generally exceed the normal retail price of the consumer property plus interest,

"(vi) provides for payments under the contract that, in the aggregate, do not exceed $10,000 per item of consumer property,

"(vii) provides that the customer does not have any legal obligation to make all the payments referred to in clause (ii) set forth under the contract, and that at the end of each payment period the customer may either continue to use the consumer property by making the payment for the next payment period or return such property to the rent-to-own dealer in good working order, in which case the customer does not incur any further obligations under the contract and is not entitled to a return of any payments previously made under the contract, and

"(viii) provides that the customer has no right to sell, sublease, mortgage, pawn, pledge, encumber, or otherwise dispose of the consumer property until all the payments stated in the contract have been made.".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 1087. EXPANSION OF REQUIREMENT THAT INVOLUNTARILY CONVERTED PROPERTY BE REPLACED WITH PROPERTY ACQUIRED FROM AN UNRELATED PERSON.

(a) IN GENERAL.—Subsection (i) of section 1033 is amended to read as follows:

"(i) REPLACEMENT PROPERTY MUST BE ACQUIRED FROM UNRELATED PERSON IN CERTAIN CASES.—

"(1) IN GENERAL.—If the property which is involuntarily converted is held by a taxpayer to which this subsection applies, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period applicable under subsection (a)(2)(B).

"(2) TAXPAYERS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

"(A) a C corporation,

"(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion, and

"(C) any other taxpayer if, with respect to property which is involuntarily converted during the taxable year, the aggregate of the amount of realized gain on such property on which there is realized gain exceeds $100,000.

In the case of a partnership, subparagraph (C) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(3) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to involuntary conversions occurring after June 8, 1997.

SEC. 1088. TREATMENT OF EXCEPTION FROM INSTALLMENT SALES RULES FOR SALES OF PROPERTY BY A MANUFACTURER TO A DEALER.

(a) IN GENERAL.—Paragraph (2) of section 811(c) of the Tax Reform Act of 1986 is hereby repealed.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years beginning more than 1 year after the date of the enactment of this Act.

(2) COORDINATION WITH SECTION 481.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

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

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

(C) the net amount of the adjustments required to be taken into account under section 481(a) of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4 taxable year period beginning with the first taxable year beginning after the date of the enactment of this Act.

SEC. 1089. LIMITATIONS ON CHARITABLE REMAINDER TRUST ELIGIBILITY FOR CERTAIN TRUSTS.

(a) LIMITATION ON NONCHARITABLE DISTRIBUTIONS.—

(1) IN GENERAL.—Paragraphs (1)(A) and (2)(A) of section 664(d) (relating to charitable remainder trusts) are each amended by inserting "nor more than 50 percent" after "not less than 5 percent".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to transfers in trust after June 18, 1997.

(b) MINIMUM CHARITABLE BENEFIT.—

(1) CHARITABLE REMAINDER ANNUITY TRUSTS.—Paragraph (1) of section 664(d) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C), and by adding at the end the following new subparagraph:

"(D) the value (determined under section 7520) of such remainder interest is at least 10 percent of the initial net fair market value of all property placed in the trust."

(2) CHARITABLE REMAINDER UNITRUSTS.—Paragraph (2) of section 664(d) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C), and by adding at the end the following new subparagraph:

"(D) with respect to each contribution of property to the trust, the value (determined under section 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.".

(3) VOID OR REFORMED TRUST.—Paragraph (3) of section 2055(e) is amended by adding at the end the following new subparagraph:

"(J) VOID OR REFORMED TRUST IN CASES OF INSUFFICIENT REMAINDER INTERESTS.—In the case of a trust that would qualify (or could be reformed to qualify pursuant to subparagraph (B)) but for failure to satisfy the requirement of paragraph (1)(D) or (2)(D) of section 664(d), such trust may be—

"(i) declared null and void ab initio, or

"(ii) changed by reformation, amendment, or otherwise to meet such requirement by reducing the payout rate or the duration (or both) of any noncharitable beneficiary's interest to the extent necessary to satisfy such requirement,

pursuant to a proceeding that is commenced within the period required in subparagraph (C)(iii). In a case described in clause (i), no deduction shall be allowed under this title for any transfer to the trust and any transactions entered into by the trust prior to being declared void shall be treated as entered into by the transferor."

(4) SEVERANCE OF CERTAIN ADDITIONAL CONTRIBUTIONS.—Subsection (d) of section 664 is amended by adding at the end the following new paragraph:

"(4) SEVERANCE OF CERTAIN ADDITIONAL CONTRIBUTIONS.—If—

"(A) any contribution is made to a trust which before the contribution is a charitable remainder unitrust, and

"(B) such contribution would (but for this paragraph) result in such trust ceasing to be a charitable unitrust by reason of paragraph (2)(D), such contribution shall be treated as a transfer to a separate trust under regulations prescribed by the Secretary."

(5) CONFORMING AMENDMENT.—Section 2055(e)(3)(G) is amended by inserting "(or other proceeding pursuant to subparagraph (J)" after "reformation".

(6) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to transfers in trust after July 28, 1997.

(B) SPECIAL RULE FOR CERTAIN DECEDENTS.—The amendments made by this subsection shall not apply to transfers in trust under the terms of a will (or other testamentary instrument) executed on or before July 28, 1997, if the decedent—

(i) dies before January 1, 1999, without having republished the will (or amended such instrument) by codicil or otherwise, or

(ii) was on July 28, 1997, 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.

SEC. 1090. EXPANDED SSA RECORDS FOR TAX ENFORCEMENT.

(a) EXPANSION OF COORDINATED ENFORCEMENT EFFORTS OF IRS AND HHS OFFICE OF CHILD SUPPORT ENFORCEMENT.—

(1) STATE REPORTING OF SSN OF CHILD.—Section 454A(e)(4)(D) of the Social Security Act (42 U.S.C. 654a(e)(4)(D)) is amended by striking "the birth date of any child" and inserting "the birth date and, beginning not later than October 1, 1999, the social security number, of any child".

(2) FEDERAL CASE REGISTRY OF CHILD SUPPORT ORDERS.—Section 453(h) of such Act (42 U.S.C. 653(h)) is amended—

(A) in paragraph (2), by adding at the end the following: "Beginning not later than October 1, 1999, the information referred to in paragraph (1) shall include the names and social security numbers of the children of such individuals."; and

(B) by adding at the end the following:

"(3) ADMINISTRATION OF FEDERAL TAX LAWS.—The Secretary of the Treasury shall have access to the information described in paragraph (2) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.".

(3) COORDINATION BETWEEN SECRETARIES.—The Secretary of the Treasury and the Secretary of Health and Human Services shall consult regarding the implementation issues resulting from the amendments made by this subsection, including interim deadlines for States that may be able before October 1, 1999, to provide the data required by such amendments. The Secretaries shall report to Congress on the results of such consultation.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 1, 1998.

(b) REQUIRED SUBMISSION OF SSN'S ON APPLICATIONS.—

(1) IN GENERAL.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended—

(A) in subparagraph (B)(ii), by adding at the end the following new sentence: "With respect to an application for a social security account number for an individual who has not attained the age of 18 before such application, such evidence shall include the information described in subparagraph (C)(ii).",

(B) in the second sentence of subparagraph (C)(ii), insert "the Commissioner of Social Security and" after "available to", and

(C) by adding at the end the following new subparagraph:

"(H) The Commissioner of Social Security shall share with the Secretary of the Treasury the information obtained by the Commissioner pursuant to the second sentence of subparagraph (B)(ii) and to subparagraph (C)(ii) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.".

(2) EFFECTIVE DATES.—

(A) The amendment made by paragraph (1)(A) shall apply to applications made after the date which is 180 days after the date of the enactment of this Act.

(B) The amendments made by subparagraphs (B) and (C) of paragraph (1) shall apply to information obtained on, before, or after the date of the enactment of this Act.

SEC. 1091. MODIFICATION OF ESTIMATED TAX SAFE HARBORS.

(a) IN GENERAL.—Clause (i) of section 6654(d)(1)(C) (relating to limitation on use of preceding year's tax) is amended to read as follows:

"(i) IN GENERAL.—If the adjusted gross income shown on the return of the individual for the preceding taxable year beginning in any calendar year exceeds $150,000, clause (ii) of subparagraph (B) shall be applied by substituting the applicable percentage for '100 percent'. For purposes of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

"If the preceding taxable year begins in:	The applicable percentage is:
1998, 1999, or 2000	105
2001	112
2002 or thereafter	110.

This clause shall not apply in the case of a preceding taxable year beginning in calendar year 1997.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 1997.

TITLE XI—SIMPLIFICATION AND OTHER FOREIGN-RELATED PROVISIONS

Subtitle A—General Provisions

SEC. 1101. CERTAIN INDIVIDUALS EXEMPT FROM FOREIGN TAX CREDIT LIMITATION.

(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) CERTAIN INDIVIDUALS EXEMPT.—

"(1) IN GENERAL.—In the case of an individual to whom this subsection applies for any taxable year—

"(A) the limitation of subsection (a) shall not apply,

"(B) no taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued under subsection (c) in any other taxable year, and

"(C) no taxes paid or accrued by the individual during any other taxable year may be deemed paid or accrued under subsection (c) in such taxable year.

"(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 $300 ($600 in the case of a joint return), 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, 1997.

SEC. 1102. 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 CERTAIN TAXES.—Subparagraph (A) shall not apply to any foreign income taxes—

"(i) paid after the date 2 years after the close of the taxable year to which such taxes relate, or

"(ii) paid before the beginning of the taxable year to which such taxes relate.

"(C) EXCEPTION FOR INFLATIONARY CURRENCIES.—Subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any inflationary currency (as determined under 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. The Secretary may prescribe adjustments to the pools of post-1986 foreign income taxes and the pools of post-1986 undistributed earnings under sections 902 and 960 in lieu of the redetermination under the preceding sentence.

"(2) SPECIAL RULE FOR TAXES NOT PAID WITHIN 2 YEARS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), 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).

"(B) TAXES SUBSEQUENTLY PAID.—Any such taxes if subsequently paid—

"(i) shall be taken into account—

"(I) in the case of taxes deemed paid under section 902 or section 960, for the taxable year in

which paid (and no redetermination shall be made under this section by reason of such payment), and

"(II) in any other case, for the taxable year to which such taxes relate, and

"(ii) shall be translated as provided in section 986(a)(2)(A).

"(3) ADJUSTMENTS.—The amount of tax (if any) due on any redetermination under paragraph (1) 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 (as amended by subsection (a)) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) 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 DATES.—

(1) IN GENERAL.—The amendments made by subsections (a)(1) and (b) shall apply to taxes paid or accrued in taxable years beginning after December 31, 1997.

(2) SUBSECTION (a)(2).—The amendment made by subsection (a)(2) shall apply to taxes which relate to taxable years beginning after December 31, 1997.

SEC. 1103. 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, 1997, 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 amendment made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 1104. 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 on the transaction 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—

"(A) section 162 (other than traveling expenses described in subsection (a)(2) thereof), or

"(B) section 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, 1997.

SEC. 1105. FOREIGN TAX CREDIT TREATMENT OF DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.

(a) SEPARATE BASKET ONLY TO APPLY TO PRE-2003 EARNINGS.—

(1) IN GENERAL.—Subparagraph (E) of section 904(d)(1) is amended to read as follows:

"(E) in the case of a corporation, dividends from noncontrolled section 902 corporations out of earnings and profits accumulated in taxable years beginning before January 1, 2003,".

(2) AGGREGATION OF NON-PFICS.—Subparagraph (E) of section 904(d)(2) (relating to noncontrolled section 902 corporations) is amended by adding at the end the following new clause:

"(iv) ALL NON-PFICS TREATED AS ONE.—All noncontrolled section 902 corporations which are not passive foreign investment companies (as defined in section 1297) shall be treated as one noncontrolled section 902 corporation for purposes of paragraph (1).".

(3) CONFORMING AMENDMENTS.—Subparagraphs (C)(iii)(II) and (D) of section 904(d)(2) are each amended by inserting "out of earnings and profits accumulated in taxable years beginning before January 1, 2003" after "corporation".

(b) APPLICATION OF LOOK-THRU RULES TO DIVIDENDS OF NONCONTROLLED SECTION 902 CORPORATIONS ATTRIBUTABLE TO POST-2002 EARNINGS.—Section 904(d) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) LOOK-THRU APPLIES TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.—

"(A) IN GENERAL.—For purposes of this subsection, any applicable dividend shall be treated as income in a separate category in proportion to the ratio of—

"(i) the portion of the earnings and profits described in subparagraph (B)(ii) attributable to income in such category, to

"(ii) the total amount of such earnings and profits.

"(B) APPLICABLE DIVIDEND.—For purposes of subparagraph (A), the term 'applicable dividend' means any dividend—

"(i) from a noncontrolled section 902 corporation with respect to the taxpayer, and

"(ii) paid out of earnings and profits accumulated in taxable years beginning after December 31, 2002.

"(C) SPECIAL RULES.—

"(i) IN GENERAL.—Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

"(ii) EARNINGS AND PROFITS.—For purposes of this paragraph and paragraph (1)(E)—

"(I) IN GENERAL.—The rules of section 316 shall apply.

"(II) REGULATIONS.—The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods prior to the taxpayer's acquisition of such stock.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

Subtitle B—Treatment of Controlled Foreign Corporations

SEC. 1111. 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:

"(e) 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 recognized 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. 1112. 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, 1997.

(c) 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.

SEC. 1113. INDIRECT FOREIGN TAX CREDIT ALLOWED FOR CERTAIN LOWER TIER COMPANIES.

(a) SECTION 902 CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 902 (relating to deemed taxes increased in case of certain 2nd and 3rd tier foreign corporations) is amended to read as follows:

"(b) DEEMED TAXES INCREASED IN CASE OF CERTAIN LOWER TIER CORPORATIONS.—

"(1) IN GENERAL.—If—

"(A) any foreign corporation is a member of a qualified group, and

"(B) such foreign corporation owns 10 percent or more of the voting stock of another member of such group from which it receives dividends in any taxable year,

such foreign corporation shall be deemed to have paid the same proportion of such other member's post-1986 foreign income taxes as would be determined under subsection (a) if such foreign corporation were a domestic corporation.

"(2) QUALIFIED GROUP.—For purposes of paragraph (1), the term 'qualified group' means—

"(A) the foreign corporation described in subsection (a), and

"(B) any other foreign corporation if—

"(i) the domestic corporation owns at least 5 percent of the voting stock of such other foreign corporation indirectly through a chain of foreign corporations connected through stock ownership of at least 10 percent of their voting stock,

"(ii) the foreign corporation described in subsection (a) is the first tier corporation in such chain, and

"(iii) such other corporation is not below the sixth tier in such chain.

The term 'qualified group' shall not include any foreign corporation below the third tier in the chain referred to in clause (i) unless such foreign corporation is a controlled foreign corporation (as defined in section 957) and the domestic corporation is a United States shareholder (as defined in section 951(b)) in such foreign corporation. Paragraph (1) shall apply to those taxes paid by a member of the qualified group below the third tier only with respect to periods during which it was a controlled foreign corporation.".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 902(c)(3) is amended by adding "or" at the end of clause (i) and by striking clauses (ii) and (iii) and inserting the following new clause:

"(ii) the requirements of subsection (b)(2) are met with respect to such foreign corporation.".

(B) Subparagraph (B) of section 902(c)(4) is amended by striking "3rd foreign corporation" and inserting "sixth tier foreign corporation".

(C) The heading for paragraph (3) of section 902(c) is amended by striking "WHERE DOMESTIC CORPORATION ACQUIRES 10 PERCENT OF FOREIGN CORPORATION" and inserting "WHERE FOREIGN CORPORATION FIRST QUALIFIES".

(D) Paragraph (3) of section 902(c) is amended by striking "ownership" each place it appears.

(b) SECTION 960 CREDIT.—Paragraph (1) of section 960(a) (relating to special rules for foreign tax credits) is amended to read as follows:

"(1) DEEMED PAID CREDIT.—For purposes of subpart A of this part, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)).".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of enactment of this Act.

(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.

Subtitle C—Treatment of Passive Foreign Investment Companies

SEC. 1121. UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS NOT SUBJECT TO PFIC INCLUSION.

Section 1296 is amended by adding at the end the following new subsection:

"(e) EXCEPTION FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—

"(1) IN GENERAL.—For purposes of this part, a corporation shall not be treated with respect to a shareholder as a passive foreign investment company during the qualified portion of such shareholder's holding period with respect to stock in such corporation.

"(2) QUALIFIED PORTION.—For purposes of this subsection, the term 'qualified portion' means the portion of the shareholder's holding period—

"(A) which is after December 31, 1997, and

"(B) during which the shareholder is a United States shareholder (as defined in section 951(b)) of the corporation and the corporation is a controlled foreign corporation.

"(3) NEW HOLDING PERIOD IF QUALIFIED PORTION ENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if the qualified portion of a shareholder's holding period with respect to any stock ends after December 31, 1997, solely for purposes of this part, the shareholder's holding period with respect to such stock shall be treated as beginning as of the first day following such period.

"(B) EXCEPTION.—Subparagraph (A) shall not apply if such stock was, with respect to such shareholder, stock in a passive foreign investment company at any time before the qualified portion of the shareholder's holding period with respect to such stock and no election under section 1298(b)(1) is made.".

SEC. 1122. ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK IN PASSIVE FOREIGN INVESTMENT COMPANY.

(a) IN GENERAL.—Part VI of subchapter P of chapter 1 is amended by redesignating subpart C as subpart D, by redesignating sections 1296 and 1297 as sections 1297 and 1298, respectively, and by inserting after subpart B the following new subpart:

"Subpart C—Election of Mark to Market For Marketable Stock

"Sec. 1296. Election of mark to market for marketable stock.

"SEC. 1296. ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK.

"(a) GENERAL RULE.—In the case of marketable stock in a passive foreign investment company 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, at the election 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 investment company—

"(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 investment company 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 investment company (with respect to which an election under this section is in effect), 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 investment company (with respect to which an election under this section is in effect) 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 investment company.

"(d) UNREVERSED INCLUSIONS.—For purposes of this section, the term 'unreversed inclusions' means, with respect to any stock in a passive foreign investment company, 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 1291.

"(e) MARKETABLE STOCK.—For purposes of this section—

"(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,

"(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, and

"(C) to the extent provided in regulations, any option on stock described in subparagraph (A) or (B).

"(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 investment company which it owns directly or indirectly shall be treated as marketable stock for purposes of this section. Except as provided in regulations, similar treatment as marketable stock shall apply in the case of any other regulated investment company which publishes net asset valuations at least annually.

"(f) TREATMENT OF CONTROLLED FOREIGN CORPORATIONS WHICH ARE SHAREHOLDERS IN PASSIVE FOREIGN INVESTMENT COMPANIES.—In the case of a foreign corporation which is a controlled foreign corporation and which owns (or is treated under subsection (g) as owning) stock in a passive foreign investment company—

"(1) this section (other than subsection (c)(2)) 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 investment company 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 investment company.

"(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) STOCK ACQUIRED FROM A DECEDENT.—In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, 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 subsection).

"(j) COORDINATION WITH SECTION 1291 FOR FIRST YEAR OF ELECTION.—

"(1) TAXPAYERS OTHER THAN REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—If the taxpayer elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, and if the requirements of subparagraph (B) are not satisfied, section 1291 shall apply to—

"(i) any distributions with respect to, or disposition of, such stock in the first taxable year of the taxpayer for which such election is made, and

"(ii) any amount which, but for section 1291, would have been included in gross income under subsection (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.

"(B) REQUIREMENTS.—The requirements of this subparagraph are met if, with respect to each of such corporation's taxable years for which such corporation was a passive foreign investment company and which begin after December 31, 1986, and included any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part with respect to the taxpayer.

"(2) SPECIAL RULES FOR REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—If a regulated investment company elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, then, with respect to such company's first taxable year for which such company elects the application of this section with respect to such stock—

"(i) section 1291 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 regulated investment 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 1291(c)(3) if section 1291 were applied without regard to this subparagraph.

Clause (ii) shall not apply if for the preceding taxable year the company elected to mark to market the stock held by such company as of the last day of such preceding taxable year.

"(B) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

"(k) ELECTION.—This section shall apply to marketable stock in a passive foreign investment company which is held by a United States person only if such person elects to apply this section with respect to such stock. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless—

"(1) such stock ceases to be marketable stock, or

"(2) the Secretary consents to the revocation of such election.

"(l) TRANSITION RULE FOR INDIVIDUALS BECOMING SUBJECT TO UNITED STATES TAX.—If any individual becomes a United States person in a taxable year beginning after December 31, 1997, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive

foreign investment company owned 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.".

(b) COORDINATION WITH INTEREST CHARGE, ETC.—

(1) Paragraph (1) of section 1291(d) is amended by adding at the end the following new flush sentence:

"Except as provided in section 1296(j), this section also shall not apply if an election under section 1296(k) is in effect for the taxpayer's taxable year.".

(2) The subsection heading for subsection (d) of section 1291 is amended by striking "SUBPART B" and inserting "SUBPARTS B AND C".

(3) Subparagraph (A) of section 1291(a)(3) is amended to read as follows:

"(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 1296 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 1296 so applied.".

(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 1296.—For purposes of determining a regulated investment company's ordinary income—

"(A) notwithstanding paragraph (1)(C), section 1296 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 investment company during the portion of the calendar year after October 31 shall be taken into account in determining such regulated investment 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 INVESTMENT COMPANY.—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 investment company with respect to which an election under section 1296(k) is in effect 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 investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of such year,".

(d) CONFORMING AMENDMENTS.—

(1) Sections 532(b)(4) and 542(c)(10) are each amended by striking "section 1296" and inserting "section 1297".

(2) Subsection (f) of section 551 is amended by striking "section 1297(b)(5)" and inserting "section 1298(b)(5)".

(3) Subsections (a)(1) and (d) of section 1293 are each amended by striking "section 1297(a)" and inserting "section 1298(a)".

(4) Paragraph (3) of section 1297(b), as redesignated by subsection (a), is hereby repealed.

(5) The table of sections for subpart D of part VI of subchapter P of chapter 1, as redesignated by subsection (a), is amended to read as follows:

"Sec. 1297. Passive foreign investment company.

"Sec. 1298. Special rules.".

(6) The table of subparts for part VI of subchapter P of chapter 1 is amended by striking the last item and inserting the following new items:

"Subpart C. Election of mark to market for marketable stock.

"Subpart D. General provisions.".

(e) CLARIFICATION OF GAIN RECOGNITION ELECTION.—The last sentence of section 1298(b)(1), as so redesignated, is amended by inserting "(determined without regard to the preceding sentence)" after "investment company".

SEC. 1123. VALUATION OF ASSETS FOR PASSIVE FOREIGN INVESTMENT COMPANY DETERMINATION.

(a) IN GENERAL.—Section 1297, as redesignated by section 1122, is amended by adding at the end the following new subsection:

"(e) METHODS FOR MEASURING ASSETS.—

"(1) DETERMINATION USING VALUE.—The determination under subsection (a)(2) shall be made on the basis of the value of the assets of a foreign corporation if—

"(A) such corporation is a publicly traded corporation for the taxable year, or

"(B) paragraph (2) does not apply to such corporation for the taxable year.

"(2) DETERMINATION USING ADJUSTED BASES.—The determination under subsection (a)(2) shall be based on the adjusted bases (as determined for the purposes of computing earnings and profits) of the assets of a foreign corporation if such corporation is not described in paragraph (1)(A) and such corporation—

"(A) is a controlled foreign corporation, or

"(B) elects the application of this paragraph.

An election under subparagraph (B), once made, may be revoked only with the consent of the Secretary.

"(3) PUBLICLY TRADED CORPORATION.—For purposes of this subsection, a foreign corporation shall be treated as a publicly traded corporation if the stock in the corporation is regularly traded on—

"(A) 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

"(B) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this subsection."

(b) CONFORMING AMENDMENTS.—Section 1297(a), as redesignated by section 1122, is amended—

(1) by striking "(by value)" and inserting "(as determined in accordance with subsection (e))", and

(2) by striking the last two sentences.

SEC. 1124. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to—

(1) taxable years of United States persons beginning after December 31, 1997, and

(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.

Subtitle D—Repeal of Excise Tax on Transfers to Foreign Entities

SEC. 1131. REPEAL OF EXCISE TAX ON TRANSFERS TO FOREIGN ENTITIES; RECOGNITION OF GAIN ON CERTAIN TRANSFERS TO FOREIGN TRUSTS AND ESTATES.

(a) REPEAL OF EXCISE TAX.—Chapter 5 (relating to transfers to avoid income tax) is hereby repealed.

(b) RECOGNITION OF GAIN ON CERTAIN TRANSFERS TO FOREIGN TRUSTS AND ESTATES.—Subpart F of part I of subchapter J of chapter 1 is amended by adding at the end the following new section:

"SEC. 684. RECOGNITION OF GAIN ON CERTAIN TRANSFERS TO CERTAIN FOREIGN TRUSTS AND ESTATES.

"(a) IN GENERAL.—Except as provided in regulations, in the case of any transfer of property by a United States person to a foreign estate or trust, 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) EXCEPTION.—Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any person is treated as the owner of such trust under section 671.

"(c) TREATMENT OF TRUSTS WHICH BECOME FOREIGN TRUSTS.—If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust.".

(b) OTHER ANTI-AVOIDANCE PROVISIONS REPLACING REPEALED EXCISE TAX.—

(1) GAIN RECOGNITION ON EXCHANGES INVOLVING FOREIGN PERSONS.—Section 1035 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) EXCHANGES INVOLVING FOREIGN PERSONS.—To the extent provided in regulations, subsection (a) shall not apply to any exchange having the effect of transferring property to any person other than a United States person.".

(2) TRANSFERS TO FOREIGN CORPORATIONS.—Section 367 is amended by adding at the end the following new subsection:

"(f) OTHER TRANSFERS.—To the extent provided in regulations, if a United States person transfers property to a foreign corporation as paid-in surplus or as a contribution to capital (in a transaction not otherwise described in this section), 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.".

(3) CERTAIN TRANSFERS TO PARTNERSHIPS.—Section 721 is amended by adding at the end the following new subsection:

"(c) REGULATIONS RELATING TO CERTAIN TRANSFERS TO PARTNERSHIPS.—The Secretary may provide by regulations that subsection (a) shall not apply to gain realized on the transfer of property to a partnership if such gain, when recognized, will be includible in the gross income of a person other than a United States person.".

(4) REPEAL OF U.S. SOURCE TREATMENT OF DEEMED ROYALTIES.—Subparagraph (C) of section 367(d)(2) is amended to read as follows:

"(C) AMOUNTS RECEIVED TREATED AS ORDINARY INCOME.—For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income.".

(5) TRANSFERS OF INTANGIBLES TO PARTNERSHIPS.—

(A) Subsection (d) of section 367 is amended by adding at the end the following new paragraph:

"(3) REGULATIONS RELATING TO TRANSFERS OF INTANGIBLES TO PARTNERSHIPS.—The Secretary may provide by regulations that the rules of paragraph (2) also apply to the transfer of intangible property by a United States person to a partnership in circumstances consistent with the purposes of this subsection.".

(B) Section 721 is amended by adding at the end the following new subsection:

"(d) TRANSFERS OF INTANGIBLES.—

"For regulatory authority to treat intangibles transferred to a partnership as sold, see section 367(d)(3).".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (h) of section 814 is amended by striking "or 1491".

(2) Section 1057 (relating to election to treat transfer to foreign trust, etc., as taxable exchange) is hereby repealed.

(3) Section 6422 is amended by striking paragraph (5) and by redesignating paragraphs (6) through (13) as paragraphs (5) through (12), respectively.

(4) The table of chapters for subtitle A is amended by striking the item relating to chapter 5.

(5) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1057.

(6) The table of sections for subpart F of part I of subchapter J of chapter 1 is amended by adding at the end the following new item:

"Sec. 684. Recognition of gain on certain transfers to certain foreign trusts and estates.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle E—Information Reporting

SEC. 1141. CLARIFICATION OF APPLICATION OF RETURN REQUIREMENT TO FOREIGN PARTNERSHIPS.

(a) IN GENERAL.—Section 6031 (relating to return of partnership income) is amended by adding at the end the following new subsection:

"(e) FOREIGN PARTNERSHIPS.—

"(1) EXCEPTION FOR FOREIGN PARTNERSHIP.—Except as provided in paragraph (2), the preceding provisions of this section shall not apply to a foreign partnership.

"(2) CERTAIN FOREIGN PARTNERSHIPS REQUIRED TO FILE RETURN.—Except as provided in regulations prescribed by the Secretary, this section shall apply to a foreign partnership for any taxable year if for such year, such partnership has—

"(A) gross income derived from sources within the United States, or

"(B) gross income which is effectively connected with the conduct of a trade or business within the United States.

The Secretary may provide simplified filing procedures for foreign partnerships to which this section applies.".

(b) SANCTION FOR FAILURE BY FOREIGN PARTNERSHIP TO COMPLY WITH SECTION 6031 TO INCLUDE DENIAL OF DEDUCTIONS.—Subsection (f) of section 6231 is amended—

(1) by striking "LOSSES AND" in the heading and inserting "DEDUCTIONS, LOSSES, AND", and

(2) by striking "loss or" each place it appears and inserting "deduction, loss, or".

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

SEC. 1142. CONTROLLED FOREIGN PARTNERSHIPS SUBJECT TO INFORMATION REPORTING COMPARABLE TO INFORMATION REPORTING FOR CONTROLLED FOREIGN CORPORATIONS.

(a) IN GENERAL.—So much of section 6038 (relating to information with respect to certain foreign corporations) as precedes paragraph (2) of subsection (a) is amended to read as follows:

"SEC. 6038. INFORMATION REPORTING WITH RESPECT TO CERTAIN FOREIGN CORPORATIONS AND PARTNERSHIPS.

"(a) REQUIREMENT.—

"(1) IN GENERAL.—Every United States person shall furnish, with respect to any foreign business entity which such person controls, such information as the Secretary may prescribe relating to—

"(A) the name, the principal place of business, and the nature of business of such entity, and the country under whose laws such entity is incorporated (or organized in the case of a partnership);

"(B) in the case of a foreign corporation, its post-1986 undistributed earnings (as defined in section 902(c));

"(C) a balance sheet for such entity listing assets, liabilities, and capital;

"(D) transactions between such entity and—

"(i) such person,

"(ii) any corporation or partnership which such person controls, and

"(iii) any United States person owning, at the time the transaction takes place—

"(I) in the case of a foreign corporation, 10 percent or more of the value of any class of stock outstanding of such corporation, and

"(II) in the case of a foreign partnership, at least a 10-percent interest in such partnership; and

"(E)(i) in the case of a foreign corporation, a description of the various classes of stock outstanding, and a list showing the name and address of, and number of shares held by, each United States person who is a shareholder of record owning at any time during the annual accounting period 5 percent or more in value of any class of stock outstanding of such foreign corporation, and

"(ii) information comparable to the information described in clause (i) in the case of a foreign partnership.

The Secretary may also require the furnishing of any other information which is similar or related in nature to that specified in the preceding sentence or which the Secretary determines to be appropriate to carry out the provisions of this title.".

(b) DEFINITIONS.—

(1) IN GENERAL.—Subsection (e) of section 6038 (relating to definitions) is amended—

(A) by redesignating paragraphs (1) and (2) as paragraphs (2) and (4), respectively,

(B) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) FOREIGN BUSINESS ENTITY.—The term 'foreign business entity' means a foreign corporation and a foreign partnership.", and

(C) by inserting after paragraph (2) (as so redesignated) the following new paragraph:

"(3) PARTNERSHIP-RELATED DEFINITIONS.—

"(A) CONTROL.—A person is in control of a partnership if such person owns directly or indirectly more than a 50 percent interest in such partnership.

"(B) 50-PERCENT INTEREST.—For purposes of subparagraph (A), a 50-percent interest in a partnership is—

"(i) an interest equal to 50 percent of the capital interest, or 50 percent of the profits interest, in such partnership, or

"(ii) to the extent provided in regulations, an interest to which 50 percent of the deductions or losses of such partnership are allocated.

For purposes of the preceding sentence, rules similar to the rules of section 267(c) (other than paragraph (3)) shall apply.

"(C) 10-PERCENT INTEREST.—A 10-percent interest in a partnership is an interest which would be described in subparagraph (B) if '10 percent' were substituted for '50 percent' each place it appears.".

(2) CLERICAL AMENDMENT.—The paragraph heading for paragraph (2) of section 6038(e) (as so redesignated) is amended by inserting "OF CORPORATION" after "CONTROL".

(c) MODIFICATION OF SANCTIONS ON PARTNERSHIPS AND CORPORATIONS FOR FAILURE TO FURNISH INFORMATION.—

(1) IN GENERAL.—Subsection (b) of section 6038 is amended—

(A) by striking "$1,000" each place it appears and inserting "$10,000", and

(B) by striking "$24,000" in paragraph (2) and inserting "$50,000".

(d) REPORTING BY 10-PERCENT PARTNERS.—Subsection (a) of section 6038 is amended by adding at the end the following new paragraph:

"(5) INFORMATION REQUIRED FROM 10-PERCENT PARTNER OF CONTROLLED FOREIGN PARTNERSHIP.—In the case of a foreign partnership which is controlled by United States persons holding at least 10-percent interests (but not by any one United States person), the Secretary may require each United States person who holds a 10-percent interest in such partnership to furnish information relating to such partnership, including information relating to such partner's ownership interests in the partnership and allocations to such partner of partnership items.".

(e) TECHNICAL AMENDMENTS.—

(1) The following provisions of section 6038 are each amended by striking "foreign corporation" each place it appears and inserting "foreign business entity":

(A) Paragraphs (2) and (3) of subsection (a).

(B) Subsection (b).

(C) Subsection (c) other than paragraph (1)(B) thereof.

(D) Subsection (d).

(E) Subsection (e)(4) (as redesignated by subsection (b)).

(2) Subparagraph (B) of section 6038(c)(1) is amended by inserting "in the case of a foreign business entity which is a foreign corporation," after "(B)".

(3) Paragraph (8) of section 318(b) is amended by striking "6038(d)(1)" and inserting "6038(d)(2)".

(4) Paragraph (4) of section 901(k) is amended by striking "foreign corporation" and inserting "foreign corporation or partnership".

(5) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6038 and inserting the following new item:

"Sec. 6038. Information reporting with respect to certain foreign corporations and partnerships.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to annual accounting periods beginning after the date of the enactment of this Act.

SEC. 1143. MODIFICATIONS RELATING TO RETURNS REQUIRED TO BE FILED BY REASON OF CHANGES IN OWNERSHIP INTERESTS IN FOREIGN PARTNERSHIP.

(a) NO RETURN REQUIRED UNLESS CHANGES INVOLVE 10-PERCENT INTEREST IN PARTNERSHIP.—

(1) IN GENERAL.—Subsection (a) of section 6046A (relating to returns as to interests in foreign partnerships) is amended by adding at the

end the following new sentence: "Paragraphs (1) and (2) shall apply to any acquisition or disposition only if the United States person directly or indirectly holds at least a 10-percent interest in such partnership either before or after such acquisition or disposition, and paragraph (3) shall apply to any change only if the change is equivalent to at least a 10-percent interest in such partnership.".

(2) 10-PERCENT INTEREST.—Section 6046A is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) 10-PERCENT INTEREST.—For purposes of subsection (a), a 10-percent interest in a partnership is an interest described in section 6038(e)(3)(C).".

(b) MODIFICATION OF PENALTY ON FAILURE TO REPORT CHANGES IN OWNERSHIP INTERESTS IN FOREIGN CORPORATIONS AND PARTNERSHIPS.—Subsection (a) of section 6679 (relating to failure to file returns, etc., with respect to foreign corporations or foreign partnerships) is amended to read as follows:

"(a) CIVIL PENALTY.—

"(1) IN GENERAL.—In addition to any criminal penalty provided by law, any person required to file a return under section 6035, 6046, or 6046A who fails to file such return at the time provided in such section, or who files a return which does not show the information required pursuant to such section, shall pay a penalty of $10,000, unless it is shown that such failure is due to reasonable cause.

"(2) INCREASE IN PENALTY WHERE FAILURE CONTINUES AFTER NOTIFICATION.—If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the United States person, such person shall pay a penalty (in addition to the amount required under paragraph (1)) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The increase in any penalty under this paragraph shall not exceed $50,000.

"(3) REDUCED PENALTY FOR RETURNS RELATING TO FOREIGN PERSONAL HOLDING COMPANIES.—In the case of a return required under section 6035, paragraph (1) shall be applied by substituting '$1,000' for '$10,000', and paragraph (2) shall not apply.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers and changes after the date of the enactment of this Act.

SEC. 1144. TRANSFERS OF PROPERTY TO FOREIGN PARTNERSHIPS SUBJECT TO INFORMATION REPORTING COMPARABLE TO INFORMATION REPORTING FOR SUCH TRANSFERS TO FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (1) of section 6038B(a) (relating to notice of certain transfers to foreign corporations) is amended to read as follows:

"(1) transfers property to—

"(A) a foreign corporation in an exchange described in section 332, 351, 354, 355, 356, or 361, or

"(B) a foreign partnership in a contribution described in section 721 or in any other contribution described in regulations prescribed by the Secretary,".

(b) EXCEPTIONS.—Section 6038B is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) EXCEPTIONS FOR CERTAIN TRANSFERS TO FOREIGN PARTNERSHIPS; SPECIAL RULE.—

"(1) EXCEPTIONS.—Subsection (a)(1)(B) shall apply to a transfer by a United States person to a foreign partnership only if—

"(A) the United States person holds (immediately after the transfer) directly or indirectly at least a 10-percent interest (as defined in section 6046A(d)) in the partnership, or

"(B) the value of the property transferred (when added to the value of the property transferred by such person or any related person to such partnership or a related partnership during the 12-month period ending on the date of the transfer) exceeds $100,000.

For purposes of the preceding sentence, the value of any transferred property is its fair market value at the time of its transfer.

"(2) SPECIAL RULE.—If by reason of an adjustment under section 482 or otherwise, a contribution described in subsection (a)(1) is deemed to have been made, such contribution shall be treated for purposes of this section as having been made not earlier than the date specified by the Secretary.".

(c) MODIFICATION OF PENALTY APPLICABLE TO FOREIGN CORPORATIONS AND PARTNERSHIPS.—

(1) IN GENERAL.—Paragraph (1) of section 6038B(b) is amended by striking "equal to" and all that follows and inserting "equal to 10 percent of the fair market value of the property at the time of the exchange (and, in the case of a contribution described in subsection (a)(1)(B), such person shall recognize gain as if the contributed property had been sold for such value at the time of such contribution).".

(2) LIMIT ON PENALTY.—Section 6038B(b) is amended by adding at the end the following new paragraph:

"(3) LIMIT ON PENALTY.—The penalty under paragraph (1) with respect to any exchange shall not exceed $100,000 unless the failure with respect to such exchange was due to intentional disregard.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers made after the date of the enactment of this Act.

(2) ELECTION OF RETROACTIVE EFFECT.—Section 1494(c) of the Internal Revenue Code of 1986 shall not apply to any transfer after August 20, 1996, if all applicable reporting requirements under section 6038B of such Code (as amended by this section) are satisfied. The Secretary of the Treasury or his delegate may prescribe simplified reporting requirements under the preceding sentence.

SEC. 1145. EXTENSION OF STATUTE OF LIMITATIONS FOR FOREIGN TRANSFERS.

(a) IN GENERAL.—Paragraph (8) of section 6501(c) (relating to failure to notify Secretary under section 6038B) is amended to read as follows:

"(8) FAILURE TO NOTIFY SECRETARY OF CERTAIN FOREIGN TRANSFERS.—In the case of any information which is required to be reported to the Secretary under section 6038, 6038A, 6038B, 6046, 6046A, or 6048, the time for assessment of any tax imposed by this title with respect to any event or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to information the due date for the reporting of which is after the date of the enactment of this Act.

SEC. 1146. INCREASE IN FILING THRESHOLDS FOR RETURNS AS TO ORGANIZATION OF FOREIGN CORPORATIONS AND ACQUISITIONS OF STOCK IN SUCH CORPORATIONS.

(a) IN GENERAL.—Subsection (a) of section 6046 (relating to returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended to read as follows:

"(a) REQUIREMENT OF RETURN.—

"(1) IN GENERAL.—A return complying with the requirements of subsection (b) shall be made by—

"(A) each United States citizen or resident who becomes an officer or director of a foreign corporation if a United States person (as defined in section 7701(a)(30)) meets the stock ownership requirements of paragraph (2) with respect to such corporation,

"(B) each United States person—

"(i) who acquires stock which, when added to any stock owned on the date of such acquisition, meets the stock ownership requirements of paragraph (2) with respect to a foreign corporation, or

"(ii) who acquires stock which, without regard to stock owned on the date of such acquisition, meets the stock ownership requirements of paragraph (2) with respect to a foreign corporation,

"(C) each person (not described in subparagraph (B)) who is treated as a United States shareholder under section 953(c) with respect to a foreign corporation, and

"(D) each person who becomes a United States person while meeting the stock ownership requirements of paragraph (2) with respect to stock of a foreign corporation.

In the case of a foreign corporation with respect to which any person is treated as a United States shareholder under section 953(c), subparagraph (A) shall be treated as including a reference to each United States person who is an officer or director of such corporation.

"(2) STOCK OWNERSHIP REQUIREMENTS.—A person meets the stock ownership requirements of this paragraph with respect to any corporation if such person owns 10 percent or more of—

"(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

"(B) the total value of the stock of such corporation.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1998.

Subtitle F—Determination of Foreign or Domestic Status of Partnerships

SEC. 1151. DETERMINATION OF FOREIGN OR DOMESTIC STATUS OF PARTNERSHIPS.

(a) IN GENERAL.—Paragraph (4) of section 7701(a) is amended by inserting before the period "unless, in the case of a partnership, the Secretary provides otherwise by regulations".

(b) EFFECTIVE DATE.—Any regulations issued with respect to the amendment made by subsection (a) shall apply to partnerships created or organized after the date determined under section 7805(b) of the Internal Revenue Code of 1986 (without regard to paragraph (2) thereof) with respect to such regulations.

Subtitle G—Other Simplification Provisions

SEC. 1161. TRANSITION RULE FOR CERTAIN TRUSTS.

(a) IN GENERAL.—Paragraph (3) of section 1907(a) of the Small Business Job Protection Act of 1996 is amended by adding at the end the following flush sentence:

"To the extent prescribed in regulations by the Secretary of the Treasury or his delegate, a trust which was in existence on August 20, 1996 (other than a trust treated as owned by the grantor under subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986), and which was treated as a United States person on the day before the date of the enactment of this Act may elect to continue to be treated as a United States person notwithstanding section 7701(a)(30)(E) of such Code.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996.

SEC. 1162. REPEAL OF STOCK AND SECURITIES SAFE HARBOR REQUIREMENT THAT PRINCIPAL OFFICE BE OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The last sentence of clause (ii) of section 864(b)(2)(A) (relating to stock or securities) is amended by striking ", or in the case of a corporation" and all that follows and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1997.

SEC. 1163. MISCELLANEOUS CLARIFICATIONS.

(a) ATTRIBUTION OF DEEMED PAID FOREIGN TAXES TO PRIOR DISTRIBUTIONS.—Subparagraph (B) of section 902(c)(2) is amended by striking "deemed paid with respect to" and inserting "attributable to".

(b) FINANCIAL SERVICES INCOME DETERMINED WITHOUT REGARD TO HIGH-TAXED INCOME.—Subclause (II) of section 904(d)(2)(C)(i) is amended by striking "subclause (I)" and inserting "subclauses (I) and (III)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle H—Other Provisions

SEC. 1171. TREATMENT OF COMPUTER SOFTWARE AS FSC EXPORT PROPERTY.

(a) IN GENERAL.—Subparagraph (B) of section 927(a)(2) (relating to property excluded from eligibility as FSC export property) is amended by inserting ", and other than computer software (whether or not patented)" before ", for commercial or home use".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to gross receipts attributable to periods after December 31, 1997, in taxable years ending after such date.

SEC. 1172. ADJUSTMENT OF DOLLAR LIMITATION ON SECTION 911 EXCLUSION.

(a) GENERAL RULE.—Paragraph (2) of section 911(b) is amended by—

(1) by striking "of $70,000" in subparagraph (A) and inserting "equal to the exclusion amount for the calendar year in which such taxable year begins", and

(2) by adding at the end the following new subparagraph:

"(D) EXCLUSION AMOUNT.—

"(i) IN GENERAL.—The exclusion amount for any calendar year is the exclusion amount determined in accordance with the following table (as adjusted by clause (ii)):

"For calendar year—	The exclusion amount is—
1998	$72,000
1999	74,000
2000	76,000
2001	78,000
2002 and thereafter	80,000.

"(ii) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2007, the $80,000 amount in clause (i) shall be increased by an amount equal to the product of—

"(I) such dollar amount, and

"(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting '2006' for '1992' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $100, such increase shall be rounded to the next lowest multiple of $100.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 1173. UNITED STATES PROPERTY NOT TO INCLUDE CERTAIN ASSETS ACQUIRED BY DEALERS IN ORDINARY COURSE OF TRADE OR BUSINESS.

(a) IN GENERAL.—Section 956(c)(2) is amended by striking "and" at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting a semicolon, and by adding at the end the following new subparagraphs:

"(J) deposits of cash or securities made or received on commercial terms in the ordinary course of a United States or foreign person's business as a dealer in securities or in commodities, but only to the extent such deposits are made or received as collateral or margin for (i) a securities loan, notional principal contract, options contract, forward contract, or futures contract, or (ii) any other financial transaction in which the Secretary determines that it is customary to post collateral or margin; and

"(K) an obligation of a United States person to the extent the principal amount of the obligation does not exceed the fair market value of readily marketable securities sold or purchased pursuant to a sale and repurchase agreement or otherwise posted or received as collateral for the obligation in the ordinary course of its business by a United States or foreign person which is a dealer in securities or commodities.

For purposes of subparagraphs (J) and (K), the term 'dealer in securities' has the meaning given such term by section 475(c)(1), and the term 'dealer in commodities' has the meaning given such term by section 475(e), except that such term shall include a futures commission merchant.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 1997, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 1174. TREATMENT OF NONRESIDENT ALIENS ENGAGED IN INTERNATIONAL TRANSPORTATION SERVICES.

(a) SOURCING RULES.—

(1) IN GENERAL.—Section 861(a)(3) is amended by adding at the end the following new flush sentence:

"In addition, except for purposes of sections 79 and 105 and subchapter D, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States.".

(2) TRANSPORTATION INCOME.—Subparagraph (B) of section 863(c)(2) is amended by adding at the end the following flush sentence:

"In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.".

(b) PRESENCE IN UNITED STATES.—

(1) IN GENERAL.—Paragraph (7) of section 7701(b) is amended by adding at the end the following new subparagraph:

"(D) CREW MEMBERS TEMPORARILY PRESENT.—An individual who is temporarily present in the United States on any day as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States shall not be treated as present in the United States on such day unless such individual otherwise engages in any trade or business in the United States on such day.".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 7701(b)(7) is amended by striking "or (C)" and inserting ", (C), or (D)".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to remuneration for services performed in taxable years beginning after December 31, 1997.

(2) PRESENCE.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1997.

SEC. 1175. EXEMPTION FOR ACTIVE FINANCING INCOME.

(a) EXEMPTION FROM FOREIGN PERSONAL HOLDING COMPANY INCOME.—Section 954 is amended by adding at the end the following new subsection:

"(h) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR BUSINESSES.—

"(1) IN GENERAL.—For purposes of subsection (c)(1), foreign personal holding company income shall not include income which is—

"(A) derived in the active conduct by a controlled foreign corporation of a banking, financing, or similar business, but only if the corporation is predominantly engaged in the active conduct of such business,

"(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company of its reserves or of 80 percent of its unearned premiums (as both are determined in the manner prescribed under paragraph (4)), or

"(C) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company of an amount of its assets equal to—

"(i) in the case of contracts regulated in the country in which sold as property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

"(ii) in the case of contracts regulated in the country in which sold as life insurance or annuity contracts, the greater of—

"(I) 10 percent of the reserves described in subparagraph (B) for such contracts, or

"(II) in the case of a qualifying insurance company which is a start-up company, $10,000,000.

"(2) PRINCIPLES FOR DETERMINING APPLICABLE INCOME.—

"(A) BANKING AND FINANCING INCOME.—The determination as to whether income is described in paragraph (1)(A) shall be made—

"(i) except as provided in clause (ii), in accordance with the applicable principles of section 904(d)(2)(C)(ii), except that such income shall include income from all leases entered into in the ordinary course of the active conduct of a banking, financing, or similar business, and

"(ii) in the case of a corporation described in paragraph (3)(B), in accordance with the applicable principles of section 1296(b) (as in effect on the day before the enactment of the Taxpayer Relief Act of 1997) for determining what is not passive income.

"(B) INSURANCE INCOME.—Under rules prescribed by the Secretary, for purposes of paragraphs (1) (B) and (C)—

"(i) in the case of contracts which are separate account-type contracts (including variable contracts not meeting the requirements of section 817), only income specifically allocable to such contracts shall be taken into account, and

"(ii) in the case of other contracts, income not allocable under clause (i) shall be allocated ratably among such contracts.

"(C) LOOK-THRU RULES.—The Secretary shall prescribe regulations consistent with the principles of section 904(d)(3) which provide that dividends, interest, income equivalent to interest, rents, or royalties received or accrued from a related person (within the meaning of subsection (d)(3)) shall be subject to look-thru treatment for purposes of this subsection.

"(3) PREDOMINANTLY ENGAGED.—For purposes of paragraph (1)(A), a corporation shall be

deemed predominantly engaged in the active conduct of a banking, financing, or similar business only if—

"(A) more than 70 percent of its gross income is derived from such business from transactions with persons which are not related persons (as defined in subsection (d)(3)) and which are located within the country under the laws of which the controlled foreign corporation is created or organized, or

"(B) the corporation is—

"(i) engaged in the active conduct of a banking or securities business (within the meaning of section 1296(b), as in effect before the enactment of the Taxpayer Relief Act of 1997), or

"(ii) a qualified bank affiliate or a qualified securities affiliate (within the meaning of the proposed regulations under such section 1296(b)).

"(4) METHODS FOR DETERMINING UNEARNED PREMIUMS AND RESERVES.—For purposes of paragraph (1)(B)—

"(A) PROPERTY AND CASUALTY CONTRACTS.—The unearned premiums and reserves of a qualifying insurance company with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company were subject to tax under subchapter L.

"(B) LIFE INSURANCE AND ANNUITY CONTRACTS.—The reserves of a qualifying insurance company with respect to life insurance or annuity contracts shall be determined under the method described in paragraph (5) which such company elects to apply for purposes of this paragraph. Such election shall be made at such time and in such manner as the Secretary may prescribe and, once made, shall be irrevocable without the consent of the Secretary.

"(C) LIMITATION ON RESERVES.—In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining foreign annual statement reserves (less any catastrophe or deficiency reserves).

"(5) METHODS.—The methods described in this paragraph are as follows:

"(A) U.S. METHOD.—The method which would apply if the qualifying insurance company were subject to tax under subchapter L, except that the interest rate used shall be an interest rate determined for the foreign country in which such company is created or organized and which is calculated in the same manner as the Federal mid-term rate under section 1274(d).

"(B) FOREIGN METHOD.—A preliminary term method, except that the interest rate used shall be the interest rate determined for the foreign country in which such company is created or organized and which is calculated in the same manner as the Federal mid-term rate under section 1274(d). If a qualifying insurance company uses such a preliminary term method with respect to contracts insuring risks located in such foreign country, such method shall apply if such company elects the method under this clause.

"(C) CASH SURRENDER VALUE.—A method under which reserves are equal to the net surrender value (as defined in section 807(e)(1)(A)) of the contract.

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) TERMS RELATING TO INSURANCE COMPANIES.—

"(i) QUALIFYING INSURANCE COMPANY.—The term 'qualifying insurance company' means any entity which—

"(I) is subject to regulation as an insurance company under the laws of its country of incorporation,

"(II) realizes at least 50 percent of its net written premiums from the insurance or reinsurance of risks located within the country in which such entity is created or organized, and

"(III) is engaged in the active conduct of an insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

"(ii) START-UP COMPANY.—A qualifying insurance company shall be treated as a start-up company if such company (and any predecessor) has not been engaged in the active conduct of an insurance business for more than 5 years as of the beginning of the taxable year of such company.

"(B) LOCATED.—For purposes of paragraph (3)(A)—

"(i) IN GENERAL.—A person shall be treated as located—

"(I) except as provided in subclause (II), within the country in which it maintains an office or other fixed place of business through which it engages in a trade or business and by which the transaction is effected, or

"(II) in the case of a natural person, within the country in which such person is physically located when such person enters into a transaction.

"(ii) SPECIAL RULE FOR QUALIFIED BUSINESS UNITS.—Gross income derived by a corporation's qualified business unit (within the meaning of section 989(a)) from transactions with persons which are not related persons (as defined in subsection (d)(3)) and which are located in the country in which the qualified business unit both maintains its principal office and conducts substantial business activity shall be treated as derived from transactions with persons which are not related persons (as defined in subsection (d)(3)) and which are located within the country under the laws of which the controlled foreign corporation is created or organized.

"(7) ANTI-ABUSE RULES.—For purposes of applying this subsection, there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any change in the method of computing reserves or any other transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection.

"(8) COORDINATION WITH SECTION 953.—This subsection shall not apply to investment income allocable to contracts that insure related party risks or risks located in a foreign country other than the country in which the qualifying insurance comapny is created or organized.

"(9) APPLICATION.—This subsection shall apply to the first full taxable year of a foreign corporation beginning after December 31, 1997, and before January 1, 1999, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.".

(b) EXEMPTION FROM FOREIGN BASE COMPANY SERVICES INCOME.—Paragraph (2) of section 954(e) 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 the following:

"(C) in the case of taxable years described in subsection (h)(8), the active conduct by a controlled foreign corporation of a banking, financing, insurance, or similar business, but only if the corporation is predominantly engaged in the active conduct of such business (within the meaning of subsection (h)(3)) or is a qualifying insurance company.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the first full taxable year of a foreign corporation beginning after December 31, 1997, and before January 1, 1999, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.

TITLE XII—SIMPLIFICATION PROVISIONS RELATING TO INDIVIDUALS AND BUSINESSES

Subtitle A—Provisions Relating to Individuals

SEC. 1201. BASIC STANDARD DEDUCTION AND MINIMUM TAX EXEMPTION AMOUNT FOR CERTAIN DEPENDENTS.

(a) BASIC STANDARD DEDUCTION.—

(1) IN GENERAL.—Paragraph (5) of section 63(c) (relating to limitation on basic standard deduction in the case of certain dependents) is amended by striking "shall not exceed" and all that follows and inserting "shall not exceed the greater of—

"(A) $500, or

"(B) the sum of $250 and such individual's earned income.".

(2) CONFORMING AMENDMENT.—Paragraph (4) of section 63(c) is amended—

(A) by striking "(5)(A)" in the material preceding subparagraph (A) and inserting "(5)", and

(B) by striking "by substituting" and all that follows in subparagraph (B) and inserting "by substituting for 'calendar year 1992' in subparagraph (B) thereof—

"(i) 'calendar year 1987' in the case of the dollar amounts contained in paragraph (2) or (5)(A) or subsection (f), and

"(ii) 'calendar year 1997' in the case of the dollar amount contained in paragraph (5)(B).".

(b) MINIMUM TAX EXEMPTION AMOUNT.—

(1) IN GENERAL.—Subsection (j) of section 59 is amended to read as follows:

"(j) TREATMENT OF UNEARNED INCOME OF MINOR CHILDREN.—

"(1) IN GENERAL.—In the case of a child to whom section 1(g) applies, the exemption amount for purposes of section 55 shall not exceed the sum of—

"(A) such child's earned income (as defined in section 911(d)(2)) for the taxable year, plus

"(B) $5,000.

"(2) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1998, the dollar amount in paragraph (1)(B) shall be increased by an amount equal to the product of—

"(A) such dollar amount, and

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting '1997' for '1992' 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 nearest multiple of $50.".

(2) CONFORMING AMENDMENT.—Clause (iv) of section 6103(e)(1)(A) is amended by striking "or 59(j)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 1202. INCREASE IN AMOUNT OF TAX EXEMPT FROM ESTIMATED TAX REQUIREMENTS.

(a) IN GENERAL.—Paragraph (1) of section 6654(e) (relating to exception where tax is small amount) is amended by striking "$500" and inserting "$1,000".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 1203. TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.

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

"(o) 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, 1997.

SEC. 1204. TREATMENT OF TRAVELING EXPENSES OF CERTAIN FEDERAL EMPLOYEES ENGAGED IN CRIMINAL INVESTIGATIONS.

(a) IN GENERAL.—Subsection (a) of section 162 is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate, or provide support services for the investigation of, a Federal crime.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid or incurred with respect to taxable years ending after the date of the enactment of this Act.

SEC. 1205. PAYMENT OF TAX BY COMMERCIALLY ACCEPTABLE MEANS.

(a) GENERAL RULE.—Section 6311 is amended to read as follows:

"SEC. 6311. PAYMENT OF TAX BY COMMERCIALLY ACCEPTABLE 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) any commercially acceptable means that the Secretary deems appropriate 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, including payment by credit card, debit card, or charge card so received is not duly paid, or is paid and subsequently charged back to the Secretary, 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 credit card, debit card, or charge card transaction which has been guaranteed expressly by a financial institution) 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. The Secretary may not pay any fee or provide any other consideration under 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) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a credit card shall not be subject to section 161 of the Truth in Lending Act (15 U.S.C. 1666), or to any similar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as to whether the person authorized payment by use of the credit card,

"(B) a payment of internal revenue taxes (or a payment for internal revenue stamps) shall not be subject to section 170 of the Truth in Lending Act (15 U.S.C. 1666i), or to any similar provisions of State law,

"(C) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a debit card shall not be subject to section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or to any similar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card,

"(D) the term 'creditor' under section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) shall not include the Secretary with respect to credit card transactions in payment of internal revenue taxes (or payment for internal revenue stamps), and

"(E) notwithstanding any other provision of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under section 161 of the Truth in Lending Act (15 U.S.C. 1666) or section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), the Secretary is authorized to provide such amount to such person as a credit to that person's credit card or debit card account through the applicable credit card or debit card system.

"(e) CONFIDENTIALITY OF INFORMATION.—

"(1) IN GENERAL.—Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit or debit card transactions obtained pursuant to section 6103(k)(8) other than for purposes directly related to the processing of such transactions, or the billing or collection of amounts charged or debited pursuant thereto.

"(2) EXCEPTIONS.—

"(A) Debit or credit card issuers or others acting on behalf of such issuers may also use and disclose such information for purposes directly related to servicing an issuer's accounts.

"(B) Debit or credit card issuers or others directly involved in the processing of credit or debit card transactions or the billing or collection of amounts charged or debited thereto may also use and disclose such information for purposes directly related to—

"(i) statistical risk and profitability assessment;

"(ii) transferring receivables, accounts, or interest therein;

"(iii) auditing the account information;

"(iv) complying with Federal, State, or local law; and

"(v) properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities.

"(3) PROCEDURES.—Use and disclosure of information under this paragraph shall be made only to the extent authorized by written procedures promulgated by the Secretary.

"(4) CROSS REFERENCE.—

"For provision providing for civil damages for violation of paragraph (1), see section 7431.".

(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 of tax by commercially acceptable means.".

(c) AMENDMENTS TO SECTIONS 6103 AND 7431 WITH RESPECT TO DISCLOSURE AUTHORIZATION.—

(1) Subsection (k) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end the following new paragraph:

"(8) DISCLOSURE OF INFORMATION TO ADMINISTER SECTION 6311.—The Secretary may disclose returns or return information to financial institutions and others to the extent the Secretary deems necessary for the administration of section 6311. Disclosures of information for purposes other than to accept payments by checks or money orders shall be made only to the extent authorized by written procedures promulgated by the Secretary.".

(2) Section 7431 (relating to civil damages for unauthorized disclosure of returns and return information) is amended by adding at the end the following new subsection:

"(g) SPECIAL RULE FOR INFORMATION OBTAINED UNDER SECTION 6103(k)(8).—For purposes of this section, any reference to section 6103 shall be treated as including a reference to section 6311(e).".

(3) Section 6103(p)(3)(A) is amended by striking "or (6)" and inserting "(6), or (8)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day 9 months after the date of the enactment of this Act.

Subtitle B—Provisions Relating to Businesses Generally

SEC. 1211. 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 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 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 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.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contracts completed in taxable years ending after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply for purposes of section 167(g) of the Internal Revenue Code of 1986 to property placed in service after September 13, 1995.

SEC. 1212. MINIMUM TAX TREATMENT OF CERTAIN PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Clause (i) of section 56(g)(4)(B) (relating to inclusion of items included for purposes of computing earnings and profits) is amended by adding at the end the following new sentence: "In the case of any insurance company taxable under section 831(b), this clause shall not apply to any amount not described in section 834(b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1997.

SEC. 1213. QUALIFIED LESSEE CONSTRUCTION ALLOWANCES FOR SHORT-TERM LEASES.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 is amended by inserting after section 109 the following new section:

"SEC. 110. QUALIFIED LESSEE CONSTRUCTION ALLOWANCES FOR SHORT-TERM LEASES.

"(a) IN GENERAL.—Gross income of a lessee does not include any amount received in cash (or treated as a rent reduction) by a lessee from a lessor—

"(1) under a short-term lease of retail space, and

"(2) for the purpose of such lessee's constructing or improving qualified long-term real property for use in such lessee's trade or business at such retail space,

but only to the extent that such amount does not exceed the amount expended by the lessee for such construction or improvement.

"(b) CONSISTENT TREATMENT BY LESSOR.—Qualified long-term real property constructed or improved in connection with any amount excluded from a lessee's income by reason of subsection (a) shall be treated as nonresidential real property of the lessor (including for purposes of section 168(i)(8)(B)).

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

"(1) QUALIFIED LONG-TERM REAL PROPERTY.—The term 'qualified long-term real property' means nonresidential real property which is part of, or otherwise present at, the retail space referred to in subsection (a) and which reverts to the lessor at the termination of the lease.

"(2) SHORT-TERM LEASE.—The term 'short-term lease' means a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined under the rules of section 168(i)(3)).

"(3) RETAIL SPACE.—The term 'retail space' means real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public.

"(d) INFORMATION REQUIRED TO BE FURNISHED TO SECRETARY.—Under regulations, the lessee and lessor described in subsection (a) shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary—

"(1) information concerning the amounts received (or treated as a rent reduction) and expended as described in subsection (a), and

"(2) any other information which the Secretary deems necessary to carry out the provisions of this section.".

(b) TREATMENT AS INFORMATION RETURN.—Subparagraph (A) of section 6724(d)(1)(A) is amended by striking "or" at the end of clause (vii), by adding "or" at the end of clause (viii), and by adding at the end the following new clause:

"(ix) section 110(d) (relating to qualified lessee construction allowances for short-term leases),".

(c) CROSS REFERENCE.—Paragraph (8) of section 168(i) (relating to treatment of leasehold improvements) is amended by adding at the end the following new subparagraph:

"(C) CROSS REFERENCE.—

"For treatment of qualified long-term real property constructed or improved in connection with cash or rent reduction from lessor to lessee, see section 110(b).".

(d) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 109 the following new item:

"Sec. 110. Qualified lessee construction allowances for short-term leases.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to leases entered into after the date of the enactment of this Act.

Subtitle C—Simplification Relating to Electing Large Partnerships

PART I—GENERAL PROVISIONS

SEC. 1221. SIMPLIFIED FLOW-THROUGH FOR ELECTING LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subchapter K (relating to partners and partnerships) is amended by adding at the end the following new part:

"PART IV—SPECIAL RULES FOR ELECTING LARGE PARTNERSHIPS

"Sec. 771. Application of subchapter to electing large partnerships.

"Sec. 772. Simplified flow-through.

"Sec. 773. Computations at partnership level.

"Sec. 774. Other modifications.

"Sec. 775. Electing large partnership defined.

"Sec. 776. Special rules for partnerships holding oil and gas properties.

"Sec. 777. Regulations.

"SEC. 771. APPLICATION OF SUBCHAPTER TO ELECTING LARGE PARTNERSHIPS.

"The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to an electing large partnership and its partners.

"SEC. 772. SIMPLIFIED FLOW-THROUGH.

"(a) GENERAL RULE.—In determining the income tax of a partner of an electing 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,

"(10) the credit allowable under section 29, and

"(11) other items to the extent that the Secretary determines that the separate treatment of such items is appropriate.

"(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 CERTAIN SEPARATELY STATED ITEMS.—

"(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), and any item referred to in subsection (a)(11), 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 an electing 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 an electing 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 an electing large partnership or the computation of any credit of an electing large partnership shall be made by the partnership; except that the election under section 901, and any election under section 108, 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 an electing large partnership or the computation of any credit of an electing 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 an electing 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 an electing 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 an electing 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) CREDIT RECAPTURE DETERMINED AT PARTNERSHIP LEVEL.—

"(1) IN GENERAL.—In the case of an electing 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.—An electing 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 an electing 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).

"(c) PARTNERSHIP NOT TERMINATED BY REASON OF CHANGE IN OWNERSHIP.—Subparagraph (B) of section 708(b)(1) shall not apply to an electing large partnership.

"(d) PARTNERSHIP ENTITLED TO CERTAIN CREDITS.—The following shall be allowed to an electing 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).

"(e) TREATMENT OF REMIC RESIDUALS.—For purposes of applying section 860E(e)(6) to any electing 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.

"(f) SPECIAL RULES FOR APPLYING CERTAIN INSTALLMENT SALE RULES.—In the case of an electing 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. ELECTING LARGE PARTNERSHIP DEFINED.

"(a) GENERAL RULE.—For purposes of this part—

"(1) IN GENERAL.—The term 'electing large partnership' means, with respect to any partnership taxable year, any partnership if—

"(A) the number of persons who were partners in such partnership in the preceding partnership taxable year equaled or exceeded 100, and

"(B) such partnership elects the application of this part.

To the extent provided in regulations, a partnership shall cease to be treated as an electing large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

"(2) ELECTION.—The election under this subsection 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, an election under subsection (a) shall not be effective with respect to 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, an election under subsection (a) shall not be effective with respect to 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 an electing 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) COMPUTATION OF PERCENTAGE DEPLETION.—In the case of an electing large partnership, except as provided in subsection (b)—

"(1) 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,

"(2) 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 regard to paragraph (1) of section 613A(d), and

"(3) paragraph (3) of section 705(a) shall not apply.

"(b) TREATMENT OF CERTAIN PARTNERS.—

"(1) 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.

"(2) DISQUALIFIED PERSON.—For purposes of paragraph (1), the term 'disqualified person' means, with respect to any partnership taxable year—

"(A) 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

"(B) 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.

"(3) AVERAGE DAILY PRODUCTION.—For purposes of paragraph (2), 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)—

"(A) 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),

"(B) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

"(C) 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 the following new item:

"Part IV. Special rules for electing large partnerships.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 1997.

SEC. 1222. SIMPLIFIED AUDIT PROCEDURES FOR ELECTING LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Chapter 63 is amended by adding at the end thereof the following new subchapter:

"Subchapter D—Treatment of electing 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 electing 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 electing large partnership other than in its capacity as a partner in another partnership which is not an electing large partnership.

"(2) TREATMENT WHERE PARTNER IN OTHER PARTNERSHIP.—If an electing large partnership is a partner in another partnership which is not an electing large partnership—

"(A) subchapter C of this chapter shall apply to items of such electing 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 electing 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 an electing 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 by treating any net increase in income 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, 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 an electing 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 an electing 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 an electing large partnership is a partner in another electing 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 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.

"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) ELECTING LARGE PARTNERSHIP.—The term 'electing large partnership' has the meaning given to such term by section 775.

"(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 electing 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.—An electing 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.—

"(1) SUSPENSION OF PERIOD OF LIMITATIONS ON MAKING ADJUSTMENT, ASSESSMENT, OR COLLECTION.—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—

"(A) for adjustment or assessment, 60 days thereafter, and

"(B) for collection, 6 months thereafter.

A rule similar to the rule of section 6213(f)(2) shall apply for purposes of section 6246.

"(2) SUSPENSION OF PERIOD OF LIMITATION FOR FILING FOR JUDICIAL REVIEW.—The running of the period specified in section 6247(a) or 6252(b) shall, in a case under title 11 of the United States Code, be suspended during the period during which the partnership is prohibited by reason of such case from filing a petition under section 6247 or 6252 and for 60 days 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) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 7421 is amended by inserting "6246(b)," after "6213(a),".

(2) Subsection (c) of section 7459 is amended by striking "or section 6228(a)" and inserting ", 6228(a), 6247, or 6252".

(3) Subparagraph (E) of section 7482(b)(1) is amended by striking "or 6228(a)" and inserting ", 6228(a), 6247, or 6252".

(4)(A) The text of section 7485(b) is amended by striking "or 6228(a)" and inserting ", 6228(a), 6247, or 6252".

(B) The subsection heading for section 7485(b) is amended to read as follows:

"(b) BOND IN CASE OF APPEAL OF CERTAIN PARTNERSHIP-RELATED DECISIONS.—".

(c) 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 electing large partnerships.".

SEC. 1223. DUE DATE FOR FURNISHING INFORMATION TO PARTNERS OF ELECTING LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subsection (b) of section 6031 (relating to copies to partners) is amended by adding at the end the following new sentence: "In the case of an electing large partnership (as defined in section 775), 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 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. 1224. RETURNS 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:

"Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.".

SEC. 1225. TREATMENT OF PARTNERSHIP ITEMS OF INDIVIDUAL RETIREMENT ACCOUNTS.

Subsection (b) of section 6012 is amended by adding at the end thereof the following new paragraph:

"(6) IRA SHARE OF PARTNERSHIP INCOME.—In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.".

SEC. 1226. EFFECTIVE DATE.

The amendments made by this part shall apply to partnership taxable years ending on or after December 31, 1997.

PART II—PROVISIONS RELATED TO TEFRA PARTNERSHIP PROCEEDINGS

SEC. 1231. TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.

(a) IN GENERAL.—Subchapter C of chapter 63 is amended by adding at the end 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 respect 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 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 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. 1232. 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 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. 1233. 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 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. 1234. 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. 1235. 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 the following new paragraph:

"(2) SPECIAL RULE FOR PARTIAL SETTLEMENT AGREEMENTS.—If a partner enters into a settlement 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 settlements entered into after the date of the enactment of this Act.

SEC. 1236. 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. 1237. 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 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 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 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 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. 1238. 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 1237, is amended by inserting "(including any liability for any penalties, additions to tax, or additional amounts 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 1237, 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 1237, 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 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 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. 1239. 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 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 the following new sentence:

"In the case of a credit or refund relating to an affected item (within the meaning of section 6231(a)(5)), 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 subparagraph (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)(1) 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 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.".

(3) Subsection (a) of section 7421, as amended by section 1222, is amended by inserting "6225(b)," after "6213(a),".

(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. 1240. 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. 1241. BONDS IN CASE OF APPEALS FROM CERTAIN 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. 1242. SUSPENSION OF INTEREST WHERE DELAY IN COMPUTATIONAL ADJUSTMENT RESULTING FROM CERTAIN 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 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 adjustments with respect to partnership taxable years beginning after the date of the enactment of this Act.

SEC. 1243. SPECIAL RULES FOR ADMINISTRATIVE ADJUSTMENT REQUESTS WITH RESPECT TO BAD DEBTS OR WORTHLESS SECURITIES.

(a) GENERAL RULE.—Section 6227 (relating to administrative adjustment requests) is amended by adding at the end the following new subsection:

"(e) REQUESTS WITH RESPECT TO BAD DEBTS OR WORTHLESS SECURITIES.—In the case of that portion of any request for an administrative adjustment which relates to the deductibility by the partnership under section 166 of a debt as a debt which became worthless, or under section 165(g) of a loss from worthlessness of a security, the period prescribed in subsection (a)(1) shall be 7 years from the last day for filing the partnership return for the year with respect to which such request is made (determined without regard to extensions).".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

(2) TREATMENT OF REQUESTS FILED BEFORE DATE OF ENACTMENT.—In the case of that portion of any request (filed before the date of the enactment of this Act) for an administrative adjustment which relates to the deductibility of a debt as a debt which became worthless or the deductibility of a loss from the worthlessness of a security—

(A) paragraph (2) of section 6227(a) of the Internal Revenue Code of 1986 shall not apply,

(B) the period for filing a petition under section 6228 of the Internal Revenue Code of 1986 with respect to such request shall not expire before the date 6 months after the date of the enactment of this Act, and

(C) such a petition may be filed without regard to whether there was a notice of the beginning of an administrative proceeding or a final partnership administrative adjustment.

PART III—PROVISION RELATING TO CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER, ETC.

SEC. 1246. CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER, ETC.

(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, 1997.

Subtitle D—Provisions Relating to Real Estate Investment Trusts

SEC. 1251. CLARIFICATION OF LIMITATION ON MAXIMUM NUMBER OF SHAREHOLDERS.

(a) RULES RELATING TO DETERMINATION OF OWNERSHIP.—

(1) FAILURE TO ISSUE SHAREHOLDER DEMAND LETTER NOT TO DISQUALIFY REIT.—Section 857(a) (relating to requirements applicable to real estate investment trusts) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) SHAREHOLDER DEMAND LETTER REQUIREMENT; PENALTY.—Section 857 (relating to taxation of real estate investment trusts and their beneficiaries) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) REAL ESTATE INVESTMENT TRUSTS TO ASCERTAIN OWNERSHIP.—

"(1) IN GENERAL.—Each real estate investment trust shall each taxable year comply with regulations prescribed by the Secretary for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

"(2) FAILURE TO COMPLY.—

"(A) IN GENERAL.—If a real estate investment trust fails to comply with the requirements of paragraph (1) for a taxable year, such trust shall pay (on notice and demand by the Secretary and in the same manner as tax) a penalty of $25,000.

"(B) INTENTIONAL DISREGARD.—If any failure under paragraph (1) is due to intentional disregard of the requirement under paragraph (1),

the penalty under subparagraph (A) shall be $50,000.

"(C) FAILURE TO COMPLY AFTER NOTICE.—The Secretary may require a real estate investment trust to take such actions as the Secretary determines appropriate to ascertain actual ownership if the trust fails to meet the requirements of paragraph (1). If the trust fails to take such actions, the trust shall pay (on notice and demand by the Secretary and in the same manner as tax) an additional penalty equal to the penalty determined under subparagraph (A) or (B), whichever is applicable.

"(D) REASONABLE CAUSE.—No penalty shall be imposed under this paragraph with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.".

(b) COMPLIANCE WITH CLOSELY HELD PROHIBITION.—

(1) IN GENERAL.—Section 856 (defining real estate investment trust) is amended by adding at the end the following new subsection:

"(k) REQUIREMENT THAT ENTITY NOT BE CLOSELY HELD TREATED AS MET IN CERTAIN CASES.—A corporation, trust, or association—

"(1) which for a taxable year meets the requirements of section 857(f)(1), and

"(2) which does not know, or exercising reasonable diligence would not have known, whether the entity failed to meet the requirement of subsection (a)(6),

shall be treated as having met the requirement of subsection (a)(6) for the taxable year.".

(2) CONFORMING AMENDMENT.—Paragraph (6) of section 856(a) is amended by inserting "subject to the provisions of subsection (k)," before "which is not".

SEC. 1252. DE MINIMIS RULE FOR TENANT SERVICES INCOME.

(a) IN GENERAL.—Paragraph (2) of section 856(d) (defining rents from real property) is amended by striking subparagraph (C) and the last sentence and inserting:

"(C) any impermissible tenant service income (as defined in paragraph (7)).".

(b) IMPERMISSIBLE TENANT SERVICE INCOME.—Section 856(d) is amended by adding at the end the following new paragraph:

"(7) IMPERMISSIBLE TENANT SERVICE INCOME.—For purposes of paragraph (2)(C)—

"(A) IN GENERAL.—The term 'impermissible tenant service income' means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for—

"(i) services furnished or rendered by the trust to the tenants of such property, or

"(ii) managing or operating such property.

"(B) DISQUALIFICATION OF ALL AMOUNTS WHERE MORE THAN DE MINIMIS AMOUNT.—If the amount described in subparagraph (A) with respect to a property for any taxable year exceeds 1 percent of all amounts received or accrued during such taxable year directly or indirectly by the real estate investment trust with respect to such property, the impermissible tenant service income of the trust with respect to the property shall include all such amounts.

"(C) EXCEPTIONS.—For purposes of subparagraph (A)—

"(i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income shall not be treated as furnished, rendered, or provided by the trust, and

"(ii) there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

"(D) AMOUNT ATTRIBUTABLE TO IMPERMISSIBLE SERVICES.—For purposes of subparagraph (A), the amount treated as received for any service (or management or operation) shall not be less than 150 percent of the direct cost of the trust in furnishing or rendering the service (or providing the management or operation).

"(E) COORDINATION WITH LIMITATIONS.—For purposes of paragraphs (2) and (3) of subsection (c), amounts described in subparagraph (A) shall be included in the gross income of the corporation, trust, or association.".

SEC. 1253. ATTRIBUTION RULES APPLICABLE TO STOCK OWNERSHIP.

Section 856(d)(5) (relating to constructive ownership of stock) is amended by striking "except that" and all that follows and inserting "except that—

"(A) '10 percent' shall be substituted for '50 percent' in subparagraph (C) of paragraphs (2) and (3) of section 318(a), and

"(B) section 318(a)(3)(A) shall be applied in the case of a partnership by taking into account only partners who own (directly or indirectly) 25 percent or more of the capital interest, or the profits interest, in the partnership.".

SEC. 1254. CREDIT FOR TAX PAID BY REIT ON RETAINED CAPITAL GAINS.

(a) GENERAL RULE.—Paragraph (3) of section 857(b) (relating to capital gains) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) TREATMENT BY SHAREHOLDERS OF UNDISTRIBUTED CAPITAL GAINS.—

"(i) Every shareholder of a real estate investment trust at the close of the trust's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the trust's taxable year falls, such amount as the trust shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year), but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A)(ii) which he would have received if all of such amount had been distributed as capital gain dividends by the trust to the holders of such shares at the close of its taxable year.

"(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A)(ii) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholders shall be allowed credit or refund as the case may be, for the tax so deemed to have been paid by him.

"(iii) The adjusted basis of such shares in the hands of the holder shall be increased with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

"(iv) In the event of such designation, the tax imposed by subparagraph (A)(ii) shall be paid by the real estate investment trust within 30 days after the close of its taxable year.

"(v) The earnings and profits of such real estate investment trust, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

"(vi) As used in this subparagraph, the terms 'shares' and 'shareholders' shall include beneficial interests and holders of beneficial interests, respectively.".

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 857(b)(7)(A) is amended by striking "subparagraph (B)" and inserting "subparagraph (B) or (D)".

(2) Clause (iii) of section 852(b)(3)(D) is amended by striking "by 65 percent" and all that follows and inserting "by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).".

SEC. 1255. REPEAL OF 30-PERCENT GROSS INCOME REQUIREMENT.

(a) GENERAL RULE.—Subsection (c) of section 856 (relating to limitations) is amended—

(1) by adding "and" at the end of paragraph (3),

(2) by striking paragraphs (4) and (8), and

(3) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (G) of section 856(c)(5), as redesignated by subsection (a), is amended by striking "and such agreement shall be treated as a security for purposes of paragraph (4)(A)".

(2) Paragraph (5) of section 857(b) is amended by striking "section 856(c)(7)" and inserting "section 856(c)(6)".

(3) Subparagraph (C) of section 857(b)(6) is amended by striking "section 856(c)(6)(B)" and inserting "section 856(c)(5)(B)".

SEC. 1256. MODIFICATION OF EARNINGS AND PROFITS RULES FOR DETERMINING WHETHER REIT HAS EARNINGS AND PROFITS FROM NON-REIT YEAR.

Subsection (d) of section 857 is amended by adding at the end the following new paragraph:

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

"(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from the earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies) rather than the most recently accumulated earnings and profits, and

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

SEC. 1257. TREATMENT OF FORECLOSURE PROPERTY.

(a) GRACE PERIODS.—

(1) INITIAL PERIOD.—Paragraph (2) of section 856(e) (relating to special rules for foreclosure property) is amended by striking "on the date which is 2 years after the date the trust acquired such property" and inserting "as of the close of the 3d taxable year following the taxable year in which the trust acquired such property".

(2) EXTENSION.—Paragraph (3) of section 856(e) is amended—

(A) by striking "or more extensions" and inserting "extension", and

(B) by striking the last sentence and inserting: "Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2).".

(b) REVOCATION OF ELECTION.—Paragraph (5) of section 856(e) is amended by striking the last sentence and inserting: "A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.".

(c) CERTAIN ACTIVITIES NOT TO DISQUALIFY PROPERTY.—Paragraph (4) of section 856(e) is

amended by adding at the end the following new flush sentence:

"For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.".

SEC. 1258. PAYMENTS UNDER HEDGING INSTRUMENTS.

Section 856(c)(5)(G) (relating to treatment of certain interest rate agreements), as redesignated by section 1255, is amended to read as follows:

"(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent provided by regulations, any—

"(i) payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

"(ii) gain from the sale or other disposition of any such investment,

shall be treated as income qualifying under paragraph (2).".

SEC. 1259. EXCESS NONCASH INCOME.

Section 857(e)(2) (relating to determination of amount of excess noncash income) is amended—

(1) by striking subparagraph (B),

(2) by striking the period at the end of subparagraph (C) and inserting a comma,

(3) by redesignating subparagraph (C) (as amended by paragraph (2)) as subparagraph (B), and

(4) by adding at the end the following new subparagraphs:

"(C) the amount (if any) by which—

"(i) the amounts includible in gross income with respect to instruments to which section 860E(a) or 1272 applies, exceed

"(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments, and

"(D) amounts includible in income by reason of cancellation of indebtedness.".

SEC. 1260. PROHIBITED TRANSACTION SAFE HARBOR.

Clause (iii) of section 857(b)(6)(C) (relating to certain sales not to constitute prohibited transactions) is amended by striking "(other than foreclosure property)" in subclauses (I) and (II) and inserting "(other than sales of foreclosure property or sales to which section 1033 applies)".

SEC. 1261. SHARED APPRECIATION MORTGAGES.

(a) BANKRUPTCY SAFE HARBOR.—Section 856(j) (relating to treatment of shared appreciation mortgages) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) COORDINATION WITH 4-YEAR HOLDING PERIOD.—

"(A) IN GENERAL.—For purposes of section 857(b)(6)(C), if a real estate investment trust is treated as having sold secured property under paragraph (3)(A), the trust shall be treated as having held such property for at least 4 years if—

"(i) the secured property is sold or otherwise disposed of pursuant to a case under title 11 of the United States Code,

"(ii) the seller is under the jurisdiction of the court in such case, and

"(iii) the disposition is required by the court or is pursuant to a plan approved by the court.

"(B) EXCEPTION.—Subparagraph (A) shall not apply if—

"(i) the secured property was acquired by the seller with the intent to evict or foreclose, or

"(ii) the trust knew or had reason to know that default on the obligation described in paragraph (5)(A) would occur.".

(b) CLARIFICATION OF DEFINITION OF SHARED APPRECIATION PROVISION.—Clause (ii) of section 856(j)(5)(A) is amended by inserting before the period "or appreciation in value as of any specified date".

SEC. 1262. WHOLLY OWNED SUBSIDIARIES.

Section 856(i)(2) (defining qualified REIT subsidiary) is amended by striking "at all times during the period such corporation was in existence".

SEC. 1263. EFFECTIVE DATE.

The amendments made by this part shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle E—Provisions Relating to Regulated Investment Companies

SEC. 1271. REPEAL OF 30-PERCENT GROSS INCOME LIMITATION.

(a) GENERAL RULE.—Subsection (b) of section 851 (relating to limitations) is amended by striking paragraph (3), by adding "and" at the end of paragraph (2), and by redesignating paragraph (4) as paragraph (3).

(b) TECHNICAL AMENDMENTS.—

(1) The material following paragraph (3) of section 851(b) (as redesignated by subsection (a)) is amended—

(A) by striking out "paragraphs (2) and (3)" and inserting "paragraph (2)", and

(B) by striking out the last sentence thereof.

(2) Subsection (c) of section 851 is amended by striking "subsection (b)(4)" each place it appears (including the heading) and inserting "subsection (b)(3)".

(3) Subsection (d) of section 851 is amended by striking "subsections (b)(4)" and inserting "subsections (b)(3)".

(4) Paragraph (1) of section 851(e) is amended by striking "subsection (b)(4)" and inserting "subsection (b)(3)".

(5) Paragraph (4) of section 851(e) is amended by striking "subsections (b)(4)" and inserting "subsections (b)(3)".

(6) Section 851 is amended by striking subsection (g) and redesignating subsection (h) as subsection (g).

(7) Subsection (g) of section 851 (as redesignated by paragraph (6)) is amended by striking paragraph (3).

(8) Section 817(h)(2) is amended—

(A) by striking "851(b)(4)" in subparagraph (A) and inserting "851(b)(3)", and

(B) by striking "851(b)(4)(A)(i)" in subparagraph (B) and inserting "851(b)(3)(A)(i)".

(9) Section 1092(f)(2) is amended by striking "Except for purposes of section 851(b)(3), the" and inserting "The".

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

Subtitle F—Taxpayer Protections

SEC. 1281. REASONABLE CAUSE EXCEPTION FOR CERTAIN PENALTIES.

(a) INFORMATION ON DEDUCTIBLE EMPLOYEE CONTRIBUTIONS.—Subsection (g) of section 6652 (relating to information required in connection with deductible employee contributions) is amended by adding at the end the following new sentence: "No penalty shall be imposed under this subsection on any failure which is shown to be due to reasonable cause and not willful neglect.".

(b) REPORTS ON STATUS AS QUALIFIED SMALL BUSINESS.—Subsection (k) of section 6652 (relating to failure to make reports required under section 1202) is amended by adding at the end the following new sentence: "No penalty shall be imposed under this subsection on any failure which is shown to be due to reasonable cause and not willful neglect.".

(c) RETURNS OF PERSONAL HOLDING COMPANY TAX BY FOREIGN CORPORATIONS.—Section 6683 (relating to failure of foreign corporation to file return of personal holding company tax) is amended by adding at the end the following new sentence: "No penalty shall be imposed under this section on any failure which is shown to be due to reasonable cause and not willful neglect.".

(d) FAILURE TO MAKE REQUIRED PAYMENTS.—Subparagraph (A) of section 7519(f)(4) is amended by adding at the end the following new sentence: "No penalty shall be imposed under this subparagraph on any failure which is shown to be due to reasonable cause and not willful neglect.".

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

SEC. 1282. CLARIFICATION OF PERIOD FOR FILING CLAIMS FOR REFUNDS.

(a) IN GENERAL.—Paragraph (3) of section 6512(b) (relating to overpayment determined by Tax Court) is amended by adding at the end the following flush sentence:

"In a case described in subparagraph (B) where the date of the mailing of the notice of deficiency is during the third year after the due date (with extensions) for filing the return of tax and no return was filed before such date, the applicable period under subsections (a) and (b)(2) of section 6511 shall be 3 years.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to claims for credit or refund for taxable years ending after the date of the enactment of this Act.

SEC. 1283. 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 commenced after the date of the enactment of this Act.

SEC. 1284. 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.

SEC. 1285. 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) by the Internal Revenue Service for reasonable administrative costs only if the prevailing party files an application with the Internal Revenue Service for such costs before the 91st day after the date on which the final decision of the Internal Revenue Service as to the determination of the tax, interest, or penalty is mailed to such party.".

(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.

TITLE XIII—SIMPLIFICATION PROVISIONS RELATING TO ESTATE AND GIFT TAXES

SEC. 1301. GIFTS TO CHARITIES EXEMPT FROM GIFT TAX FILING REQUIREMENTS.

(a) IN GENERAL.—Section 6019 is amended by striking "or" at the end of paragraph (1), by adding "or" at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

"(3) a transfer with respect to which a deduction is allowed under section 2522 but only if—

"(A)(i) such transfer is of the donor's entire interest in the property transferred, and

"(ii) no other interest in such property is or has been transferred (for less than adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b) of section 2522, or

"(B) such transfer is described in section 2522(d),".

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

SEC. 1302. 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. 1303. 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. 1304. TREATMENT FOR ESTATE TAX PURPOSES OF SHORT-TERM OBLIGATIONS HELD BY NONRESIDENT ALIENS.

(a) IN GENERAL.—Subsection (b) of section 2105 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 inserting after paragraph (3) the following new paragraph:

"(4) obligations which would be original issue discount obligations as defined in section 871(g)(1) but for subparagraph (B)(i) thereof, if any interest thereon (were such interest received by the decedent at the time of his death) would not be effectively connected with the conduct of a trade or business within the United States.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 1305. CERTAIN REVOCABLE TRUSTS TREATED AS PART OF ESTATE.

(a) IN GENERAL.—Subpart A of part I of subchapter J (relating to estates, trusts, beneficiaries, and decedents) is amended by adding at the end the following new section:

"SEC. 646. CERTAIN REVOCABLE TRUSTS TREATED AS PART OF ESTATE.

"(a) GENERAL RULE.—For purposes of this subtitle, if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

"(b) DEFINITIONS.—For purposes of subsection (a)—

"(1) QUALIFIED REVOCABLE TRUST.—The term 'qualified revocable trust' means any trust (or portion thereof) which was treated under section 676 as owned by the decedent of the estate referred to in subsection (a) by reason of a power in the grantor (determined without regard to section 672(e)).

"(2) APPLICABLE DATE.—The term 'applicable date' means—

"(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after the date of the decedent's death, and

"(B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

"(c) ELECTION.—The election under subsection (a) shall be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and, once made, shall be irrevocable.".

(b) COMPARABLE TREATMENT UNDER GENERATION-SKIPPING TAX.—Paragraph (1) of section 2652(b) is amended by adding at the end the following new sentence: "Such term shall not include any trust during any period the trust is treated as part of an estate under section 646.".

(c) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by adding at the end the following new item:

"Sec. 646. Certain revocable trusts treated as part of estate.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to estates of decedents dying after the date of the enactment of this Act.

SEC. 1306. DISTRIBUTIONS DURING FIRST 65 DAYS OF TAXABLE YEAR OF ESTATE.

(a) IN GENERAL.—Subsection (b) of section 663 (relating to distributions in first 65 days of taxable year) is amended by inserting "an estate or" before "a trust" each place it appears.

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 663(b) is amended by striking "the fiduciary of such trust" and inserting "the executor of such estate or the fiduciary of such trust (as the case may be)".

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

SEC. 1307. SEPARATE SHARE RULES AVAILABLE TO ESTATES.

(a) IN GENERAL.—Subsection (c) of section 663 (relating to separate shares treated as separate trusts) is amended—

(1) by inserting before the last sentence the following new sentence: "Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates.", and

(2) by inserting "or estates" after "trusts" in the last sentence.

(b) CONFORMING AMENDMENT.—The subsection heading of section 663(c) is amended by inserting "ESTATES OR" before "TRUSTS".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 1308. EXECUTOR OF ESTATE AND BENEFICIARIES TREATED AS RELATED PERSONS FOR DISALLOWANCE OF LOSSES, ETC.

(a) DISALLOWANCE OF LOSSES.—Subsection (b) of section 267 (relating to losses, expenses, and interest with respect to transactions between related taxpayers) is amended by striking "or" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting "; or", and by adding at the end the following new paragraph:

"(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.".

(b) ORDINARY INCOME FROM GAIN FROM SALE OF DEPRECIABLE PROPERTY.—Subsection (b) of section 1239 is amended by striking the period at the end of paragraph (2) and inserting ", and" and by adding at the end the following new paragraph:

"(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.".

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

SEC. 1309. TREATMENT OF FUNERAL TRUSTS.

(a) IN GENERAL.—Subpart F of part I of subchapter J of chapter 1 is amended by adding at the end the following new section:

"SEC. 685. TREATMENT OF FUNERAL TRUSTS.

"(a) IN GENERAL.—In the case of a qualified funeral trust—

"(1) subparts B, C, D, and E shall not apply, and

"(2) no deduction shall be allowed by section 642(b).

"(b) QUALIFIED FUNERAL TRUST.—For purposes of this subsection, the term 'qualified funeral trust' means any trust (other than a foreign trust) if—

"(1) the trust arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property necessary to provide such services,

"(2) the sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use such funds solely to make payments for such services or property for the benefit of the beneficiaries of the trust,

"(3) the only beneficiaries of such trust are individuals with respect to whom such services or property are to be provided at their death under contracts described in paragraph (1),

"(4) the only contributions to the trust are contributions by or for the benefit of such beneficiaries,

"(5) the trustee elects the application of this subsection, and

"(6) the trust would (but for the election described in paragraph (5)) be treated as owned under subpart E by the purchasers of the contracts described in paragraph (1).

"(c) DOLLAR LIMITATION ON CONTRIBUTIONS.—

"(1) IN GENERAL.—The term 'qualified funeral trust' shall not include any trust which accepts aggregate contributions by or for the benefit of an individual in excess of $7,000.

"(2) RELATED TRUSTS.—For purposes of paragraph (1), all trusts having trustees which are related persons shall be treated as 1 trust. For purposes of the preceding sentence, persons are related if—

"(A) the relationship between such persons is described in section 267 or 707(b),

"(B) such persons are treated as a single employer under subsection (a) or (b) of section 52, or

"(C) the Secretary determines that treating such persons as related is necessary to prevent avoidance of the purposes of this section.

"(3) INFLATION ADJUSTMENT.—In the case of any contract referred to in subsection (b)(1) which is entered into during any calendar year after 1998, the dollar amount referred to paragraph (1) 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 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any dollar amount after being increased under the preceding sentence is not a multiple of $100, such dollar amount shall be rounded to the nearest multiple of $100.

"(d) APPLICATION OF RATE SCHEDULE.—Section 1(e) shall be applied to each qualified funeral trust by treating each beneficiary's interest in each such trust as a separate trust.

"(e) TREATMENT OF AMOUNTS REFUNDED TO PURCHASER ON CANCELLATION.—No gain or loss shall be recognized to a purchaser of a contract described in subsection (b)(1) by reason of any payment from such trust to such purchaser by reason of cancellation of such contract. If any payment referred to in the preceding sentence consists of property other than money, the basis of such property in the hands of such purchaser shall be the same as the trust's basis in such property immediately before the payment.

"(f) SIMPLIFIED REPORTING.—The Secretary may prescribe rules for simplified reporting of all trusts having a single trustee.".

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

"Sec. 685. Treatment of funeral trusts.".

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

SEC. 1310. 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) MARITAL AND 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(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 TRANSFERS FROM REVOCABLE TRUSTS.—For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent by reason of a power in the grantor (determined without regard to section 672(e)) 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. 1311. CLARIFICATION OF TREATMENT OF SURVIVOR ANNUITIES UNDER QUALIFIED TERMINABLE INTEREST RULES.

(a) IN GENERAL.—Subparagraph (C) of section 2056(b)(7) is amended by inserting "(or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033)" after "section 2039".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 1312. TREATMENT UNDER QUALIFIED DOMESTIC TRUST RULES OF FORMS OF OWNERSHIP WHICH ARE NOT TRUSTS.

(a) IN GENERAL.—Subsection (c) of section 2056A (defining qualified domestic trust) is amended by adding at the end the following new paragraph:

"(3) TRUST.—To the extent provided in regulations prescribed by the Secretary, the term 'trust' includes other arrangements which have substantially the same effect as a trust.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 1313. 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. 1314. AUTHORITY TO WAIVE REQUIREMENT OF UNITED STATES TRUSTEE FOR QUALIFIED DOMESTIC TRUSTS.

(a) IN GENERAL.—Subparagraph (A) of section 2056A(a)(1) is amended by inserting "except as provided in regulations prescribed by the Secretary," before "requires".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

TITLE XIV—SIMPLIFICATION PROVISIONS RELATING TO EXCISE TAXES, TAX-EXEMPT BONDS, AND OTHER MATTERS

Subtitle A—Excise Tax Simplification

PART I—EXCISE TAXES ON HEAVY TRUCKS AND LUXURY CARS

SEC. 1401. INCREASE IN DE MINIMIS LIMIT FOR AFTER-MARKET ALTERATIONS FOR HEAVY TRUCKS AND LUXURY CARS.

(a) IN GENERAL.—Sections 4003(a)(3)(C) and 4051(b)(2)(B) (relating to exceptions) are each amended by striking "$200" and inserting "$1,000".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to installations on

vehicles sold after the date of the enactment of this Act.

SEC. 1402. CREDIT FOR TIRE TAX IN LIEU OF EXCLUSION OF VALUE OF TIRES IN COMPUTING PRICE.

(a) IN GENERAL.—Subsection (e) of section 4051 is amended to read as follows:

"(e) CREDIT AGAINST TAX FOR TIRE TAX.—If—

"(1) tires are sold on or in connection with the sale of any article, and

"(2) tax is imposed by this subchapter on the sale of such tires,

there shall be allowed as a credit against the tax imposed by this subchapter an amount equal to the tax (if any) imposed by section 4071 on such tires.".

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 4052(b)(1) is amended by striking clause (iii), by adding "and" at the end of clause (ii), and by redesignating clause (iv) as clause (iii).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1998.

PART II—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER

SEC. 1411. CREDIT OR REFUND FOR IMPORTED BOTTLED DISTILLED SPIRITS RETURNED TO DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Section 5008(c)(1) (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 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1412. AUTHORITY TO CANCEL OR CREDIT EXPORT BONDS WITHOUT SUBMISSION OF RECORDS.

(a) IN GENERAL.—Section 5175(c) (relating to cancellation of credit of 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 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1413. REPEAL OF REQUIRED MAINTENANCE OF RECORDS ON PREMISES OF DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Section 5207(c) (relating to preservation and inspection) 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 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1414. FERMENTED MATERIAL FROM ANY BREWERY MAY BE RECEIVED AT A DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Section 5222(b)(2) (relating to receipt) 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 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1415. 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) Section 5681(a) is amended by striking ", and every wholesale dealer in liquors," and by striking "section 5115(a) or".

(2) Section 5681(c) 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. 1416. REFUND OF TAX TO WINE RETURNED TO BOND NOT LIMITED TO UNMERCHANTABLE WINE.

(a) IN GENERAL.—Section 5044(a) (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 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1417. USE OF ADDITIONAL AMELIORATING MATERIAL IN CERTAIN WINES.

(a) IN GENERAL.—Section 5384(b)(2)(D) (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 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1418. DOMESTICALLY PRODUCED BEER MAY BE WITHDRAWN FREE OF TAX FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.

(a) IN GENERAL.—Section 5053 (relating to exemptions), as amended by section 1414(b), 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) shall apply for purposes of this subsection.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1419. BEER MAY BE WITHDRAWN FREE OF TAX FOR DESTRUCTION.

(a) IN GENERAL.—Section 5053 (relating to exemptions), as amended by section 1418(a), 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 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1420. 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 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1421. 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 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 the following new item:

"Sec. 5418. Beer imported in bulk.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

SEC. 1422. TRANSFER TO BONDED WINE CELLARS OF WINE IMPORTED IN BULK WITHOUT PAYMENT OF TAX.

(a) IN GENERAL.—Part II of subchapter F of chapter 51 is amended by inserting after section 5363 the following new section:

"SEC. 5364. WINE IMPORTED IN BULK.

"Wine 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 bonded wine cellar without payment of the internal revenue tax imposed on such wine. The proprietor of a bonded wine cellar to which such wine is transferred shall become liable for the tax on the wine withdrawn from customs custody under this section upon release of the wine from customs custody, and the importer, or the person bringing such wine 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 inserting after the item relating to section 5363 the following new item:

"Sec. 5364. Wine imported in bulk.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act.

PART III—OTHER EXCISE TAX PROVISIONS

SEC. 1431. AUTHORITY TO GRANT EXEMPTIONS FROM REGISTRATION REQUIREMENTS.

(a) IN GENERAL.—Section 4222(b)(2) (relating to export) is amended—

(1) by striking "in the case of any sale or resale for export,", and

(2) by striking "EXPORT" and inserting "UNDER REGULATIONS".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1432. REPEAL OF EXPIRED PROVISIONS.

(a) PIGGY-BACK TRAILERS.—Section 4051 (relating to imposition of tax on heavy trucks and trailers sold at retail) is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) DEEP SEABED MINING.—

(1) IN GENERAL.—Subchapter F of chapter 36 (relating to tax on removal of hard mineral resources from deep seabed) is hereby repealed.

(2) CONFORMING AMENDMENT.—The table of subchapters for chapter 36 is amended by striking the item relating to subchapter F.

(c) OZONE-DEPLETING CHEMICALS.—

(1) Paragraph (1) of section 4681(b) is amended by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

"(B) BASE TAX AMOUNT.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during any calendar year after 1995 shall be $5.35 increased by 45 cents for each year after 1995.".

(2) Subsection (g) of section 4682 is amended to read as follows:

"(g) CHEMICALS USED AS PROPELLANTS IN METERED-DOSE INHALERS.—

"(1) EXEMPTION FROM TAX.—

"(A) IN GENERAL.—No tax shall be imposed by section 4681 on—

"(i) any use of any substance as a propellant in metered-dose inhalers, or

"(ii) any qualified sale by the manufacturer, producer, or importer of any substance.

"(B) QUALIFIED SALE.—For purposes of subparagraph (A), the term 'qualified sale' means any sale by the manufacturer, producer, or importer of any substance—

"(i) for use by the purchaser as a propellant in metered dose inhalers, or

"(ii) for resale by the purchaser to a 2d purchaser for such use by the 2d purchaser.

The preceding sentence shall apply only if the manufacturer, producer, and importer, and the 1st and 2d purchasers (if any) meet such registration requirements as may be prescribed by the Secretary.

"(2) OVERPAYMENTS.—If any substance on which tax was paid under this subchapter is used by any person as a propellant in metered-dose inhalers, credit or refund without interest shall be allowed to such person in an amount equal to the tax so paid. Amounts payable under the preceding sentence with respect to uses during the taxable year shall be treated as described in section 34(a) for such year unless claim thereof has been timely filed under this paragraph.".

SEC. 1433. SIMPLIFICATION OF IMPOSITION OF EXCISE TAX ON ARROWS.

(a) IN GENERAL.—Subsection (b) of section 4161 (relating to imposition of tax) is amended to read as follows:

"(b) BOWS AND ARROWS, ETC.—

"(1) BOWS.—

"(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a draw weight of 10 pounds or more, a tax equal to 11 percent of the price for which so sold.

"(B) PARTS AND ACCESSORIES.—There is hereby imposed upon the sale by the manufacturer, producer, or importer—

"(i) of any part of accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

"(ii) of any quiver suitable for use with arrows described in paragraph (2), a tax equivalent to 11 percent of the price for which so sold.

"(2) ARROWS.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any shaft, point, nock, or vane of a type used in the manufacture of any arrow which after its assembly—

"(A) measures 18 inches overall or more in length, or

"(B) measures less than 18 inches overall in length but is suitable for use with a bow described in paragraph (1)(A),

a tax equal to 12.4 percent of the price for which so sold.

"(3) COORDINATION WITH SUBSECTION (a).—No tax shall be imposed under this subsection with respect to any article taxable under subsection (a).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles sold by the manufacturer, producer, or importer after September 30 1997.

SEC. 1434. MODIFICATIONS TO RETAIL TAX ON HEAVY TRUCKS.

(a) CERTAIN REPAIRS AND MODIFICATIONS NOT TREATED AS MANUFACTURE.—Section 4052 is amended by redesignating the subsection defining a long-term lease as subsection (e) and by adding at the end the following new subsection:

"(f) CERTAIN REPAIRS AND MODIFICATIONS NOT TREATED AS MANUFACTURE.—

"(1) IN GENERAL.—An article described in section 4051(a)(1) shall not be treated as manufactured or produced solely by reason of repairs or modifications to the article (including any modification which changes the transportation function of the article or restores a wrecked article to a functional condition) if the cost of such repairs and modifications does not exceed 75 percent of the retail price of a comparable new article.

"(2) EXCEPTION.—Paragraph (1) shall not apply if the article (as repaired or modified) would, if new, be taxable under section 4051 and the article when new was not taxable under this section or the corresponding provision of prior law.".

(b) SIMPLIFICATION OF CERTIFICATION PROCEDURES WITH RESPECT TO SALES OF TAXABLE ARTICLES.—

(1) REPEAL OF REGISTRATION REQUIREMENT.—Subsection (d) of section 4052 is amended by striking "rules of—" and all that follows through "shall apply" and inserting "rules of subsections (c) and (d) of section 4216 (relating to partial payments) shall apply".

(2) REQUIREMENT TO MODIFY REGULATIONS.—Section 4052 is amended by adding at the end the following new subsection:

"(g) REGULATIONS.—The Secretary shall prescribe regulations which permit, in lieu of any other certification, persons who are purchasing articles taxable under this subchapter for resale or leasing in a long-term lease to execute a statement (made under penalties of perjury) on the sale invoice that such sale is for resale. The Secretary shall not impose any registration requirement as a condition of using such procedure.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1998.

SEC. 1435. SKYDIVING FLIGHTS EXEMPT FROM TAX ON TRANSPORTATION OF PERSONS BY AIR.

(a) IN GENERAL.—Section 4261 (relating to imposition of tax on transportation of persons by air), as previously amended by this Act, is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) EXEMPTION FOR SKYDIVING USES.—No tax shall be imposed by this section or section 4271 on any air transportation exclusively for the purpose of skydiving.".

(b) TRANSPORTATION TREATED AS NONCOMMERCIAL AVIATION.—The last sentence of section 4041(c)(2) is amended by inserting before the period "or by reason of section 4261(h)".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to amounts paid after September 30, 1997.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall take effect on October 1, 1997.

SEC. 1436. ALLOWANCE OR CREDIT OF REFUND FOR TAX-PAID AVIATION FUEL PURCHASED BY REGISTERED PRODUCER OF AVIATION FUEL.

(a) IN GENERAL.—Section 4091 (relating to aviation fuel) is amended by adding at the end the following new subsection:

"(d) REFUND OF TAX-PAID AVIATION FUEL TO REGISTERED PRODUCER OF FUEL.—If—

"(1) a producer of aviation fuel is registered under section 4101, and

"(2) such producer establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) on aviation fuel held by such producer,

then an amount equal to the tax so paid shall be allowed as a refund (without interest) to

such producer in the same manner as if it were an overpayment of tax imposed by this section.".

(b) CONFORMING AMENDMENT.—The last sentence of section 6416(d) is amended by inserting before the period "or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel acquired by the producer after September 30, 1997.

Subtitle B—Tax-Exempt Bond Provisions

SEC. 1441. 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 percent of the proceeds of the issue or $100,000" and inserting "5 percent of the proceeds of the issue".

SEC. 1442. 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 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. 1443. REPEAL OF DEBT SERVICE-BASED LIMITATION ON INVESTMENT IN CERTAIN NONPURPOSE INVESTMENTS.

Subsection (d) of section 148 (relating to special rules for reasonably required reserve or replacement fund) is amended by striking paragraph (3).

SEC. 1444. 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 subparagraphs (B), (C), and (D), respectively.

(b) Paragraph (4) of section 148(f) is amended by striking subparagraph (E).

SEC. 1445. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to bonds issued after the date of the enactment of this Act.

Subtitle C—Tax Court Procedures

SEC. 1451. 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. 1452. REDETERMINATION OF INTEREST PURSUANT TO MOTION.

(a) IN GENERAL.—Subsection (c) of section 7481 (relating to jurisdiction over interest determinations) is amended to read as follows:

"(c) JURISDICTION OVER INTEREST DETERMINATIONS.—

"(1) IN GENERAL.—Notwithstanding subsection (a), if, within 1 year after the date the decision of the Tax Court becomes final under subsection (a) in a case to which this subsection applies, the taxpayer files a motion in the Tax Court for a redetermination of the amount of interest involved, then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest or the Secretary has made an underpayment of such interest and the amount thereof.

"(2) CASES TO WHICH THIS SUBSECTION APPLIES.—This subsection shall apply where—

"(A)(i) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title, and

"(ii) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

"(B) the Tax Court finds under section 6512(b) that the taxpayer has made an overpayment.

"(3) SPECIAL RULES.—If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest or that the Secretary has made an underpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining interest, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 1453. 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:

"(D) 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 separate individuals for purposes of clause (i) of such section.".

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

SEC. 1454. PROCEEDINGS FOR DETERMINATION OF EMPLOYMENT STATUS.

(a) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7436 as section 7437 and by inserting after section 7435 the following new section:

"SEC. 7436. PROCEEDINGS FOR DETERMINATION OF EMPLOYMENT STATUS.

"(a) CREATION OF REMEDY.—If, in connection with an audit of any person, there is an actual controversy involving a determination by the Secretary as part of an examination that—

"(1) one or more individuals performing services for such person are employees of such person for purposes of subtitle C, or

"(2) such person is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978 with respect to such an individual,

upon the filing of an appropriate pleading, the Tax Court may determine whether such a determination by the Secretary is correct. Any such redetermination by the Tax Court shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by the person for whom the services are performed.

"(2) TIME FOR FILING ACTION.—If the Secretary sends by certified or registered mail notice to the petitioner of a determination by the Secretary described in subsection (a), no proceeding may be initiated under this section with respect to such determination unless the pleading is filed before the 91st day after the date of such mailing.

"(3) NO ADVERSE INFERENCE FROM TREATMENT WHILE ACTION IS PENDING.—If, during the pendency of any proceeding brought under this section, the petitioner changes his treatment for employment tax purposes of any individual whose employment status as an employee is involved in such proceeding (or of any individual holding a substantially similar position) to treatment as an employee, such change shall not be taken into account in the Tax Court's determination under this section.

"(c) SMALL CASE PROCEDURES.—

"(1) IN GENERAL.—At the option of the petitioner, concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings under this section may (notwithstanding the provisions of section 7453) be conducted subject to the rules of evidence, practice, and procedure applicable under section 7463 if the amount of employment taxes placed in dispute is $10,000 or less for each calendar quarter involved.

"(2) FINALITY OF DECISIONS.—A decision entered in any proceeding conducted under this subsection shall not be reviewed in any other court and shall not be treated as a precedent for any other case not involving the same petitioner and the same determinations.

"(3) CERTAIN RULES TO APPLY.—Rules similar to the rules of the last sentence of subsection (a), and subsections (c), (d), and (e), of section 7463 shall apply to proceedings conducted under this subsection.

"(d) SPECIAL RULES.—

"(1) RESTRICTIONS ON ASSESSMENT AND COLLECTION PENDING ACTION, ETC.—The principles of subsections (a), (b), (c), (d), and (f) of section 6213, section 6214(a), section 6215, section 6503(a), section 6512, and section 7481 shall apply to proceedings brought under this section in the same manner as if the Secretary's determination described in subsection (a) were a notice of deficiency.

"(2) AWARDING OF COSTS AND CERTAIN FEES.—Section 7430 shall apply to proceedings brought under this section.

"(e) EMPLOYMENT TAX.—The term 'employment tax' means any tax imposed by subtitle C.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 6511 is amended by adding at the end the following new paragraph:

"(7) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO SELF-EMPLOYMENT TAX IN CERTAIN CASES.—If—

"(A) the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to Tax Court determination in a proceeding under section 7436, and

"(B) the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises),

such credit or refund may be allowed or made if claim therefor is filed on or before the last day of the second year after the calendar year in which such determination becomes final.".

(2) Subsection (a) of section 7421 is amended by striking "and 7429(b)" and inserting "7429(b), and 7436".

(3) Sections 7453 and 7481(b) are each amended by striking "section 7463" and inserting "section 7436(c) or 7463".

(4) The table of sections for subchapter B of chapter 76 is amended by striking the last item and inserting the following:

"Sec. 7436. Proceedings for determination of employment status.

"Sec. 7437. Cross references.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle D—Other Provisions

SEC. 1461. EXTENSION OF DUE DATE OF FIRST QUARTER ESTIMATED TAX PAYMENT BY PRIVATE FOUNDATIONS.

(a) IN GENERAL.—Paragraph (3) of section 6655(g) is amended by adding at the end the following new sentence: "In the case of a private foundation, subsection (c)(2) shall be applied by substituting 'May 15' for 'April 15'.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining underpayments of estimated tax for taxable years beginning after the date of the enactment of this Act.

SEC. 1462. CLARIFICATION OF AUTHORITY TO WITHHOLD PUERTO RICO INCOME TAXES FROM SALARIES OF FEDERAL EMPLOYEES.

(a) IN GENERAL.—Subsection (c) of section 5517 of title 5, United States Code, is amended by striking "or territory or possession" and inserting ", territory, possession, or commonwealth".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1998.

SEC. 1463. CERTAIN NOTICES DISREGARDED UNDER PROVISION INCREASING INTEREST RATE ON LARGE CORPORATE UNDERPAYMENTS.

(a) GENERAL RULE.—Subparagraph (B) of section 6621(c)(2) (defining applicable date) is amended by adding at the end the following new clause:

"(iii) EXCEPTION FOR LETTERS OR NOTICES INVOLVING SMALL AMOUNTS.—For purposes of this paragraph, any letter or notice shall be disregarded if the amount of the deficiency or proposed deficiency (or the assessment or proposed assessment) set forth in such letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining interest for periods after December 31, 1997.

TITLE XV—PENSIONS AND EMPLOYEE BENEFITS

Subtitle A—Simplification

SEC. 1501. MATCHING CONTRIBUTIONS OF SELF-EMPLOYED INDIVIDUALS NOT TREATED AS ELECTIVE EMPLOYER CONTRIBUTIONS.

(a) IN GENERAL.—Section 402(g) (relating to limitation on exclusion for elective deferrals) is amended by adding at the end the following:

"(9) MATCHING CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS NOT TREATED AS ELECTIVE EMPLOYER CONTRIBUTIONS.—Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) for purposes of this title.".

(b) CONFORMING AMENDMENT FOR SIMPLE RETIREMENT ACCOUNTS.—Section 408(p) (relating to simple retirement accounts) is amended by adding at the end the following:

"(8) MATCHING CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS NOT TREATED AS ELECTIVE EMPLOYER CONTRIBUTIONS.—Any matching contribution described in paragraph (2)(A)(iii) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution to a simple retirement account for purposes of this title.".

(c) EFFECTIVE DATES.—

(1) ELECTIVE DEFERRALS.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1997.

(2) SIMPLE RETIREMENT ACCOUNTS.—The amendment made by subsection (b) shall apply to years beginning after December 31, 1996.

SEC. 1502. MODIFICATION OF PROHIBITION OF ASSIGNMENT OR ALIENATION.

(a) AMENDMENT TO ERISA.—Section 206(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(d)) is amended by adding at the end the following:

"(4) Paragraph (1) shall not apply to any offset of a participant's benefits provided under an employee pension benefit plan against an amount that the participant is ordered or required to pay to the plan if—

"(A) the order or requirement to pay arises—

"(i) under a judgment of conviction for a crime involving such plan,

"(ii) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of this subtitle, or

"(iii) pursuant to a settlement agreement between the Secretary and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of this subtitle by a fiduciary or any other person,

"(B) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

"(C) in a case in which the survivor annuity requirements of section 205 apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

"(i) either—

"(I) such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 205(c)(2)(B)), or

"(II) an election to waive the right of the spouse to a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 205(c),

"(ii) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of this subtitle, or

"(iii) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 205(a)(1) and under a qualified preretirement survivor annuity provided pursuant to section 205(a)(2), determined in accordance with paragraph (5).

A plan shall not be treated as failing to meet the requirements of section 205 solely by reason of an offset under this paragraph.

"(5)(A) The survivor annuity described in paragraph (4)(C)(iii) shall be determined as if—

"(i) the participant terminated employment on the date of the offset,

"(ii) there was no offset,

"(iii) the plan permitted commencement of benefits only on or after normal retirement age,

"(iv) the plan provided only the minimum-required qualified joint and survivor annuity, and

"(v) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

"(B) For purposes of this paragraph, the term 'minimum-required qualified joint and survivor annuity' means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 3(23)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.".

(b) AMENDMENT TO 1986 CODE.—Section 401(a)(13) (relating to assignment and alienation) is amended by adding at the end the following:

"(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Subparagraph (A) shall not apply to any offset of a participant's benefits provided under a plan against an amount that the participant is ordered or required to pay to the plan if—

"(i) the order or requirement to pay arises—

"(I) under a judgment of conviction for a crime involving such plan,

"(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

"(III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a fiduciary or any other person,

"(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

"(iii) in a case in which the survivor annuity requirements of section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

"(I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a),

"(II) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of such subtitle, or

"(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii), determined in accordance with subparagraph (D).

A plan shall not be treated as failing to meet the requirements of this subsection, subsection (k), section 403(b), or section 409(d) solely by reason of an offset described in this subparagraph.

"(D) SURVIVOR ANNUITY.—

"(i) IN GENERAL.—The survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if—

"(I) the participant terminated employment on the date of the offset,

"(II) there was no offset,

"(III) the plan permitted commencement of benefits only on or after normal retirement age,

"(IV) the plan provided only the minimum-required qualified joint and survivor annuity, and

"(V) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

"(ii) DEFINITION.—For purposes of this subparagraph, the term 'minimum-required qualified joint and survivor annuity' means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of the enactment of this Act.

SEC. 1503. ELIMINATION OF PAPERWORK BURDENS ON PLANS.

(a) ELIMINATION OF UNNECESSARY FILING REQUIREMENTS.—Section 101(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(b)) is amended by striking paragraphs (1), (2), and (3) and by redesignating paragraphs (4) and (5) as paragraphs (1) and (2), respectively.

(b) ELIMINATION OF PLAN DESCRIPTION.—

(1) IN GENERAL.—Section 102(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1022(a)) is amended—

(A) by striking paragraph (2), and

(B) by striking "(a)(1)" and inserting "(a)".

(2) CONFORMING AMENDMENTS.—

(A) Section 102(b) of such Act (29 U.S.C. 1022(b)) is amended by striking "The plan description and summary plan description shall contain" and inserting "The summary plan description shall contain".

(B) The heading for section 102 of such Act is amended by striking "PLAN DESCRIPTION AND".

(c) FURNISHING OF REPORTS.—

(1) IN GENERAL.—Section 104(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(a)(1)) is amended to read as follows:

"SEC. 104. (a)(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing). The Secretary shall make copies of such annual reports available for inspection in the public document room of the Department of Labor.".

(2) SECRETARY MAY REQUEST DOCUMENTS.—

(A) IN GENERAL.—Section 104(a) of such Act (29 U.S.C. 1024(a)) is amended by adding at the end the following:

"(6) The administrator of any employee benefit plan subject to this part shall furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest summary plan description (including any summaries of plan changes not contained in the summary plan description), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.".

(B) PENALTY.—Section 502(c) of such Act (29 U.S.C. 1132(c)) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following:

"(6) If, within 30 days of a request by the Secretary to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Secretary, the Secretary may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure (but in no event in excess of $1,000 per request). No penalty shall be imposed under this paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.".

(d) CONFORMING AMENDMENTS.—

(1) Section 104(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(1)) is amended by striking "section 102(a)(1)" each place it appears and inserting "section 102(a)".

(2) Section 104(b)(2) of such Act (29 U.S.C. 1024(b)(2)) is amended by striking "the plan description and" and inserting "the latest updated summary plan description and".

(3) Section 104(b)(4) of such Act (29 U.S.C. 1024(b)(4)) is amended by striking "plan description".

(4) Section 106(a) of such Act (29 U.S.C. 1026(a)) is amended by striking "descriptions,".

(5) Section 107 of such Act (29 U.S.C. 1027) is amended by striking "description or".

(6) Section 108(2)(B) of such Act (29 U.S.C. 1028(2)(B)) is amended by striking "plan descriptions, annual reports," and inserting "annual reports".

(7) Section 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is amended by striking "or (5)" and inserting "(5), or (6)".

(e) TECHNICAL CORRECTION.—Section 1144(c) of the Social Security Act (42 U.S.C. 1320b–14(c)) is amended by redesignating paragraph (9) as paragraph (8).

SEC. 1504. MODIFICATION OF 403(b) EXCLUSION ALLOWANCE TO CONFORM TO 415 MODIFICATIONS.

(a) DEFINITION OF COMPENSATION.—

(1) IN GENERAL.—Section 403(b)(3) (defining includible compensation) is amended by adding at the end the following: "Such term includes—

"(A) any elective deferral (as defined in section 402(g)(3)), and

"(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125 or 457.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after December 31, 1997.

(b) REPEAL OF RULES IN SECTION 415(e).—The Secretary of the Treasury shall modify the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 to reflect the amendment made by section 1452(a) of the Small Business Job Protection Act of 1996. Such modification shall take effect for years beginning after December 31, 1999.

SEC. 1505. EXTENSION OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES TO STATE AND LOCAL GOVERNMENTS.

(a) GENERAL NONDISCRIMINATION AND PARTICIPATION RULES.—

(1) NONDISCRIMINATION REQUIREMENTS.—Section 401(a)(5) (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by adding at the end the following:

"(G) STATE AND LOCAL GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).".

(2) ADDITIONAL PARTICIPATION REQUIREMENTS.—Section 401(a)(26)(H) (relating to additional participation requirements) is amended to read as follows:

"(H) EXCEPTION FOR STATE AND LOCAL GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).".

(3) MINIMUM PARTICIPATION STANDARDS.—Section 410(c)(2) (relating to application of participation standards to certain plans) is amended to read as follows:

"(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this paragraph shall apply only if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974).".

(b) PARTICIPATION AND DISCRIMINATION STANDARDS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—Section 401(k)(3) (relating to application of participation and discrimination standards) is amended by adding at the end the following:

"(G) A governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof) shall be treated as meeting the requirements of this paragraph.".

(c) NONDISCRIMINATION RULES FOR SECTION 403(b) PLANS.—Section 403(b)(12) (relating to nondiscrimination requirements) is amended by adding at the end the following:

"(C) STATE AND LOCAL GOVERNMENTAL PLANS.—For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section apply to taxable years beginning on or after the date of enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403 (b)(1)(D) and (b)(12), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.

SEC. 1506. CLARIFICATION OF CERTAIN RULES RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS OF S CORPORATIONS.

(a) CERTAIN CASH DISTRIBUTIONS PERMITTED.—

(1) Paragraph (2) of section 409(h) is amended by adding at the end the following new subparagraph:

"(B) EXCEPTION FOR CERTAIN PLANS RESTRICTED FROM DISTRIBUTING SECURITIES.—

"(i) IN GENERAL.—A plan to which this subparagraph applies shall not be treated as failing to meet the requirements of this subsection or section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that the participant entitled to a distribution has a right to receive the distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).

"(ii) APPLICABLE PLANS.—This subparagraph shall apply to a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) and which is established and maintained by—

"(I) an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), or

"(II) an S corporation."

(2) Paragraph (2) of section 409(h), as in effect before the amendment made by paragraph (1), is amended—

(A) by striking "A plan which" in the first sentence and inserting the following:

"(A) IN GENERAL.—A plan which", and

(B) by striking the last sentence.

(b) CERTAIN SHAREHOLDER-EMPLOYEES NOT TREATED AS OWNER-EMPLOYEES.—

(1) AMENDMENT TO 1986 CODE.—

(A) IN GENERAL.—Section 4975(f) is amended by adding at the end the following new paragraph:

"(6) EXEMPTIONS NOT TO APPLY TO CERTAIN TRANSACTIONS.—

"(A) IN GENERAL.—In the case of a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)), the exemptions provided by subsection (d) (other than paragraphs (9) and (12)) shall not apply to a transaction in which the plan directly or indirectly—

"(i) lends any part of the corpus or income of the plan to,

"(ii) pays any compensation for personal services rendered to the plan to, or

"(iii) acquires for the plan any property from, or sells any property to,

any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or any corporation in which any such owner-employee owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

"(B) SPECIAL RULES FOR SHAREHOLDER-EMPLOYEES, ETC.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the following shall be treated as owner-employees:

"(I) A shareholder-employee.

"(II) A participant or beneficiary of an individual retirement plan (as defined in section 7701(a)(37)).

"(III) An employer or association of employees which establishes such an individual retirement plan under section 408(c).

"(ii) EXCEPTION FOR CERTAIN TRANSACTIONS INVOLVING SHAREHOLDER-EMPLOYEES.—Subparagraph (A)(iii) shall not apply to a transaction which consists of a sale of employer securities to an employee stock ownership plan (as defined in subsection (e)(7)) by a shareholder-employee, a member of the family (as defined in section 267(c)(4)) of such shareholder-employee, or a corporation in which such a shareholder-employee owns stock representing a 50 percent or greater interest described in subparagraph (A).

"(C) SHAREHOLDER-EMPLOYEE.—For purposes of subparagraph (B), the term 'shareholder-employee' means an employee or officer of an S corporation who owns (or is considered as owning within the meaning of section 318(a)(1)) more than 5 percent of the outstanding stock of the corporation on any day during the taxable year of such corporation."

(B) CONFORMING AMENDMENTS.—Section 4975(d) is amended—

(i) by striking "The prohibitions" and inserting "Except as provided in subsection (f)(6), the prohibitions", and

(ii) by striking the last two sentences thereof.

(2) AMENDMENT TO ERISA.—Section 408(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(d)) is amended to read as follows:

"(d)(1) Section 407(b) and subsections (b), (c), and (e) of this section shall not apply to a transaction in which a plan directly or indirectly—

"(A) lends any part of the corpus or income of the plan to,

"(B) pays any compensation for personal services rendered to the plan to, or

"(C) acquires for the plan any property from, or sells any property to,

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1986), a member of the family (as defined in section 267(c)(4) of such Code) of any such owner-employee, or any corporation in which any such owner-employee owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

"(2)(A) For purposes of paragraph (1), the following shall be treated as owner-employees:

"(i) A shareholder-employee.

"(ii) A participant or beneficiary of an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986).

"(iii) An employer or association of employees which establishes such an individual retirement plan under section 408(c) of such Code.

"(B) Paragraph (1)(C) shall not apply to a transaction which consists of a sale of employer securities to an employee stock ownership plan (as defined in section 407(d)(6)) by a shareholder-employee, a member of the family (as defined in section 267(c)(4) of such Code) of any such owner-employee, or a corporation in which such a shareholder-employee owns stock representing a 50 percent or greater interest described in paragraph (1).

"(3) For purposes of paragraph (2), the term 'shareholder-employee' means an employee or officer of an S corporation (as defined in section 1361(a)(1) of such Code) who owns (or is considered as owning within the meaning of section 318(a)(1) of such Code) more than 5 percent of the outstanding stock of the corporation on any day during the taxable year of such corporation."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 1507. MODIFICATION OF 10-PERCENT TAX FOR NONDEDUCTIBLE CONTRIBUTIONS.

(a) IN GENERAL.—Section 4972(c)(6)(B) (relating to exceptions) is amended to read as follows:

"(B) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

"(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

"(ii) the sum of—

"(I) the amount of contributions described in section 401(m)(4)(A), plus

"(II) the amount of contributions described in section 402(g)(3)(A).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 1508. MODIFICATION OF FUNDING REQUIREMENTS FOR CERTAIN PLANS.

(a) FUNDING RULES FOR CERTAIN PLANS.—Section 769 of the Retirement Protection Act of 1994 is amended by adding at the end the following new subsection:

"(c) TRANSITION RULES FOR CERTAIN PLANS.—

"(1) IN GENERAL.—In the case of a plan that—

"(A) was not required to pay a variable rate premium for the plan year beginning in 1996;

"(B) has not, in any plan year beginning after 1995 and before 2009, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor); and

"(C) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the transition rules described in paragraph (2) shall apply for any plan year beginning after 1996 and before 2010.

"(2) TRANSITION RULES.—The transition rules described in this paragraph are as follows:

"(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974—

"(i) the funded current liability percentage for any plan year beginning after 1996 and before 2005 shall be treated as not less than 90 percent if for such plan year the funded current liability percentage is at least 85 percent, and

"(ii) the funded current liability percentage for any plan year beginning after 2004 and before 2010 shall be treated as not less than 90 percent if for such plan year the funded current liability percentage satisfies the minimum percentage determined according to the following table:

"In the case of a plan year beginning in:	The minimum percentage is:
2005	86
2006	87
2007	88
2008	89
2009 and thereafter	90.

"(B) Sections 412(c)(7)(E)(i)(I) of such Code and 302(c)(7)(E)(i)(I) of such Act shall be applied—

"(i) by substituting '85 percent' for '90 percent' for plan years beginning after 1996 and before 2005, and

"(ii) by substituting the minimum percentage specified in the table contained in subparagraph (A)(ii) for '90 percent' for plan years beginning after 2004 and before 2010.

"(C) In the event the funded current liability percentage of a plan is less than 85 percent for any plan year beginning after 1996 and before 2005, the transition rules under subparagraphs (A) and (B) shall continue to apply to the plan if contributions for such a plan year are made to the plan in an amount equal to the lesser of—

"(i) the amount necessary to result in a funded current liability percentage of 85 percent, or

"(ii) the greater of—

"(I) 2 percent of the plan's current liability as of the beginning of such plan year, or

"(II) the amount necessary to result in a funded current liability percentage of 80 percent as of the end of such plan year.

For the plan year beginning in 2005 and for each of the 3 succeeding plan years, the transition rules under subparagraphs (A) and (B) shall continue to apply to the plan for such plan year only if contributions to the plan for such plan year equal at least the expected increase in current liability due to benefits accruing during such plan year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 1996.

SEC. 1509. CLARIFICATION OF DISQUALIFICATION RULES RELATING TO ACCEPTANCE OF ROLLOVER CONTRIBUTIONS.

The Secretary of the Treasury or his delegate shall clarify that, under the Internal Revenue Service regulations protecting pension plans from disqualification by reason of the receipt of invalid rollover contributions under section 402(c) of the Internal Revenue Code of 1986, in order for the administrator of the plan receiving any such contribution to reasonably conclude that the contribution is a valid rollover contribution it is not necessary for the distributing

plan to have a determination letter with respect to its status as a qualified plan under section 401 of such Code.

SEC. 1510. NEW TECHNOLOGIES IN RETIREMENT PLANS.

(a) IN GENERAL.—Not later than December 31, 1998, the Secretary of the Treasury and the Secretary of Labor shall each issue guidance which is designed to—

(1) interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators while maintaining the protection of the rights of participants and beneficiaries, and

(2) clarify the extent to which writing requirements under the Internal Revenue Code of 1986 relating to retirement plans shall be interpreted to permit paperless transactions.

(b) APPLICABILITY OF FINAL REGULATIONS.—Final regulations applicable to the guidance regarding new technologies described in subsection (a) shall not be effective until the first plan year beginning at least 6 months after the issuance of such final regulations.

Subtitle B—Other Provisions Relating to Pensions and Employee Benefits

SEC. 1521. INCREASE IN CURRENT LIABILITY FUNDING LIMIT.

(a) AMENDMENT TO 1986 CODE.—Section 412(c)(7) (relating to full-funding limitation) is amended—

(A) by striking "150 percent" in subparagraph (A)(i)(I) and inserting "the applicable percentage", and

(B) by adding at the end the following:

"(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

"In the case of any plan year beginning in:	The applicable percentage is:
1999 or 2000	155
2001 or 2002	160
2003 or 2004	165
2005 and succeeding years	170.".

(b) AMENDMENT TO ERISA.—Section 302(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)) is amended—

(A) by striking "150 percent" in subparagraph (A)(i)(I) and inserting "the applicable percentage", and

(B) by adding at the end the following:

"(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

"In the case of any plan year beginning in:	The applicable percentage is:
1999 or 2000	155
2001 or 2002	160
2003 or 2004	165
2005 and succeeding years	170.".

(c) SPECIAL AMORTIZATION RULE.—

(1) CODE AMENDMENT.—Section 412(b)(2) is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by inserting after subparagraph (D) the following:

"(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of subsection (c)(7)(A)(i)(I).".

(2) ERISA AMENDMENT.—Section 302(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)(2)) is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by inserting after subparagraph (D) the following:

"(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of subsection (c)(7)(A)(i)(I).".

(3) CONFORMING AMENDMENTS.—

(A) Section 412(c)(7)(D) is amended by adding "and" at the end of clause (i), by striking ", and" at the end of clause (ii) and inserting a period, and by striking clause (iii).

(B) Section 302(c)(7)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)(D)) is amended by adding "and" at the end of clause (i), by striking ", and" at the end of clause (ii) and inserting a period, and by striking clause (iii).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 1998.

(2) SPECIAL RULE FOR UNAMORTIZED BALANCES UNDER EXISTING LAW.—The unamortized balance (as of the close of the plan year preceding the plan's first year beginning in 1999) of any amortization base established under section 412(c)(7)(D)(iii) of such Code and section 302(c)(7)(D)(iii) of such Act (as repealed by subsection (c)(3)) for any plan year beginning before 1999 shall be amortized in equal annual installments (until fully amortized) over a period of years equal to the excess of—

(A) 20 years, over

(B) the number of years since the amortization base was established.

SEC. 1522. SPECIAL RULES FOR CHURCH PLANS.

(a) IN GENERAL.—Section 414(e)(5) (relating to special rules for chaplains and self-employed ministers) is amended—

(1) by striking "not eligible to participate" in subparagraph (C) and inserting "not otherwise participating", and

(2) by adding at the end the following new subparagraph:

"(E) EXCLUSION.—In the case of a contribution to a church plan made on behalf of a minister described in subparagraph (A)(i)(II), such contribution shall not be included in the gross income of the minister to the extent that such contribution would not be so included if the minister was an employee of a church.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1997.

SEC. 1523. REPEAL OF APPLICATION OF UNRELATED BUSINESS INCOME TAX TO ESOPS.

(a) IN GENERAL.—Section 512(e) is amended by adding at the end the following new paragraph:

"(3) EXCEPTION FOR ESOPS.—This subsection shall not apply to employer securities (within the meaning of section 409(l)) held by an employee stock ownership plan described in section 4975(e)(7)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SEC. 1524. DIVERSIFICATION OF SECTION 401(k) PLAN INVESTMENTS.

(a) LIMITATIONS ON INVESTMENT IN EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CASH OR DEFERRED ARRANGEMENTS.—Section 407(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(b)) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2)(A) If this paragraph applies to an eligible individual account plan, the portion of such plan which consists of applicable elective deferrals (and earnings allocable thereto) shall be treated as a separate plan—

"(i) which is not an eligible individual account plan, and

"(ii) to which the requirements of this section apply.

"(B)(i) This paragraph shall apply to any eligible individual account plan if any portion of the plan's applicable elective deferrals (or earnings allocable thereto) are required to be invested in qualifying employer securities or qualifying employer real property or both—

"(I) pursuant to the terms of the plan, or

"(II) at the direction of a person other than the participant on whose behalf such elective deferrals are made to the plan (or a beneficiary).

"(ii) This paragraph shall not apply to an individual account plan for a plan year if, on the last day of the preceding plan year, the fair market value of the assets of all individual account plans maintained by the employer equals not more than 10 percent of the fair market value of the assets of all pension plans (other than multiemployer plans) maintained by the employer.

"(iii) This paragraph shall not apply to an individual account plan that is an employee stock ownership plan as defined in section 4975(e)(7) of the Internal Revenue Code of 1986.

"(iv) This paragraph shall not apply to an individual account plan if, pursuant to the terms of the plan, the portion of any employee's applicable elective deferrals which is required to be invested in qualifying employer securities and qualifying employer real property for any year may not exceed 1 percent of the employee's compensation which is taken into account under the plan in determining the maximum amount of the employee's applicable elective deferrals for such year.

"(C) For purposes of this paragraph, the term 'applicable elective deferral' means any elective deferral (as defined in section 402(g)(3)(A) of the Internal Revenue Code of 1986) which is made pursuant to a qualified cash or deferred arrangement as defined in section 401(k) of the Internal Revenue Code of 1986."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.

SEC. 1525. SECTION 401(K) PLANS FOR CERTAIN IRRIGATION AND DRAINAGE ENTITIES.

(a) IN GENERAL.—Subparagraph (B) of section 401(k)(7) (relating to rural cooperative plan) is amended—

(1) by striking "and" at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

"(iv) any organization which—

"(I) is a mutual irrigation or ditch company described in section 501(c)(12) (without regard to the 85 percent requirement thereof), or

"(II) is a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation, or drainage, and", and

(2) in clause (v), as so redesignated, by striking "or (iii)" and inserting ", (iii), or (iv)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to years beginning after December 31, 1997.

SEC. 1526. PORTABILITY OF PERMISSIVE SERVICE CREDIT UNDER GOVERNMENTAL PENSION PLANS.

(a) IN GENERAL.—Section 415 (relating to limitations on benefits and contributions under qualified plans) is amended by adding at the end the following new subsection:

"(n) SPECIAL RULES RELATING TO PURCHASE OF PERMISSIVE SERVICE CREDIT.—

"(1) IN GENERAL.—If an employee makes 1 or more contributions to a defined benefit governmental plan (within the meaning of section

414(d)) to purchase permissive service credit under such plan, then the requirements of this section shall be treated as met only if—

"(A) the requirements of subsection (b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of subsection (b), or

"(B) the requirements of subsection (c) are met, determined by treating all such contributions as annual additions for purposes of subsection (c).

"(2) APPLICATION OF LIMIT.—For purposes of—

"(A) applying paragraph (1)(A), the plan shall not fail to meet the reduced limit under subsection (b)(2)(C) solely by reason of this subsection, and

"(B) applying paragraph (1)(B), the plan shall not fail to meet the percentage limitation under subsection (c)(1)(B) solely by reason of this subsection.

"(3) PERMISSIVE SERVICE CREDIT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'permissive service credit' means service credit—

"(i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan,

"(ii) which such participant has not received under such governmental plan, and

"(iii) which such participant may receive only by making a voluntary additional contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

"(B) LIMITATION ON NONQUALIFIED SERVICE CREDIT.—A plan shall fail to meet the requirements of this section if—

"(i) more than 5 years of permissive service credit attributable to nonqualified service are taken into account for purposes of this subsection, or

"(ii) any permissive service credit attributable to nonqualified service is taken into account under this subsection before the employee has at least 5 years of participation under the plan.

"(C) NONQUALIFIED SERVICE.—For purposes of subparagraph (B), the term 'nonqualified service' means service for which permissive service credit is allowed other than—

"(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in subsection (k)(3)),

"(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an educational organization described in section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), as determined under State law,

"(iii) service as an employee of an association of employees who are described in clause (i), or

"(iv) military service (other than qualified military service under section 414(u)) recognized by such governmental plan.

In the case of service described in clauses (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a participant to receive a retirement benefit for the same service under more than one plan."

(b) SPECIAL RULE FOR REPAYMENT OF CASHOUTS.—Section 415(k) (relating to special rules) is amended by adding at the end the following new paragraph:

"(3) REPAYMENTS OF CASHOUTS UNDER GOVERNMENTAL PLANS.—In the case of any repayment of contributions (including interest thereon) to the governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer within the same State, any such repayment shall not be taken into account for purposes of this section."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to permissive service credit contributions made in years beginning after December 31, 1997.

(2) TRANSITION RULE.—

(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the limitations of section 415(c)(1) of such Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on the date of the enactment of this Act.

(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan before the first plan year beginning after the last day of the calendar year in which the next regular session (following the date of the enactment of this Act) of the governing body with authority to amend the plan ends.

SEC. 1527. REMOVAL OF DOLLAR LIMITATION ON BENEFIT PAYMENTS FROM A DEFINED BENEFIT PLAN MAINTAINED FOR CERTAIN POLICE AND FIRE EMPLOYEES.

(a) IN GENERAL.—Subparagraph (G) of section 415(b)(2) is amended by striking "participant—" and all that follows and inserting "participant, subparagraph (C) of this paragraph shall not apply.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1996.

SEC. 1528. SURVIVOR BENEFITS FOR PUBLIC SAFETY OFFICERS KILLED IN THE LINE OF DUTY.

(a) IN GENERAL.—Section 101 (relating to certain death benefits) is amended by adding at the end the following new subsection:

"(h) SURVIVOR BENEFITS ATTRIBUTABLE TO SERVICE BY A PUBLIC SAFETY OFFICER WHO IS KILLED IN THE LINE OF DUTY.—

"(1) IN GENERAL.—Gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty—

"(A) if such annuity is provided, under a governmental plan which meets the requirements of section 401(a), to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and

"(B) to the extent such annuity is attributable to such officer's service as a public safety officer.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to the death of any public safety officer if, as determined in accordance with the provisions of the Omnibus Crime Control and Safe Streets Act of 1968—

"(A) the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about such officer's death;

"(B) the officer was voluntarily intoxicated (as defined in section 1204 of such Act) at the time of death;

"(C) the officer was performing such officer's duties in a grossly negligent manner at the time of death; or

"(D) the payment is to an individual whose actions were a substantial contributing factor to the death of the officer.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after such date.

SEC. 1529. TREATMENT OF CERTAIN DISABILITY BENEFITS RECEIVED BY FORMER POLICE OFFICERS OR FIREFIGHTERS.

(a) GENERAL RULE.—For purposes of determining whether any amount to which this section applies is excludable from gross income under section 104(a)(1) of the Internal Revenue Code of 1986, the following conditions shall be treated as personal injuries or sickness in the course of employment:

(1) Heart disease.

(2) Hypertension.

(b) AMOUNTS TO WHICH SECTION APPLIES.—This section shall apply to any amount—

(1) which is payable—

(A) to an individual (or to the survivors of an individual) who was a full-time employee of any police department or fire department which is organized and operated by a State, by any political subdivision thereof, or by any agency or instrumentality of a State or political subdivision thereof, and

(B) under a State law (as amended on May 19, 1992) which irrebuttably presumed that heart disease and hypertension are work-related illnesses but only for employees separating from service before July 1, 1992; and

(2) which was received in calendar year 1989, 1990, or 1991.

(c) WAIVER OF STATUTE OF LIMITATIONS.—If, on the date of the enactment of this Act (or at any time within the 1-year period beginning on such date of enactment), credit or refund of any overpayment of tax resulting from the provisions of this section is barred by any law or rule of law (including res judicata), then credit or refund of such overpayment shall, nevertheless, be allowed or made if claim therefore is filed before the date 1 year after such date of enactment.

SEC. 1530. GRATUITOUS TRANSFERS FOR THE BENEFIT OF EMPLOYEES.

(a) IN GENERAL.—Subparagraph (C) of section 664(d)(1) and subparagraph (C) of section 664(d)(2) are each amended by striking the period at the end thereof and inserting "or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)).".

(b) QUALIFIED GRATUITOUS TRANSFER DEFINED.—Section 664 is amended by adding at the end the following new subsection:

"(g) QUALIFIED GRATUITOUS TRANSFER OF QUALIFIED EMPLOYER SECURITIES.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified gratuitous transfer' means a transfer of qualified employer securities to an employee stock ownership plan (as defined in section 4975(e)(7)) but only to the extent that—

"(A) the securities transferred previously passed from a decedent dying before January 1, 1999, to a trust described in paragraph (1) or (2) of subsection (d),

"(B) no deduction under section 404 is allowable with respect to such transfer,

"(C) such plan contains the provisions required by paragraph (3),

"(D) such plan treats such securities as being attributable to employer contributions but without regard to the limitations otherwise applicable to such contributions under section 404, and

"(E) the employer whose employees are covered by the plan described in this paragraph files with the Secretary a verified written statement consenting to the application of sections 4978 and 4979A with respect to such employer.

"(2) EXCEPTION.—The term 'qualified gratuitous transfer' shall not include a transfer of qualified employer securities to an employee stock ownership plan unless—

"(A) such plan was in existence on August 1, 1996,

"(B) at the time of the transfer, the decedent and members of the decedent's family (within the meaning of section 2032A(e)(2)) own (directly or through the application of section 318(a)) no more than 10 percent of the value of the stock of the corporation referred to in paragraph (4), and

"(C) immediately after the transfer, such plan owns (after the application of section 318(a)(4)) at least 60 percent of the value of the outstanding stock of the corporation.

"(3) PLAN REQUIREMENTS.—A plan contains the provisions required by this paragraph if such plan provides that—

"(A) the qualified employer securities so transferred are allocated to plan participants in a manner consistent with section 401(a)(4),

"(B) plan participants are entitled to direct the plan as to the manner in which such securities which are entitled to vote and are allocated to the account of such participant are to be voted,

"(C) an independent trustee votes the securities so transferred which are not allocated to plan participants,

"(D) each participant who is entitled to a distribution from the plan has the rights described in subparagraphs (A) and (B) of section 409(h)(1),

"(E) such securities are held in a suspense account under the plan to be allocated each year, up to the limitations under section 415(c), after first allocating all other annual additions for the limitation year, up to the limitations under sections 415 (c) and (e), and

"(F) on termination of the plan, all securities so transferred which are not allocated to plan participants as of such termination are to be transferred to, or for the use of, an organization described in section 170(c).

For purposes of the preceding sentence, the term 'independent trustee' means any trustee who is not a member of the family (within the meaning of section 2032A(e)(2)) of the decedent or a 5-percent shareholder. A plan shall not fail to be treated as meeting the requirements of section 401(a) by reason of meeting the requirements of this subsection.

"(4) QUALIFIED EMPLOYER SECURITIES.—For purposes of this section, the term 'qualified employer securities' means employer securities (as defined in section 409(l)) which are issued by a domestic corporation—

"(A) which has no outstanding stock which is readily tradable on an established securities market, and

"(B) which has only 1 class of stock.

"(5) TREATMENT OF SECURITIES ALLOCATED BY EMPLOYEE STOCK OWNERSHIP PLAN TO PERSONS RELATED TO DECEDENT OR 5-PERCENT SHAREHOLDERS.—

"(A) IN GENERAL.—If any portion of the assets of the plan attributable to securities acquired by the plan in a qualified gratuitous transfer are allocated to the account of—

"(i) any person who is related to the decedent (within the meaning of section 267(b)) or a member of the decedent's family (within the meaning of section 2032A(e)(2)), or

"(ii) any person who, at the time of such allocation or at any time during the 1-year period ending on the date of the acquisition of qualified employer securities by the plan, is a 5-percent shareholder of the employer maintaining the plan,

the plan shall be treated as having distributed (at the time of such allocation) to such person or shareholder the amount so allocated.

"(B) 5-PERCENT SHAREHOLDER.—For purposes of subparagraph (A), the term '5-percent shareholder' means any person who owns (directly or through the application of section 318(a)) more than 5 percent of the outstanding stock of the corporation which issued such qualified employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of section 409(l)(4)) as such corporation. For purposes of the preceding sentence, section 318(a) shall be applied without regard to the exception in paragraph (2)(B)(i) thereof.

"(C) CROSS REFERENCE.—

"For excise tax on allocations described in subparagraph (A), see section 4979A.

"(6) TAX ON FAILURE TO TRANSFER UNALLOCATED SECURITIES TO CHARITY ON TERMINATION OF PLAN.—If the requirements of paragraph (3)(F) are not met with respect to any securities, there is hereby imposed a tax on the employer maintaining the plan in an amount equal to the sum of—

"(A) the amount of the increase in the tax which would be imposed by chapter 11 if such securities were not transferred as described in paragraph (1), and

"(B) interest on such amount at the underpayment rate under section 6621 (and compounded daily) from the due date for filing the return of the tax imposed by chapter 11.".

(c) CONFORMING AMENDMENTS.—

(1) Section 401(a)(1) is amended by inserting "or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1))," after "stock bonus plans),".

(2) Section 404(a)(9) is amended by inserting after subparagraph (B) the following new subparagraph:

"(C) A qualified gratuitous transfer (as defined in section 664(g)(1)) shall have no effect on the amount or amounts otherwise deductible under paragraph (3) or (7) or under this paragraph.".

(3) Section 415(c)(6) is amended by adding at the end thereof the following new sentence:

"The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.".

(4) Section 415(e) is amended—

(A) by redesignating paragraph (6) as paragraph (7), and

(B) by inserting after paragraph (5) the following new paragraph:

"(6) SPECIAL RULE FOR QUALIFIED GRATUITOUS TRANSFERS.—Any qualified gratuitous transfer of qualified employer securities (as defined by section 664(g)) shall not be taken into account in calculating, and shall not be subject to, the limitations provided in this subsection.".

(5) Subparagraph (B) of section 664(d)(1) and subparagraph (B) of section 664(d)(2) are each amended by inserting "and other than qualified gratuitous transfers described in subparagraph (C)" after "subparagraph (A)".

(6) Paragraph (4) of section 674(b) is amended by inserting before the period "or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1))".

(7) Section 2055(a) is amended—

(i) by striking "or" at the end of paragraph (3),

(ii) by striking the period at the end of paragraph (4) and inserting "; or", and

(iii) by inserting after paragraph (4) the following new paragraph:

"(5) to an employee stock ownership plan if such transfer qualifies as a qualified gratuitous transfer of qualified employer securities within the meaning of section 664(g).".

(8) Paragraph (8) of section 2056(b) is amended to read as follows:

"(8) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

"(A) IN GENERAL.—If the surviving spouse of the decedent is the only beneficiary of a qualified charitable remainder trust who is not a charitable beneficiary nor an ESOP beneficiary, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) CHARITABLE BENEFICIARY.—The term 'charitable beneficiary' means any beneficiary which is an organization described in section 170(c).

"(ii) ESOP BENEFICIARY.—The term 'ESOP beneficiary' means any beneficiary which is an employee stock ownership plan (as defined in section 4975(e)(7)) that holds a remainder interest in qualified employer securities (as defined in section 664(g)(4)) to be transferred to such plan in a qualified gratuitous transfer (as defined in section 664(g)(1)).

"(iii) QUALIFIED CHARITABLE REMAINDER TRUST.—The term 'qualified charitable remainder trust' means a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664).".

(9) Section 4947(b) is amended by inserting after paragraph (3) the following new paragraph:

"(4) SECTION 507.—The provisions of section 507(a) shall not apply to a trust which is described in subsection (a)(2) by reason of a distribution of qualified employer securities (as defined in section 664(g)(4)) to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by section 664(g)).".

(10) The last sentence of section 4975(e)(7) is amended by inserting "and section 664(g)" after "section 409(n)"

(11) Subsection (a) of section 4978 is amended—

(A) by inserting "or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied" after "section 1042 applied", and

(B) by inserting before the comma at the end of paragraph (2) "60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied)".

(12) Paragraph (2) of section 4978(b) is amended—

(A) by inserting "or acquired in the qualified gratuitous transfer to which section 664(g) applied" after "section 1042 applied", and

(B) by inserting "or to which section 664(g) applied" after "section 1042 applied" in subparagraph (A) thereof.

(13) Subsection (c) of section 4978 is amended by striking "written statement" and all that follows and inserting "written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be).".

(14) Paragraph (2) of section 4978(e) is amended by striking the period and inserting "; except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1)).".

(15) Subsection (a) of section 4979A is amended to read as follows:

"(a) IMPOSITION OF TAX.—If—

"(1) there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative, or

"(2) there is an allocation described in section 664(g)(5)(A),

there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.".

(16) Subsection (c) of section 4979A is amended to read as follows:

"(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid by—

"(1) the employer sponsoring such plan, or

"(2) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be).".

(17) Section 4979A is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) SPECIAL STATUTE OF LIMITATIONS FOR TAX ATTRIBUTABLE TO CERTAIN ALLOCATIONS.—The statutory period for the assessment of any tax imposed by this section on an allocation described in subsection (a)(2) of qualified employer securities shall not expire before the date which is 3 years from the later of—

"(1) the 1st allocation of such securities in connection with a qualified gratuitous transfer (as defined in section 664(g)(1)), or

"(2) the date on which the Secretary is notified of the allocation described in subsection (a)(2).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers made by trusts to, or for the use of, an employee stock ownership plan after the date of the enactment of this Act.

Subtitle C—Provisions Relating to Certain Health Acts

SEC. 1531. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986 TO IMPLEMENT THE NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT OF 1996 AND THE MENTAL HEALTH PARITY ACT OF 1996.

(a) IN GENERAL.—Subtitle K is amended—

(1) by striking all that precedes section 9801 and inserting the following:

"Subtitle K—Group Health Plan Requirements

"CHAPTER 100. Group health plan requirements.

"CHAPTER 100—GROUP HEALTH PLAN REQUIREMENTS

"Subchapter A. Requirements relating to portability, access, and renewability.

"Subchapter B. Other requirements.

"Subchapter C. General provisions.

"Subchapter A—Requirements Relating to Portability, Access, and Renewability

"Sec. 9801. Increased portability through limitation on preexisting condition exclusions.

"Sec. 9802. Prohibiting discrimination against individual participants and beneficiaries based on health status.

"Sec. 9803. Guaranteed renewability in multiemployer plans and certain multiple employer welfare arrangements.",

(2) by redesignating sections 9804, 9805, and 9806 as sections 9831, 9832, and 9833, respectively,

(3) by inserting before section 9831 (as so redesignated) the following:

"Subchapter C—General Provisions

"Sec. 9831. General exceptions.

"Sec. 9832. Definitions.

"Sec. 9833. Regulations.", and

(4) by inserting after section 9803 the following:

"Subchapter B—Other Requirements

"Sec. 9811. Standards relating to benefits for mothers and newborns.

"Sec. 9812. Parity in the application of certain limits to mental health benefits.

"SEC. 9811. STANDARDS RELATING TO BENEFITS FOR MOTHERS AND NEWBORNS.

"(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY FOLLOWING BIRTH.—

"(1) IN GENERAL.—A group health plan may not—

"(A) except as provided in paragraph (2)—

"(i) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a normal vaginal delivery, to less than 48 hours, or

"(ii) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a caesarean section, to less than 96 hours; or

"(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).

"(2) EXCEPTION.—Paragraph (1)(A) shall not apply in connection with any group health plan in any case in which the decision to discharge the mother or her newborn child prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the mother.

"(b) PROHIBITIONS.—A group health plan may not—

"(1) deny to the mother or her newborn child eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

"(2) provide monetary payments or rebates to mothers to encourage such mothers to accept less than the minimum protections available under this section;

"(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

"(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

"(5) subject to subsection (c)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

"(c) RULES OF CONSTRUCTION.—

"(1) Nothing in this section shall be construed to require a mother who is a participant or beneficiary—

"(A) to give birth in a hospital; or

"(B) to stay in the hospital for a fixed period of time following the birth of her child.

"(2) This section shall not apply with respect to any group health plan which does not provide benefits for hospital lengths of stay in connection with childbirth for a mother or her newborn child.

"(3) Nothing in this section shall be construed as preventing a group health plan from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with childbirth for a mother or newborn child under the plan, except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

"(d) LEVEL AND TYPE OF REIMBURSEMENTS.—Nothing in this section shall be construed to prevent a group health plan from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

"(f) PREEMPTION; EXCEPTION FOR HEALTH INSURANCE COVERAGE IN CERTAIN STATES.—The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (including a decision, rule, regulation, or other State action having the effect of law) for a State that regulates such coverage that is described in any of the following paragraphs:

"(1) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a caesarean section.

"(2) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

"(3) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

"SEC. 9812. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

"(a) IN GENERAL.—

"(1) AGGREGATE LIFETIME LIMITS.—In the case of a group health plan that provides both medical and surgical benefits and mental health benefits—

"(A) NO LIFETIME LIMIT.—If the plan does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the plan may not impose any aggregate lifetime limit on mental health benefits.

"(B) LIFETIME LIMIT.—If the plan includes an aggregate lifetime limit on substantially all medical and surgical benefits (in this paragraph referred to as the 'applicable lifetime limit'), the plan shall either—

"(i) apply the applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

"(ii) not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit.

"(C) RULE IN CASE OF DIFFERENT LIMITS.—In the case of a plan that is not described in subparagraph (A) or (B) and that includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan with respect to mental health benefits by substituting for the applicable lifetime limit an average aggregate lifetime limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to such categories.

"(2) ANNUAL LIMITS.—In the case of a group health plan that provides both medical and surgical benefits and mental health benefits—

"(A) NO ANNUAL LIMIT.—If the plan does not include an annual limit on substantially all medical and surgical benefits, the plan may not impose any annual limit on mental health benefits.

"(B) ANNUAL LIMIT.—If the plan includes an annual limit on substantially all medical and surgical benefits (in this paragraph referred to as the 'applicable annual limit'), the plan shall either—

"(i) apply the applicable annual limit both to medical and surgical benefits to which it otherwise would apply and to mental health benefits

and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

"(ii) not include any annual limit on mental health benefits that is less than the applicable annual limit.

"(C) RULE IN CASE OF DIFFERENT LIMITS.—In the case of a plan that is not described in subparagraph (A) or (B) and that includes no or different annual limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan with respect to mental health benefits by substituting for the applicable annual limit an average annual limit that is computed taking into account the weighted average of the annual limits applicable to such categories.

"(b) CONSTRUCTION.—Nothing in this section shall be construed—

"(1) as requiring a group health plan to provide any mental health benefits; or

"(2) in the case of a group health plan that provides mental health benefits, as affecting the terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits under the plan, except as specifically provided in subsection (a) (in regard to parity in the imposition of aggregate lifetime limits and annual limits for mental health benefits).

"(c) EXEMPTIONS.—

"(1) SMALL EMPLOYER EXEMPTION.—This section shall not apply to any group health plan for any plan year of a small employer (as defined in section 4980D(d)(2)).

"(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan if the application of this section to such plan results in an increase in the cost under the plan of at least 1 percent.

"(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

"(e) DEFINITIONS.—For purposes of this section:

"(1) AGGREGATE LIFETIME LIMIT.—The term 'aggregate lifetime limit' means, with respect to benefits under a group health plan, a dollar limitation on the total amount that may be paid with respect to such benefits under the plan with respect to an individual or other coverage unit.

"(2) ANNUAL LIMIT.—The term 'annual limit' means, with respect to benefits under a group health plan, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the plan with respect to an individual or other coverage unit.

"(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan, but does not include mental health benefits.

"(4) MENTAL HEALTH BENEFITS.—The term 'mental health benefits' means benefits with respect to mental health services, as defined under the terms of the plan, but does not include benefits with respect to treatment of substance abuse or chemical dependency.

"(f) SUNSET.—This section shall not apply to benefits for services furnished on or after September 30, 2001."

(b) CONFORMING AMENDMENTS.—

(1) Chapter 100 of such Code is further amended—

(A) in the last sentence of section 9801(c)(1), by striking "section 9805(c)" and inserting "section 9832(c)";

(B) in section 9831(b), by striking "9805(c)(1)" and inserting "9832(c)(1)";

(C) in section 9831(c)(1), by striking "9805(c)(2)" and inserting "9832(c)(2)";

(D) in section 9831(c)(2), by striking "9805(c)(3)" and inserting "9832(c)(3)"; and

(E) in section 9831(c)(3), by striking "9805(c)(4)" and inserting "9832(c)(4)".

(2) Section 4980D of such Code is amended—

(A) in subsection (a), by striking "plan portability, access, and renewability" and inserting "plans";

(B) in subsection (c)(3)(B)(i)(I), by striking "9805(d)(3)" and inserting "9832(d)(3)";

(C) in subsection (d)(1), by inserting "(other than a failure attributable to section 9811)" after "on any failure";

(D) in subsection (d)(3), by striking "9805" and inserting "9832";

(E) in subsection (f)(1), by striking "9805(a)" and inserting "9832(a)".

(3) The table of subtitles for such Code is amended by striking the item relating to subtitle K and inserting the following new item:

"SUBTITLE K. Group health plan requirements."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.

SEC. 1532. SPECIAL RULES RELATING TO CHURCH PLANS.

(a) IN GENERAL.—Section 9802 (relating to prohibiting discrimination against individual participants and beneficiaries based on health status) is amended by adding at the end the following new subsection:

"(c) SPECIAL RULES FOR CHURCH PLANS.—A church plan (as defined in section 414(e)) shall not be treated as failing to meet the requirements of this section solely because such plan requires evidence of good health for coverage of—

"(1) both any employee of an employer with 10 or less employees (determined without regard to section 414(e)(3)(C)) and any self-employed individual, or

"(2) any individual who enrolls after the first 90 days of initial eligibility under the plan.

This subsection shall apply to a plan for any year only if the plan included the provisions described in the preceding sentence on July 15, 1997, and at all times thereafter before the beginning of such year."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the amendments made by section 401(a) of the Health Insurance Portability and Accountability Act of 1996.

Subtitle D—Provisions Relating to Plan Amendments

SEC. 1541. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this title or subtitle H of title X, and

(B) before the first day of the first plan year beginning on or after January 1, 1999.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting "2001" for "1999".

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

(B) such plan or contract amendment applies retroactively for such period.

TITLE XVI—TECHNICAL AMENDMENTS RELATED TO SMALL BUSINESS JOB PROTECTION ACT OF 1996 AND OTHER LEGISLATION

SEC. 1600. COORDINATION WITH OTHER TITLES.

For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.

SEC. 1601. AMENDMENTS RELATED TO SMALL BUSINESS JOB PROTECTION ACT OF 1996.

(a) AMENDMENTS RELATED TO SUBTITLE A.—

(1) AMENDMENT RELATED TO SECTION 1116.—Paragraph (1) of section 6050R(c) is amended by striking "name and address" and inserting "name, address, and phone number of the information contact".

(2) AMENDMENT TO SECTION 1116.—Paragraphs (1) and (2)(C) of section 1116(b) of the Small Business Job Protection Act of 1996 shall each be applied as if the reference to chapter 68 were a reference to chapter 61.

(b) AMENDMENT RELATED TO SUBTITLE B.—Subsection (c) of section 52 is amended by striking "targeted jobs credit" and inserting "work opportunity credit".

(c) AMENDMENTS RELATED TO SUBTITLE C.—

(1) AMENDMENT RELATED TO SECTION 1302.—Subparagraph (B) of section 1361(e)(1) is amended by striking "and" at the end of clause (i), striking the period at the end of clause (ii) and inserting ", and", and adding at the end the following new clause:

"(iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)).".

(2) EFFECTIVE DATE FOR SECTION 1307.—

(A) Notwithstanding section 1317 of the Small Business Job Protection Act of 1996, the amendments made by subsections (a) and (b) of section 1307 of such Act shall apply to determinations made after December 31, 1996.

(B) In no event shall the 120-day period referred to in section 1377(b)(1)(B) of the Internal Revenue Code of 1986 (as added by such section 1307) expire before the end of the 120-day period beginning on the date of the enactment of this Act.

(3) AMENDMENT RELATED TO SECTION 1308.—Subparagraph (A) of section 1361(b)(3) is amended by striking "For purposes of this title" and inserting "Except as provided in regulations prescribed by the Secretary, for purposes of this title".

(4) AMENDMENTS RELATED TO SECTION 1316.—

(A) Paragraph (2) of section 512(e) is amended by striking "within the meaning of section 1012" and inserting "as defined in section 1361(e)(1)(C)".

(B) Paragraph (7) of section 1361(c) is redesignated as paragraph (6).

(C) Subparagraph (B) of section 1361(b)(1) is amended by striking "subsection (c)(7)" and inserting "subsection (c)(6)".

(D) Paragraph (1) of section 512(e) is amended by striking "section 1361(c)(7)" and inserting "section 1361(c)(6)".

(d) AMENDMENTS RELATED TO SUBTITLE D.—

(1) AMENDMENTS RELATED TO SECTION 1421.—

(A) Subsection (i) of section 408 is amended in the last sentence by striking "30 days" and inserting "31 days".

(B) Subparagraph (H) of section 408(k)(6) is amended by striking "if the terms of such pension" and inserting "of an employer if the terms of simplified employee pensions of such employer".

(C)(i) Subparagraph (B) of section 408(l)(2) is amended—

(I) by inserting "and the issuer of an annuity established under such an arrangement" after "under subsection (p)", and

(II) in clause (i), by inserting "or issuer" after "trustee".

(ii) Paragraph (2) of section 6693(c) is amended—

(I) by inserting "or issuer" after "trustee", and

(II) in the heading, by inserting "AND ISSUER" after "trustee".

(D) Subsection (p) of section 408 is amended by adding at the end the following new paragraph:

"(8) COORDINATION WITH MAXIMUM LIMITATION UNDER SUBSECTION (a).—In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting 'the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(iii) or (B)(i) of paragraph (2) of this subsection, whichever is applicable' for '$2,000'.".

(E) Clause (i) of section 408(p)(2)(D) is amended by adding at the end the following new sentence: "If only individuals other than employees described in subparagraph (A) or (B) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.".

(F) Subparagraph (D) of section 408(p)(2) is amended by adding at the end the following new clause:

"(iii) GRACE PERIOD.—In the case of an employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to meet any requirement of this subsection for any subsequent year due to any acquisition, disposition, or similar transaction involving another such employer, rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this subsection.".

(G) Paragraph (5) of section 408(p) is amended in the text preceding subparagraph (A) by striking "simplified" and inserting "simple".

(2) AMENDMENTS RELATED TO SECTION 1422.—

(A) Clause (ii) of section 401(k)(11)(D) is amended by striking the period and inserting "if such plan allows only contributions required under this paragraph.".

(B) Paragraph (11) of section 401(k) is amended by adding at the end the following new subparagraph:

"(E) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $6,000 amount under subparagraph (B)(i)(I) at the same time and in the same manner as under section 408(p)(2)(E).".

(C) Subparagraph (A) of section 404(a)(3) is amended—

(i) in clause (i), by striking "not in excess of" and all that follows and inserting the following: "not in excess of the greater of—

"(I) 15 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or

"(II) the amount such employer is required to contribute to such trust under section 401(k)(11) for such year.", and

(ii) in clause (ii), by striking "15 percent" and all that follows and inserting the following "the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.".

(D) Subparagraph (B) of section 401(k)(11) is amended by adding at the end the following new clause:

"(iii) ADMINISTRATIVE REQUIREMENTS.—

"(I) IN GENERAL.—Rules similar to the rules of subparagraphs (B) and (C) of section 408(p)(5) shall apply for purposes of this subparagraph.

"(II) NOTICE OF ELECTION PERIOD.—The requirements of this subparagraph shall not be treated as met with respect to any year unless the employer notifies each employee eligible to participate, within a reasonable period of time before the 60th day before the beginning of such year (and, for the first year the employee is so eligible, the 60th day before the first day such employee is so eligible), of the rules similar to the rules of section 408(p)(5)(C) which apply by reason of subclause (I).".

(3) AMENDMENT RELATED TO SECTION 1433.—The heading of paragraph (11) of section 401(m) is amended by striking "ALTERNATIVE" and inserting "ADDITIONAL ALTERNATIVE".

(4) CLARIFICATION OF SECTION 1450.—

(A) Section 403(b)(11) of the Internal Revenue Code of 1986 shall not apply with respect to a distribution from a contract described in section 1450(b)(1) of such Act to the extent that such distribution is not includible in income by reason of—

(i) in the case of distributions before January 1, 1998, section 403 (b)(8) or (b)(10) of such Code (determined after the application of section 1450(b)(2) of such Act), and

(ii) in the case of distributions on and after such date, such section 403(b)(1).

(B) This paragraph shall apply as if included in section 1450 of the Small Business Job Protection Act of 1996.

(5) AMENDMENT RELATED TO SECTION 1451.—Clause (ii) of section 205(c)(8)(A) of the Employee Retirement Income Security Act of 1974 is amended by striking "Secretary" and inserting "Secretary of the Treasury".

(6) AMENDMENTS RELATED TO SECTION 1461.—

(A) Section 414(e)(5)(A) is amended to read as follows:

"(A) CERTAIN MINISTERS MAY PARTICIPATE.—For purposes of this part—

"(i) IN GENERAL.—A duly ordained, commissioned, or licensed minister of a church is described in paragraph (3)(B) if, in connection with the exercise of their ministry, the minister—

"(I) is a self-employed individual (within the meaning of section 401(c)(1)(B), or

"(II) is employed by an organization other than an organization which is described in section 501(c)(3) and with respect to which the minister shares common religious bonds.

"(ii) TREATMENT AS EMPLOYER AND EMPLOYEE.—For purposes of sections 403(b)(1)(A) and 404(a)(10), a minister described in clause (i)(I) shall be treated as employed by the minister's own employer which is an organization described in section 501(c)(3) and exempt from tax under section 501(a).".

(B) Section 403(b)(1)(A) is amended by striking "or" at the end of clause (i), by inserting "or" at the end of clause (ii), and by adding at the end the following new clause:

"(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,".

(7) AMENDMENT RELATED TO SECTION 1462.—The paragraph (7) of section 414(q) added by section 1462 of the Small Business Job Protection Act of 1996 is redesignated as paragraph (9).

(e) AMENDMENT RELATED TO SUBTITLE E.—Subparagraph (A) of section 956(b)(1) is amended by inserting "to the extent such amount was accumulated in prior taxable years" after "section 316(a)(1)".

(f) AMENDMENTS RELATED TO SUBTITLE F.—

(1) AMENDMENTS RELATED TO SECTION 1601.—

(A) The heading of section 30A is amended to read as follows:

"SEC. 30A. PUERTO RICO ECONOMIC ACTIVITY CREDIT.".

(B) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended in the item relating to section 30A by striking "Puerto Rican" and inserting "Puerto Rico".

(C) Paragraph (1) of section 55(c) is amended by striking "Puerto Rican" and inserting "Puerto Rico".

(2) AMENDMENTS RELATED TO SECTION 1606.—

(A) Clause (ii) of section 9503(c)(2)(A) is amended by striking "(or with respect to qualified diesel-powered highway vehicles purchased before January 1, 1999)".

(B) Subparagraph (A) of section 9503(e)(5) is amended by striking "; except that" and all that follows and inserting a period.

(3) AMENDMENTS RELATED TO SECTION 1607.—

(A) Subsection (f) of section 4001 (relating to phasedown of tax on luxury passenger automobiles) is amended—

(i) by inserting "and section 4003(a)" after "subsection (a)", and

(ii) by inserting ", each place it appears," before "the percentage".

(B) Subsection (g) of section 4001 (relating to termination) is amended by striking "tax imposed by this section" and inserting "taxes imposed by this section and section 4003" and by striking "or use" and inserting ", use, or installation".

(C) The amendments made by this paragraph shall apply to sales after the date of the enactment of this Act.

(4) AMENDMENTS RELATED TO SECTION 1609.—

(A) Subsection (l) of section 4041 is amended—

(i) by inserting "or a fixed-wing aircraft" after "helicopter", and

(ii) in the heading, by striking "HELICOPTER".

(B) The last sentence of section 4041(a)(2) is amended by striking "section 4081(a)(2)(A)" and inserting "section 4081(a)(2)(A)(i)".

(C) Subsection (b) of section 4092 is amended by striking "section 4041(c)(4)" and inserting "section 4041(c)(2)".

(D) Subsection (g) of section 4261 (as redesignated by title X) is amended by inserting "on that flight" after "dedicated".

(E) Paragraph (1) of section 1609(h) of such Act is amended by striking "paragraph (3)(A)(i)" and inserting "paragraph (3)(A)".

(F) Paragraph (4) of section 1609(h) of such Act is amended by inserting before the period "or exclusively for the use described in section 4092(b) of such Code".

(5) AMENDMENTS RELATED TO SECTION 1616.—

(A) Subparagraph (A) of section 593(e)(1) is amended by inserting "(and, in the case of an S corporation, the accumulated adjustments account, as defined in section 1368(e)(1))" after "1951,".

(B) Paragraph (7) of section 1374(d) is amended by adding at the end the following new sentence: "For purposes of applying this section to any amount includible in income by reason of section 593(e), the preceding sentence shall be applied without regard to the phrase '10-year'.".

(6) AMENDMENTS RELATED TO SECTION 1621.—

(A) Subparagraph (A) of section 860L(b)(1) is amended in the text preceding clause (i) by striking "after the startup date" and inserting "on or after the startup date".

(B) Paragraph (2) of section 860L(d) is amended by striking "section 860I(c)(2)" and inserting "section 860I(b)(2)".

(C) Subparagraph (B) of section 860L(e)(2) is amended by inserting "other than foreclosure property" after "any permitted asset".

(D) Subparagraph (A) of section 860L(e)(3) is amended by striking "if the FASIT" and all that follows and inserting the following new flush text after clause (ii):

"if the FASIT were treated as a REMIC and permitted assets (other than cash or cash equivalents) were treated as qualified mortgages.".

(E)(i) Paragraph (3) of section 860L(e) is amended by adding at the end the following new subparagraph:

"(D) INCOME FROM DISPOSITIONS OF FORMER HEDGE ASSETS.—Paragraph (2)(A) shall not apply to income derived from the disposition of—

"(i) an asset which was described in subsection (c)(1)(D) when first acquired by the FASIT but on the date of such disposition was no longer described in subsection (c)(1)(D)(ii), or

"(ii) a contract right to acquire an asset described in clause (i).".

(ii) Subparagraph (A) of section 860L(e)(2) is amended by inserting "except as provided in paragraph (3)," before "the receipt".

(g) AMENDMENTS RELATED TO SUBTITLE G.—

(1) EXTENSION OF PERIOD FOR CLAIMING REFUNDS FOR ALCOHOL FUELS.—Notwithstanding section 6427(i)(3)(C) of the Internal Revenue Code of 1986, a claim filed under section 6427(f) of such Code for any period after September 30, 1995, and before October 1, 1996, shall be treated as timely filed if filed before the 60th day after the date of the enactment of this Act.

(2) AMENDMENTS TO SECTIONS 1703 AND 1704.—Sections 1703(n)(8) and 1704(j)(4)(B) of the Small Business Job Protection Act of 1996 shall each be applied as if such sections referred to section 1702 instead of section 1602.

(h) AMENDMENTS RELATED TO SUBTITLE H.—

(1) AMENDMENTS RELATED TO SECTION 1806.—

(A) Subparagraph (B) of section 529(e)(1) is amended by striking "subsection (c)(2)(C)" and inserting "subsection (c)(3)(C)".

(B) Subparagraph (C) of section 529(e)(1) is amended by inserting "(or agency or instrumentality thereof)" after "local government".

(C) Paragraph (2) of section 1806(c) of the Small Business Job Protection Act of 1996 is amended by striking so much of the first sentence as follows subparagraph (B)(ii) and inserting the following:

"then such program (as in effect on August 20, 1996) shall be treated as a qualified State tuition program with respect to contributions (and earnings allocable thereto) pursuant to contracts entered into under such program before the first date on which such program meets such requirements (determined without regard to this paragraph) and the provisions of such program (as so in effect) shall apply in lieu of section 529(b) of the Internal Revenue Code of 1986 with respect to such contributions and earnings.".

(2) AMENDMENTS RELATED TO SECTION 1807.—

(A) Paragraph (2) of section 23(a) is amended to read as follows:

"(2) YEAR CREDIT ALLOWED.—The credit under paragraph (1) with respect to any expense shall be allowed—

"(A) in the case of any expense paid or incurred before the taxable year in which such adoption becomes final, for the taxable year following the taxable year during which such expense is paid or incurred, and

"(B) in the case of an expense paid or incurred during or after the taxable year in which such adoption becomes final, for the taxable year in which such expense is paid or incurred.".

(B) Subparagraph (B) of section 23(b)(2) is amended by striking "determined—" and all that follows and inserting the following: "determined without regard to sections 911, 931, and 933.".

(C) Paragraph (1) of section 137(b) (relating to adoption assistance programs) is amended by striking "amount excludable from gross income" and inserting "of the amounts paid or expenses incurred which may be taken into account".

(D)(i) Subparagraph (C) of section 414(n)(3) is amended by inserting "137," after "132,".

(ii) Paragraph (2) of section 414(t) is amended by inserting "137," after "132,".

(iii) Paragraph (1) of section 6039D(d) is amended by striking "or 129" and inserting "129, or 137".

(i) AMENDMENTS RELATED TO SUBTITLE I.—

(1) AMENDMENT RELATED TO SECTION 1901.—Subsection (b) of section 6048 is amended in the heading by striking "GRANTOR" and inserting "OWNER".

(2) AMENDMENTS RELATED TO SECTION 1903.—Clauses (ii) and (iii) of section 679(a)(3)(C) are each amended by inserting ", owner," after "grantor".

(3) AMENDMENTS RELATED TO SECTION 1907.—

(A) Clause (ii) of section 7701(a)(30)(E) is amended by striking "fiduciaries" and inserting "persons".

(B) Subsection (b) of section 641 is amended by adding at the end the following new sentence: "For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.".

(4) EFFECTIVE DATE RELATED TO SUBTITLE I.—The Secretary of the Treasury may by regulations or other administrative guidance provide that the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996 shall not apply to a trust with respect to a reasonable period beginning on the date of the enactment of such Act, if—

(A) such trust is in existence on August 20, 1996, and is a United States person for purposes of the Internal Revenue Code of 1986 on such date (determined without regard to such amendments),

(B) no election is in effect under section 1907(a)(3)(B) of such Act with respect to such trust,

(C) before the expiration of such reasonable period, such trust makes the modifications necessary to be treated as a United States person for purposes of such Code (determined with regard to such amendments), and

(D) such trust meets such other conditions as the Secretary may require.

(j) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 to which they relate.

(2) CERTAIN ADMINISTRATIVE REQUIREMENTS WITH RESPECT TO CERTAIN PENSION PLANS.—The amendment made by subsection (d)(2)(D) shall apply to calendar years beginning after the date of the enactment of this Act.

SEC. 1602. AMENDMENTS RELATED TO HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.

(a) AMENDMENTS RELATED TO SECTION 301.—

(1) Paragraph (2) of section 26(b) is amended by striking "and" at the end of subparagraph (N), by striking the period at the end of subparagraph (O) and inserting ", and", and by adding at the end the following new subparagraph:

"(P) section 220(f)(4) (relating to additional tax on medical savings account distributions not used for qualified medical expenses).".

(2) Paragraph (3) of section 220(c) is amended by striking subparagraph (A) and redesignating subparagraphs (B) through (D) as subparagraphs (A) through (C), respectively.

(3) Subparagraph (C) of section 220(d)(2) is amended by striking "an eligible individual" and inserting "described in clauses (i) and (ii) of subsection (c)(1)(A)".

(4) Subsection (a) of section 6693 is amended by adding at the end the following new sentence:

"This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(X).".

(5) Paragraph (4) of section 4975(c) is amended by striking "if, with respect to such transaction" and all that follows and inserting the following: "if section 220(e)(2) applies to such transaction.".

(b) AMENDMENT RELATED TO SECTION 321.—Subparagraph (B) of section 7702B(c)(2) is amended in the last sentence by inserting "described in subparagraph (A)(i)" after "chronically ill individual".

(c) AMENDMENTS RELATED TO SECTION 322.—Subparagraph (B) of section 162(l)(2) is amended by adding at the end the following new sentence: "The preceding sentence shall be applied separately with respect to—

"(i) plans which include coverage for qualified long-term care services (as defined in section 7702B(c)) or are qualified long-term care insurance contracts (as defined in section 7702B(b)), and

"(ii) plans which do not include such coverage and are not such contracts.".

(d) AMENDMENTS RELATED TO SECTION 323.—

(1) Paragraph (1) of section 6050Q(b) is amended by inserting ", address, and phone number of the information contact" after "name".

(2)(A) Paragraph (2) of section 6724(d) is amended by striking so much as follows subparagraph (Q) and precedes the last sentence, and inserting the following new subparagraphs:

"(R) section 6050R(c) (relating to returns relating to certain purchases of fish),

"(S) section 6051 (relating to receipts for employees),

"(T) section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance),

"(U) section 6053(b) or (c) (relating to reports of tips),

"(V) section 6048(b)(1)(B) (relating to foreign trust reporting requirements),

"(W) section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels),

"(X) section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person, or

"(Y) section 6047(d) (relating to reports by plan administrators) to any person other than the Secretary with respect to the amount of payments made to such person.".

(B) Subsection (e) of section 6652 is amended in the last sentence by striking "section 6724(d)(2)(X)" and inserting "section 6724(d)(2)(Y)".

(e) AMENDMENT RELATED TO SECTION 325.—Clauses (ii) and (iii) of section 7702B(g)(4)(B) are each amended by striking "Secretary" and inserting "appropriate State regulatory agency".

(f) AMENDMENTS RELATED TO SECTION 501.—

(1) Paragraph (4) of section 264(a) is amended by striking subparagraph (A) and all that follows through "by the taxpayer." and inserting the following:

"(A) is or was an officer or employee, or

"(B) is or was financially interested in,

any trade or business carried on (currently or formerly) by the taxpayer.".

(2) The last 2 sentences of section 264(d)(2)(B)(ii) are amended to read as follows: "For purposes of subclause (II), the term 'applicable period' means the 12-month period beginning on the date the policy is issued (and each

successive 12-month period thereafter) unless the taxpayer elects a number of months (not greater than 12) other than such 12-month period to be its applicable period. Such an election shall be made not later than the 90th day after the date of the enactment of this sentence and, if made, shall apply to the taxpayer's first taxable year ending on or after October 13, 1995, and all subsequent taxable years unless revoked with the consent of the Secretary.".

(3) Subparagraph (B) of section 264(d)(4) is amended by striking "the employer" and inserting "the taxpayer".

(4) Subsection (c) of section 501 of the Health Insurance Portability and Accountability Act of 1996 is amended by striking paragraph (3).

(5) Paragraph (2) of section 501(d) of such Act is amended by striking "no additional premiums" and all that follows and inserting the following: "a lapse occurring after October 13, 1995, by reason of no additional premiums being received under the contract.".

(g) AMENDMENTS RELATED TO SECTION 511.—

(1) Subparagraph (B) of section 877(d)(2) is amended by striking "the 10-year period described in subsection (a)" and inserting "the 10-year period beginning on the date the individual loses United States citizenship".

(2) Subparagraph (D) of section 877(d)(2) is amended by adding at the end the following new sentence: "In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph shall be recognized immediately after such loss of citizenship.".

(3) Paragraph (3) of section 877(d) is amended by inserting "and the period applicable under paragraph (2)" after "subsection (a)".

(4) Subparagraph (A) of section 877(d)(4) is amended—

(A) by inserting "during the 10-year period beginning on the date the individual loses United States citizenship" after "contributes property" in clause (i),

(B) by inserting "immediately before such contribution" after "from such property", and

(C) by striking "during the 10-year period referred to in subsection (a),".

(5) Subparagraph (C) of section 2501(a)(3) is amended by striking "decedent" and inserting "donor".

(6)(A) Clause (i) of section 2107(c)(2)(B) is amended by striking "such foreign country in respect of property included in the gross estate as the value of the property" and inserting "such foreign country as the value of the property subjected to such taxes by such foreign country and".

(B) Subparagraph (C) of section 2107(c)(2) is amended to read as follows:

"(C) PROPORTIONATE SHARE.—In the case of property which is included in the gross estate solely by reason of subsection (b), such property's proportionate share is the percentage which the value of such property bears to the total value of all property included in the gross estate solely by reason of subsection (b).".

(h) AMENDMENTS RELATED TO SECTION 512.—

(1) Subpart A of part III of subchapter A of chapter 61 is amended by redesignating the section 6039F added by section 512 of the Health Insurance Portability and Accountability Act of 1996 as section 6039G and by moving such section 6039G to immediately after the section 6039F added by section 1905 of the Small Business Job Protection Act of 1996.

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking the item relating to the section 6039F related to information on individuals losing United States citizenship and inserting after the item relating to the section 6039F related to notice of large gifts received from foreign persons the following new item:

"Sec. 6039G. Information on individuals losing United States citizenship.".

(3) Paragraph (1) of section 877(e) is amended by striking "6039F" and inserting "6039G".

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996 to which such amendments relate.

SEC. 1603. AMENDMENTS RELATED TO TAXPAYER BILL OF RIGHTS 2.

(a) AMENDMENT RELATED TO SECTION 1311.—Subsection (b) of section 4962 is amended by striking "subchapter A or C" and inserting "subchapter A, C, or D".

(b) AMENDMENTS RELATED TO SECTION 1312.—

(1)(A) Paragraph (10) of section 6033(b) is amended by striking all that precedes subparagraph (A) and inserting the following:

"(10) the respective amounts (if any) of the taxes imposed on the organization, or any organization manager of the organization, during the taxable year under any of the following provisions (and the respective amounts (if any) of reimbursements paid by the organization during the taxable year with respect to taxes imposed on any such organization manager under any of such provisions):".

(B) Subparagraph (C) of section 6033(b)(10) is amended by adding at the end the following: "except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded,".

(2) Paragraph (11) of section 6033(b) is amended to read as follows:

"(11) the respective amounts (if any) of—

"(A) the taxes imposed with respect to the organization on any organization manager, or any disqualified person, during the taxable year under section 4958 (relating to taxes on private excess benefit from certain charitable organizations), and

"(B) reimbursements paid by the organization during the taxable year with respect to taxes imposed under such section,

except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded,".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Taxpayer Bill of Rights 2 to which such amendments relate.

SEC. 1604. MISCELLANEOUS PROVISIONS.

(a) AMENDMENTS RELATED TO ENERGY POLICY ACT OF 1992.—

(1) Paragraph (1) of section 263(a) is amended by striking "or" at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting "; or", and by adding at the end the following new subparagraph:

"(H) expenditures for which a deduction is allowed under section 179A.".

(2) Subparagraph (B) of section 312(k)(3) is amended—

(A) by striking "179" in the heading and the first place it appears in the text and inserting "179 or 179A", and

(B) by striking "179" the last place it appears and inserting "179 or 179A, as the case may be".

(3) Paragraphs (2)(C) and (3)(C) of section 1245(a) are each amended by inserting "179A," after "179,".

(4) The amendments made by this subsection shall take effect as if included in the amendments made by section 1913 of the Energy Policy Act of 1992.

(b) AMENDMENTS RELATED TO URUGUAY ROUND AGREEMENTS ACT.—

(1) Paragraph (1) of section 6621(a) is amended in the last sentence by striking "subsection (c)(3))" and inserting "subsection (c)(3), applied by substituting 'overpayment' for 'underpayment')".

(2)(A) Subclause (II) of section 412(m)(5)(E)(ii) is amended by striking "clause (i)" and inserting "subclause (I)".

(B) Subclause (II) of section 302(e)(5)(E)(ii) of the Employee Retirement Income Security Act of 1974 is amended by striking "clause (i)" and inserting "subclause (I)".

(3) Subparagraph (A) of section 767(d)(3) of the Uruguay Round Agreements Act is amended in the last sentence by striking "(except that" and all that follows through "into account)".

(4) The amendments made by this subsection shall take effect as if included in the sections of the Uruguay Round Agreements Act to which they relate.

(c) AMENDMENT RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1993.—

(1) Paragraph (6) of section 168(j) (defining Indian reservation) is amended by adding at the end the following new flush sentence:

"For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term 'former Indian reservations in Oklahoma' as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence).".

(2) The amendment made by paragraph (1) shall apply as if included in the amendments made by section 13321 of the Omnibus Budget Reconciliation Act of 1993, except that such amendment shall not apply—

(A) with respect to property (with an applicable recovery period under section 168(j) of the Internal Revenue Code of 1986 of 6 years or less) held by the taxpayer if the taxpayer claimed the benefits of section 168(j) of such Code with respect to such property on a return filed before March 18, 1997, but only if such return is the first return of tax filed for the taxable year in which such property was placed in service, or

(B) with respect to wages for which the taxpayer claimed the benefits of section 45A of such Code for a taxable year on a return filed before March 18, 1997, but only if such return was the first return of tax filed for such taxable year.

(d) AMENDMENTS RELATED TO TAX REFORM ACT OF 1986.—

(1) Paragraph (3) of section 1059(d) is amended by striking "subsection (a)(2)" and inserting "subsection (a)".

(2)(A) Subparagraph (A) of section 833(b)(1) is amended—

(i) by inserting before the comma at the end of clause (i) "and liabilities incurred during the taxable year under cost-plus contracts", and

(ii) by inserting before the comma at the end of clause (ii) "or in connection with the administration of cost-plus contracts".

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 1012 of the Tax Reform Act of 1986.

(e) AMENDMENT RELATED TO TAX REFORM ACT OF 1984.—

(1) Section 267(f) is amended by adding at the end the following new paragraph:

"(4) DETERMINATION OF RELATIONSHIP RESULTING IN DISALLOWANCE OF LOSS, FOR PURPOSES OF OTHER PROVISIONS.—For purposes of any other section of this title which refers to a relationship which would result in a disallowance of losses under this section, deferral under paragraph (2) shall be treated as disallowance.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in section 174(b) of the Tax Reform Act of 1984.

(f) AMENDMENTS RELATED TO BALANCED BUDGET ACT OF 1997.—

(1) The Balanced Budget Act of 1997 is amended—

(A) in the table of contents for title IV, in the item relating to section 4921, by striking "children with";

*(B) in the heading for section 4921, by striking "**children with**"; and*

*(C) in the heading for such section, by striking "**children with**"; and*

(ii) by amending subsection (a) to read as follows:

"(a) IN GENERAL.—The Secretary, directly or through grants, shall provide for research into the prevention and cure of Type I diabetes.".

(2)(A) Section 11201(g)(2)(B)(iii) of the Balanced Budget Act of 1997 shall apply as if the reference in such section to "December 31, 2003" were a reference to "December 31, 2001".

(B) Notwithstanding section 11104(b)(3) of the Balanced Budget Act of 1997, in carrying out any of the management reform plans under such section, the head of a department of the government of the District of Columbia shall report solely to the District of Columbia Financial Responsibility and Management Assistance Authority.

(3) Section 9302 of the Balanced Budget Act of 1997 is amended by adding at the end the following new subsection:

"(k) COORDINATION WITH TOBACCO INDUSTRY SETTLEMENT AGREEMENT.—The increase in excise taxes collected as a result of the amendments made by subsections (a), (e), and (g) of this section shall be credited against the total payments made by parties pursuant to Federal legislation implementing the tobacco industry settlement agreement of June 20, 1997.

(4) The provisions of, and amendments made by, this subsection shall take effect immediately after the sections referred to in this subsection take effect.

(g) CLERICAL AMENDMENTS.—

(1) Clause (iii) of section 163(j)(2)(B) is amended by striking "clause (i)" and inserting "clause (ii)".

(2) Paragraph (1) of section 665(d) is amended in the last sentence by striking "or 669(d) and (e)".

(3) Subsection (g) of section 1441 (relating to cross reference) is amended by striking "one-half" and inserting "85 percent".

(4) Paragraph (1) of section 2523(g) is amended by striking "qualified remainder trust" and inserting "qualified charitable remainder trust".

(5) Subsection (d) of section 9502 is amended by redesignating the paragraph added by section 806 of the Federal Aviation Reauthorization Act of 1996 as paragraph (6).

TITLE XVII—IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO

SEC. 1701. IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO.

Section 1021(a)(3) of the Congressional Budget and Impoundment Control Act of 1974 shall only apply to—

(1) section 101(c) (relating to high risk pools permitted to cover dependents of high risk individuals);

(2) section 222 (relating to limitation on qualified 501(c)(3) bonds other than hospital bonds);

(3) section 224 (relating to contributions of computer technology and equipment for elementary or secondary school purposes);

(4) section 312(a) (relating to treatment of remainder interests for purposes of provision relating to gain on sale of principal residence);

(5) section 501(b) (relating to indexing of alternative valuation of certain farm, etc., real property);

(6) section 504 (relating to extension of treatment of certain rents under section 2032A to lineal descendants);

(7) section 505 (relating to clarification of judicial review of eligibility for extension of time for payment of estate tax);

(8) section 508 (relating to treatment of land subject to qualified conservation easement);

(9) section 511 (relating to expansion of exception from generation-skipping transfer tax for transfers to individuals with deceased parents);

(10) section 601 (relating to the research tax credit);

(11) section 602 (relating to contributions of stock to private foundations);

(12) section 603 (relating to the work opportunity tax credit);

(13) section 604 (relating to orphan drug tax credit);

(14) section 701 (relating to incentives for revitalization of the District of Columbia) to the extent it amends the Internal Revenue Code of 1986 to create sections 1400 and 1400A (relating to tax-exempt economic development bonds);

(15) section 701 (relating to incentives for revitalization of the District of Columbia) to the extent it amends the Internal Revenue Code of 1986 to create section 1400C (relating to first-time homebuyer credit for District of Columbia);

(16) section 801 (relating to incentives for employing long-term family assistance recipients);

(17) section 904(b) (relating to uniform rate of tax on vaccines) as it relates to any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens;

(18) section 904(b) (relating to uniform rate of tax on vaccines) as it relates to any vaccine against measles;

(19) section 904(b) (relating to uniform rate of tax on vaccines) as it relates to any vaccine against mumps;

(20) section 904(b) (relating to uniform rate of tax on vaccines) as it relates to any vaccine against rubella;

(21) section 905 (relating to operators of multiple retail gasoline outlets treated as wholesale distributors for refund purposes);

(22) section 906 (relating to exemption of electric and other clean-fuel motor vehicles from luxury automobile classification);

(23) section 907(a) (relating to rate of tax on liquefied natural gas determined on basis of BTU equivalency with gasoline);

(24) section 907(b) (relating to rate of tax on methanol from natural gas determined on basis of BTU equivalency with gasoline);

(25) section 908 (relating to modification of tax treatment of hard cider);

(26) section 914 (relating to mortgage financing for residences located in disaster areas);

(27) section 962 (relating to assignment of workmen's compensation liability eligible for exclusion relating to personal injury liability assignments);

(28) section 963 (relating to tax-exempt status for certain State worker's compensation act companies);

(29) section 967 (relating to additional advance refunding of certain Virgin Island bonds);

(30) section 968 (relating to nonrecognition of gain on sale of stock to certain farmers' cooperatives);

(31) section 971 (relating to exemption of the incremental cost of a clean fuel vehicle from the limits on depreciation for vehicles);

(32) section 974 (relating to clarification of treatment of certain receivables purchased by cooperative hospital service organizations);

(33) section 975 (relating to deduction in computing adjusted gross income for expenses in connection with service performed by certain officials) with respect to taxable years beginning before 1991;

(34) section 977 (relating to elective carryback of existing carryovers of National Railroad Passenger Corporation);

(35) section 1005(b)(2)(B) (relating to transition rule for instruments described in a ruling request submitted to the Internal Revenue Service on or before June 8, 1997);

(36) section 1005(b)(2)(C) (relating to transition rule for instruments described on or before June 8, 1997, in a public announcement or in a filing with the Securities and Exchange Commission) as it relates to a public announcement;

(37) section 1005(b)(2)(C) (relating to transition rule for instruments described on or before June 8, 1997, in a public announcement or in a filing with the Securities and Exchange Commission) as it relates to a filing with the Securities and Exchange Commission;

(38) section 1011(d)(2)(B) (relating to transition rule for distributions made pursuant to the terms of a tender offer outstanding on May 3, 1995);

(39) section 1011(d)(3) (relating to transition rule for distributions made pursuant to the terms of a tender offer outstanding on September 13, 1995);

(40) section 1012(d)(3)(B) (relating to transition rule for distributions pursuant to an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 described in a ruling request submitted to the Internal Revenue Service on or before April 16, 1997);

(41) section 1012(d)(3)(C) (relating to transition rule for distributions pursuant to an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 described in a public announcement or filing with the Securities and Exchange Commission) as it relates to a public announcement;

(42) section 1012(d)(3)(C) (relating to transition rule for distributions pursuant to an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 described in a public announcement or filing with the Securities and Exchange Commission) as it relates to a filing with the Securities and Exchange Commission;

(43) section 1013(d)(2)(B) (relating to transition rule for distributions or acquisitions after June 8, 1997, described in a ruling request submitted to the Internal Revenue Service submitted on or before June 8, 1997);

(44) section 1013(d)(2)(C) (relating to transition rule for distributions or acquisitions after June 8, 1997, described in a public announcement or filing with the Securities and Exchange Commission on or before June 8, 1997) as it relates to a public announcement;

(45) section 1013(d)(2)(C) (relating to transition rule for distributions or acquisitions after June 8, 1997, described in a public announcement or filing with the Securities and Exchange Commission on or before June 8, 1997) as it relates to a filing with the Securities and Exchange Commission;

(46) section 1014(f)(2)(B) (relating to transition rule for any transaction after June 8, 1997, if such transaction is described in a ruling request submitted to the Internal Revenue Service on or before June 8, 1997);

(47) section 1014(f)(2)(C) (relating to transition rule for any transaction after June 8, 1997, if such transaction is described in a public announcement or filing with the Securities and Exchange Commission on or before June 8, 1997) as it relates to a public announcement;

(48) section 1014(f)(2)(C) (relating to transition rule for any transaction after June 8, 1997, if such transaction is described in a public announcement or filing with the Securities and Exchange Commission on or before June 8, 1997) as it relates to a filing with the Securities and Exchange Commission;

(49) section 1042(b) (relating to special rules for provision terminating certain exceptions from rules relating to exempt organizations which provide commercial-type insurance);

(50) section 1081(a) (relating to termination of suspense accounts for family corporations required to use accrual method of accounting) as

it relates to the repeal of Internal Revenue Code section 447(i)(3);

(51) section 1089(b)(3) (relating to reformations);

(52) section 1089(b)(5)(B)(i) (relating to persons under a mental disability;

(53) section 1171 (relating to treatment of computer software as FSC export property);

(54) section 1175 (relating to exemption for active financing income);

(55) section 1204 (relating to travel expenses of certain Federal employees engaged in criminal investigations);

(56) section 1236 (relating to extension of time for filing a request for administrative adjustment);

(57) section 1243 (relating to special rules for administrative adjustment request with respect to bad debts or worthless securities);

(58) section 1251 (relating to clarification of limitation on maximum number of shareholders);

(59) section 1253 (relating to attribution rules applicable to stock ownership);

(60) section 1256 (relating to modification of earnings and profits rules for determining whether REIT has earnings and profits from non-REIT year);

(61) section 1257 (relating to treatment of foreclosure property);

(62) section 1261 (relating to shared appreciation mortgages);

(63) section 1302 (relating to clarification of waiver of certain rights of recovery);

(64) section 1303 (relating to transitional rule under section 2056A);

(65) section 1304 (relating to treatment for estate tax purposes of short-term obligations held by nonresident aliens);

(66) section 1311 (relating to clarification of treatment of survivor annuities under qualified terminable interest rules);

(67) section 1312 (relating to treatment of qualified domestic trust rules of forms of ownership which are not trusts);

(68) section 1313 (relating to opportunity to correct failures under section 2032A);

(69) section 1414 (relating to fermented material from any brewery may be received at a distilled spirits plant);

(70) section 1417 (relating to use of additional ameliorating material in certain wines);

(71) section 1418 (relating to domestically produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.);

(72) section 1421 (relating to transfer to brewery of beer imported in bulk without payment of tax);

(73) section 1422 (relating to transfer to bonded wine cellars of wine imported in bulk without payment of tax);

(74) section 1506 (relating to clarification of certain rules relating to employee stock ownership plans of S corporations);

(75) section 1507 (relating to modification of 10-percent tax for nondeductible contributions);

(76) section 1523 (relating to repeal of application of unrelated business income tax to ESOPs);

(77) section 1530 (relating to gratuitous transfers for the benefit of employees);

(78) section 1532 (relating to special rules relating to church plans); and

(79) section 1604(c)(2) (relating to amendment related to Omnibus Budget Reconciliation Act of 1993).

And the Senate agree to the same.

For consideration of the House bill, and the Senate amendment, and modifications committed to conference:

JOHN R. KASICH,
BILL ARCHER,
PHIL CRANE,
WILLIAM M. THOMAS,
DICK ARMEY,
TOM DELAY,
CHARLES B. RANGEL,

As additional conferees from the Committee on Transportation and Infrastructure, for consideration of secs. 702 and 704 of the Senate amendment, and modifications committed to conference:

BUD SHUSTER,
SUSAN MOLINARI,
JAMES L. OBERSTAR,

As additional conferees from the Committee on Education and the Workforce, for consideration of secs. 713–14, 717, 879, 1302, 1304–5, and 1311 of the Senate amendment, and modifications committed to conference:

BILL GOODLING,
HARRIS W. FAWELL,
DONALD M. PAYNE,
Managers on the Part of the House.

From the Committee on Finance:

BILL ROTH,
TRENT LOTT,
DANIEL P. MOYNIHAN,

From the Committee on the Budget:

PETE DOMENICI,
DON NICKLES,
FRANK R. LAUTENBERG,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2014) to provide for reconciliation pursuant to subsections (b)(2) and (d) of section 105 of the concurrent resolution on the budget for fiscal year 1998, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

I. CHILD AND DEPENDENT CARE TAX CREDIT; HEALTH CARE FOR CHILDREN

A. Child Tax Credit (sec. 101 (a), (c), and (d) of the House bill and sec. 101 of the Senate amendment)

Present Law

In general

Present law does not provide tax credits based solely on the taxpayer's number of dependent children. Taxpayers with dependent children, however, generally are able to claim a personal exemption for each of these dependents. The total amount of personal exemptions is subtracted (along with certain other items) from adjusted gross income ("AGI") in arriving at taxable income. The amount of each personal exemption is $2,650 for 1997, and is adjusted annually for inflation. In 1997, the amount of the personal exemption is phased out for taxpayers with AGI in excess of $121,200 for single taxpayers, $151,500 for heads of household, and $181,800 for married couples filing joint returns. These phaseout thresholds are adjusted annually for inflation.

Dependent care credit

A nonrefundable credit against income tax liability is available for up to 30 percent (phased down to 20 percent for individuals with AGI above $28,000) of a limited dollar amount of employment-related child and dependent care expenses for certain qualified individuals: (1) a dependent child under age 13; (2) a dependent physically or mentally unable to care for him or herself; or (3) a spouse who is physically or mentally unable to care for him or herself. Eligible employment-related expenses are limited to $2,400 if there is one qualifying individual and $4,800 if there are two or more qualifying individuals. Employment-related expenses are expenses for household services and the care of a qualifying individual, if incurred to enable the taxpayer to be gainfully employed. Employment-related expenses are reduced to the extent the taxpayer has employer-provided dependent care assistance that is excludable from gross income.

House Bill

Size of credit

The House bill provides a $500 ($400 for taxable year 1998) nonrefundable tax credit for each qualifying child under the age of 17.

Qualifying child

A qualifying child is defined as an individual for whom the taxpayer can claim a dependency exemption and who is a son or daughter of the taxpayer (or descendent of either), a stepson or stepdaughter of the taxpayer or an eligible foster child of the taxpayer.

Savings requirement

No provision.

Reduction for dependent care credit

After 1999, the child credit is reduced by one-half of the dependent care credit (no reduction with respect to dependents who are physically or mentally incapable of self-care). The reduction applies to married individuals with AGI above $60,000 ($30,000 for married individuals filing separately). In the case taxpayer's filing as a single or head of household, the reduction applies to AGI above $33,000.

Phaseout of credit

For taxpayers with modified AGI in excess of certain thresholds, the sum of the otherwise allowable child credit and the otherwise allowable dependent care credit is phased out. The phaseout rate is $25 for each $1,000 of modified AGI (or fraction thereof) in excess of the threshold. The reduction is applied first to the child credit and then to the dependent care credit. For married taxpayers filing joint returns, the threshold is $110,000. For taxpayers filing single or head of household returns, the threshold is $75,000. For married taxpayers filing separate returns, the threshold is $55,000. These thresholds are not indexed for inflation.

Maximum allowable child credit

The maximum amount of the child credit for each taxable year (after the reduction, if any, for the dependent care credit after 2001) could not exceed an amount equal to the excess of: (1) the taxpayer's regular income tax liability (net of applicable credits) over (2) the sum of the taxpayer's tentative minimum tax liability (determined without regard to the alternative minimum foreign tax credit) and the earned income credit allowed.

IRS notice and withholding

The House bill provides that the Secretary of the Treasury shall submit notice to all taxpayers of the passage of the child tax

credit. In addition, it directs the Secretary of the Treasury to modify the withholding tables for single taxpayers claiming more than one exemption and for married taxpayers claiming more than two exemptions to take account of the effects of the child tax credit. The adjustments to the withholding tables apply to employees whose annualized wages from an employer are expected to be at least $30,000, but not more than $100,000.

Effective date

Generally, the child tax credit is effective for taxable years beginning after December 31, 1997. The provision to reduce the otherwise allowable child credit by one-half of the amount of the taxpayer's dependent care credit is effective for taxable years beginning after December 31, 2001.

Senate Amendment

Size of credit

The Senate amendment provides a $500 ($250 in 1997 for children under the age of 13) nonrefundable tax credit for each qualifying child under the age of 17. For taxable years beginning after December 31, 2002, the credit is allowed for each qualifying child under the age of 18.

Qualifying child

Same as the House bill.

Savings requirement

In the case of each child age 13 to 16 (13 to 17 for taxable years beginning after December 31, 2002), the credit generally is available only for amounts contributed to savings for education with respect to that child.

Reduction for dependent care credit

No provision.

Phaseout

Generally the same as the House bill, except the dependent care credit is not phased out.

Maximum allowable child credit

The maximum amount of the child credit for each taxable year cannot exceed an amount equal to the excess of: (1) the taxpayer's regular income tax liability (net of applicable credits) over (2) the sum of the taxpayer's tentative minimum tax liability (determined without regard to the alternative minimum foreign tax credit) and one-half of the earned income credit allowed.

IRS notice and withholding

No provision.

Effective date

The child tax credit is effective July 1, 1997, for taxable years beginning after December 31, 1996.

Conference Agreement

Size of credit

The conference agreement provides a $500 ($400 for taxable year 1998) credit for each qualifying child under the age of 17.

Qualifying child

The conference agreement follows the House bill and the Senate amendment. The conference agreement includes a requirement that the taxpayer include the name and taxpayer identification number (TIN) for each qualifying child. The conference agreement also extends the math and clerical error rule to the child tax credit.

Savings requirement

The conference agreement does not include the Senate amendment.

Reduction for dependent care credit

The conference agreement does not include the House bill provision.

Phaseout

The conference agreement follows the House bill and the Senate amendment with one modification. The modification is to increase the phaseout rate to $50 for each $1,000 of modified AGI (or fraction thereof) in excess of the threshold. The threshold amounts are unchanged from both the House bill and the Senate amendment.

Maximum allowable child credit

In general, in the case of a taxpayer with qualifying children, the amount of the child credit equals $500 times the number of qualifying children.

In the case of a taxpayer with one or two qualifying children, a portion of the child credit may be treated as a supplemental child credit amount. This amount equals the excess of (1) $500 times the number of qualifying children up to the excess of the taxpayer's income tax liability (net of applicable credits other than the earned income credit) over the taxpayer's tentative minimum tax liability (determined without regard to the alternative minimum foreign tax credit) over (2) the sum of the taxpayer's regular income tax liability (net of applicable credits other than the earned income credit) and the employee share of FICA (and one-half of the taxpayer's SECA tax liability, if applicable) reduced by any earned income credit amount. In no case will the total amount of the allowable child credit exceed the amount that would result from its calculation as a nonrefundable personal credit.

In the case of a taxpayer with three or more qualifying children, the maximum amount of the child credit for each taxable year cannot exceed the greater of: (1) the excess of the taxpayer's regular tax liability (net of applicable credits other than the earned income credit) over the taxpayer's tentative minimum tax liability (determined without regard to the alternative minimum foreign tax credit), or (2) an amount equal to the excess of the sum of the taxpayer's regular income tax liability (net of applicable credits other than the earned income credit) and the employee share of FICA (and one-half of the taxpayer's SECA tax liability, if applicable) reduced by the earned income credit. To the extent that the amount determined under (1) is greater than the amount determined under (2), the difference is treated as a supplemental child credit amount.

The conferees anticipate that the Secretary of the Treasury will determine whether a simplified method of calculating the child credit, consistent with the formula described above, can be achieved.

Refundable child credit amount

In the case of a taxpayer with three or more qualifying children, if the amount of the allowable child credit as computed under the computation described immediately above exceeds the taxpayer's regular tax liability before the computation, then the excess is a refundable tax credit.

IRS notice and withholding

The conference agreement does not include the House bill provision.

Effective date

Generally, the child tax credit is effective for taxable years beginning after December 31, 1997.

B. Expand Definition of High-Risk Individuals with Respect to Tax-Exempt State-Sponsored Organizations Providing Health Coverage (sec. 101(b) of the House bill)

Present Law

Present law provides tax-exempt status to any membership organization that is established by a State exclusively to provide coverage for medical care on a nonprofit basis to certain high-risk individuals, provided certain criteria are satisfied.[1] The organization may provide coverage for medical care either by issuing insurance itself or by entering into an arrangement with a health maintenance organization ("HMO").

High-risk individuals eligible to receive medical care coverage from the organization must be residents of the State who, due to a pre-existing medical condition, are unable to obtain health coverage for such condition through insurance or an HMO, or are able to acquire such coverage only at a rate that is substantially higher than the rate charged for such coverage by the organization. The State must determine the composition of membership in the organization. For example, a State could mandate that all organizations that are subject to insurance regulation by the State must be members of the organization.

Present law further requires the State or members of the organization to fund the liabilities of the organization to the extent that premiums charged to eligible individuals are insufficient to cover such liabilities. Finally, no part of the net earnings of the organization can inure to the benefit of any private shareholder or individual.

House Bill

The House bill expands the definition of high-risk individuals to include a child of an individual who meets the present-law definition of a high-risk individual, subject to certain requirements. The requirements are: (1) the taxpayer is allowed a deduction for a personal exemption for the child for the taxable year; (2) the child has not attained the age of 17 as of the close of the calendar year in which the taxable year of the taxpayer begins; and (3) the child is a son or daughter or the taxpayer (or a dependent of either), a stepson or stepdaughter of the taxpayer, or an eligible foster child of the taxpayer.

Effective date.—Taxable years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification to further expand the definition of high-risk individuals to include the spouse of an individual who meets the present-law definition of a high-risk individual.

C. Indexing of the Dependent Care Credit; Phase Out for High-Income Taxpayers (sec. 102 of the House bill)

Present Law

A nonrefundable credit against income tax liability is available for up to 30 percent of a limited dollar amount of employment-related child and dependent care expenses. The credit may be claimed by an individual who maintains a household that includes one or more qualifying individuals. A qualifying individual is a dependent of the taxpayer who is under the age of 13, a physically or mentally incapacitated dependent, or a physically or mentally incapacitated spouse.

Employment-related expenses are expenses for household services and the care of a qualifying individual, if incurred to enable the taxpayer to be gainfully employed. Eligible employment-related expenses are limited to $2,400 if there is one qualifying individual, and $4,800 if there are two or more qualifying individuals.

[1] No inference is intended as to the tax treatment of other types of State-sponsored organizations.

The 30-percent credit rate is reduced by one percentage point for each $2,000 (or fraction thereof) of adjusted gross income ("AGI") above $10,000. A married couple's combined AGI is used for purposes of this computation. Individuals with more than $28,000 of AGI are entitled to a credit equal to 20 percent of allowable employment-related expenses.

House Bill

Dollar limits

Under the House bill, the dollar limits on eligible employment-related expenses ($2,400 if there is one qualifying individual and $4,800 if there are two or more qualifying individuals) are indexed for inflation.

Phaseout

For taxpayers with modified AGI in excess of certain thresholds, the sum of the otherwise allowable child credit and the otherwise allowable dependent care credit is phased out. The phaseout rate is $25 for each $1,000 of modified AGI (or fraction thereof) in excess of the threshold. The reduction is applied first to the child credit and then to the dependent care credit. For married taxpayers filing joint returns, the threshold is $110,000. For taxpayers filing single or head of household returns, the threshold is $75,000. For married taxpayers filing separate returns, the threshold is $55,000. These thresholds are not indexed for inflation. (See above the description of the phaseout in the child tax credit.)

Effective date

The provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

D. Tax Credit for Employer Expenses for Child Care Facilities (sec. 103 of the Senate amendment)

Present Law

Ordinary and necessary business expenses are deductible by an employer.

House Bill

No provision.

Senate Amendment

The Senate amendment provides a tax credit equal to 50 percent of an employers' qualified child care expenses for the taxable year. The maximum credit allowable cannot exceed $150,000 per year.

Qualified child care expenses are any amounts paid or incurred: (1) to acquire, construct, rehabilitate or expand property which is to be used as part of a qualified child care facility, with respect to which a deduction for depreciation is allowable, and which is not part of the principal residence of the taxpayer or an employee of the taxpayer; (2) for the operating costs of a qualified child care facility; (3) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer; (4) under a contract to provide child care resource and referral services to employees of the taxpayer; or (5) for the costs of seeking accreditation for a child care facility. A qualified child care facility is a facility the principal use of which is to provide child care assistance and which meets the requirements of all applicable laws and regulations of the State and local government in which it is located. A facility is not a qualified child care facility unless enrollment in the facility is open to employees of the taxpayer during the year, the facility is not the principal trade or business of the taxpayer (unless at least 30 percent of the enrolled are dependents of employees of the taxpayer) and the use of (or eligibility to use) the facility does not discriminate in favor of highly compensated employees.

A recapture of the credit applies if the facility ceases to operate as a qualified child care facility or the facility is disposed of.

No deduction or credit is allowed under any other provision with respect to the amount of credit determined under this provision. The taxpayer's basis in property is reduced by the amount of credit determined with respect to such property.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 1997, but before January 1, 2000.

Conference Agreement

The conference agreement does not include the Senate amendment.

E. Expansion of Coordinated Enforcement Efforts Between the Internal Revenue Service and the Health and Human Services Office of Child Support Enforcement (sec. 104 of the Senate amendment)

Present Law

The Internal Revenue Service ("IRS") and various Federal departments and agencies have information sharing agreements. The Secretary of Health and Human Services ("HHS") has been directed to create and maintain various data bases which may be used by the IRS to collect, unpaid child support amounts, to administer the earned income credit and to verify a claim with respect to employment on a tax return.

House Bill

No provision.

Senate Amendment

The Senate amendment gives the IRS expanded access to information in the National Directory of New Hires to verify any information which is required on a tax return. It also gives the IRS access to the names and social security numbers of custodial parents in the Federal Case Registry of Child Support Orders. This information is made available to administer the Internal Revenue Code provisions which grant tax benefits based on the support and residence of dependent children.

Effective date.—The provision is effective on October 1, 1997.

Conference Agreement

The conference agreement does not include the Senate amendment.

F. Penalty-Free Withdrawals from IRAs for Adoption Expenses (sec. 105 of the Senate amendment)

Present Law

Under present law, amounts held in an individual retirement arrangement ("IRA") are includible in income when withdrawn (except to the extent the withdrawal is a return of nondeductible contributions). Amounts withdrawn prior to attainment of age 59½ are subject to an additional 10-percent early withdrawal tax, unless the withdrawal is due to death or disability, is made in the form of certain periodic payments, is used to pay medical expenses in excess of 7.5 percent of AGI, or is used to purchase health insurance of an unemployed individual.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the 10-percent early withdrawal tax does not apply to distributions from IRAs that are not in excess of $2,000 if the taxpayer uses the amounts to pay qualified adoption expenses.

The penalty-free withdrawal is available for "qualified adoption expenses," meaning reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to, and the principal purpose of which is for, the legal adoption of an eligible child by the taxpayer. Qualified adoption expenses do not include expenses (1) incurred in violation of State or Federal law, (2) incurred in carrying out any surrogate parenting arrangement, (3) incurred in connection with the adoption of a child of a spouse, or (4) which are reimbursed under an employer program or otherwise.

Effective date.—The provision is effective for distributions after December 31, 1996.

Conference Agreement

The conference agreement does not include the Senate amendment.

II. EDUCATION TAX INCENTIVES

A. Tax Benefits Relating to Education Expenses

1. HOPE tax credit and Lifetime Learning tax credit for higher education tuition expenses (sec. 201 of the House bill and the Senate amendment)

Present Law

Deductibility of education expenses

Taxpayers generally may not deduct education and training expenses. However, a deduction for education expenses generally is allowed under section 162 if the education or training (1) maintains or improves a skill required in a trade or business currently engaged in by the taxpayer, or (2) meets the express requirements of the taxpayer's employer, or requirements of applicable law or regulations, imposed as a condition of continued employment (Treas. Reg. sec. 1.162-5). However, education expenses are not deductible if they relate to certain minimum educational requirements or to education or training that enables a taxpayer to begin working in a new trade or business. In the case of an employee, education expenses (if not reimbursed by the employer) may be claimed as an itemized deduction only if such expenses meet the above-described criteria for deductibility under section 162 and only to the extent that the expenses, along with other miscellaneous deductions, exceed 2 percent of the taxpayer's adjusted gross income (AGI).

Exclusion for employer-provided educational assistance

A special rule allows an employee to exclude from gross income for income tax purposes and from wages for employment tax purposes up to $5,250 annually paid by his or her employer for educational assistance (sec. 127). In order for the exclusion to apply, certain requirements must be satisfied, including a requirement that not more than 5 percent of the amounts paid or incurred by the employer during the year for educational assistance under a qualified educational assistance program can be provided for the class of individuals consisting of more than 5-percent owners of the employer and the spouses or dependents of such more than 5-percent owners. This special rule for employer-provided educational assistance expired with respect to courses beginning after June 30, 1997 (and does not apply to graduate level courses beginning after June 30, 1996).

For purposes of the special exclusion, educational assistance means the payment by an employer of expenses incurred by or on

behalf of the employee for education of the employee including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment. Educational assistance also includes the provision by the employer of courses of instruction for the employee (including books, supplies, and equipment). Educational assistance does not include tools or supplies which may be retained by the employee after completion of a course or meals, lodging, or transportation. The exclusion does not apply to any education involving sports, games, or hobbies.

In the absence of the special exclusion, employer-provided educational assistance is excludable from gross income and wages as a working condition fringe benefit (sec. 132(d)) only to the extent the education expenses would be deductible under section 162.

Exclusion for interest earned on savings bonds

Another special rule (sec. 135) provides that interest earned on a qualified U.S. Series EE savings bond issued after 1989 is excludable from gross income if the proceeds of the bond upon redemption do not exceed qualified higher education expenses paid by the taxpayer during the taxable year.[2] "Qualified higher education expenses" include tuition and fees (but not room and board expenses) required for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer at certain colleges, universities, or vocational schools. The exclusion provided by section 135 is phased out for certain higher-income taxpayers, determined by the taxpayer's modified AGI during the year the bond is redeemed. For 1996, the exclusion was phased out for taxpayers with modified AGI between $49,450 and $64,450 ($74,200 and $104,200 for joint returns). To prevent taxpayers from effectively avoiding the income phaseout limitation through issuance of bonds directly in the child's name, section 135(c)(1)(B) provides that the interest exclusion is available only with respect to U.S. Series EE savings bonds issued to taxpayers who are at least 24 years old.

Qualified scholarships

Section 117 excludes from gross income amounts received as a qualified scholarship by an individual who is a candidate for a degree and used for tuition and fees required for the enrollment or attendance (or for fees, books, supplies, and equipment required for courses of instruction) at a primary, secondary, or post-secondary educational institution. The tax-free treatment provided by section 117 does not extend to scholarship amounts covering regular living expenses, such as room and board. There is, however, no dollar limitation for the section 117 exclusion, provided that the scholarship funds are used to pay for tuition and required fees. In addition to the exclusion for qualified scholarships, section 117 provides an exclusion from gross income for qualified tuition reductions for education below the graduate level provided to employees (and their spouses and dependents) of certain educational organizations.[3] Section 117(c) specifically provides that the exclusion for qualified scholarships and qualified tuition reductions does not apply to any amount received by a student that represents payment for teaching, research, or other services by the student required as a condition for receiving the scholarship or tuition reduction.

Student loan forgiveness

In the case of an individual, section 108(f) provides that gross income subject to Federal income tax does not include any amount from the forgiveness (in whole or in part) of certain student loans, provided that the forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers (e.g., providing health care services to a nonprofit organization). Student loans eligible for this special rule must be made to an individual to assist the individual in attending an education institution that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its education activities are regularly carried on. Loan proceeds may be used not only for tuition and required fees, but also to cover room and board expenses (in contrast to tax-free scholarships under section 117, which are limited to tuition and required fees). In addition, the loan must be made by (1) the United States (or an instrumentality or agency thereof), (2) a State (or any political subdivision thereof), (3) certain tax-exempt public benefit corporations that control a State, county, or municipal hospital and whose employees have been deemed to be public employees under State law, or (4) an educational organization that originally received the funds from which the loan was made from the United States, a State, or a tax-exempt public benefit corporation. Thus, loans made with private, nongovernmental funds are not qualifying student loans for purposes of the section 108(f) exclusion. As with section 117, there is no dollar limitation for the section 108(f) exclusion.

Qualified State prepaid tuition programs

Section 529 (enacted as part of the Small Business Job Protection Act of 1996) provides tax-exempt status to "qualified State tuition programs," meaning certain programs established and maintained by a State (or agency or instrumentality thereof) under which persons may (1) purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to a waiver or payment of qualified higher education expenses of the beneficiary, or (2) make contributions to an account that is established for the purpose of meeting qualified higher education expenses of the designated beneficiary of the account. "Qualified higher education expenses" are defined as tuition, fees, books, supplies, and equipment required for the enrollment or attendance at a college or university (or certain vocational schools). Qualified higher education expenses do not include room and board expenses. Section 529 also provides that no amount shall be included in the gross income of a contributor to, or beneficiary of, a qualified State tuition program with respect to any distribution from, or earnings under, such program, except that (1) amounts distributed or educational benefits provided to a beneficiary (e.g., when the beneficiary attends college) will be included in the beneficiary's gross income (unless excludable under another Code section) to the extent such amounts or the value of the educational benefits exceed contributions made on behalf of the beneficiary, and (2) amounts distributed to a contributor (e.g., when a parent receives a refund) will be included in the contributor's gross income to the extent such amounts exceed contributions made by that person.[4]

House Bill

In general

Individual taxpayers are allowed to claim a non-refundable HOPE credit against Federal income taxes up to $1,500 per student per year for 50 percent of qualified tuition and related expenses (but not room and board expenses) paid for the first two years of the student's post-secondary education in a degree or certificate program. The qualified tuition and related expenses must be incurred on behalf of the taxpayer, the taxpayer's spouse, or a dependent. The HOPE credit is available with respect to an individual student for two taxable years, provided that the student has not completed the first two years of post-secondary education. Beginning in 1998, the maximum credit amount of $1,500 will be indexed for inflation, rounded down to the closest multiple of $50.[5]

The HOPE credit amount that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified AGI between $40,000 and $50,000 ($80,000 and $100,000 for joint returns). Modified AGI includes amounts otherwise excluded with respect to income earned abroad (or income from Puerto Rico or U.S. possessions). The income phase-out ranges will be indexed for inflation occurring after the year 1999, rounded down to the closest multiple of $5,000. The first taxable year for which the inflation adjustment could be made to increase the income phase-out ranges will be 2001.

The HOPE credit is available in the taxable year the expenses are paid, subject to the requirement that the education commence or continue during that year or during the first three months of the next year. Qualified tuition expenses paid with the proceeds of a loan generally are eligible for the HOPE credit (rather than repayment of the loan itself).[6]

Dependent students

A taxpayer may claim the HOPE credit with respect to an eligible student who is not the taxpayer or the taxpayer's spouse (e.g., in cases where the student is the taxpayer's child) only if the taxpayer claims the student as a dependent for the taxable year for which the credit is claimed. If a student is claimed as a dependent by the parent or other taxpayer, the eligible student him- or herself is *not* entitled to claim a HOPE credit for that taxable year on the student's own tax return. If a parent (or other taxpayer) claims a student as a dependent, any qualified tuition and related expenses paid by the student are treated as paid by the parent (or other taxpayer) for purposes of the provision.

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[2] If the aggregate redemption amount (i.e., principal plus interest) of all Series EE bonds redeemed by the taxpayer during the taxable year exceeds the qualified education expenses incurred, then the excludable portion of interest income is based on the ratio that the education expenses bears to the aggregate redemption amount (sec. 135(b)).

[3] A special rule provides that qualified tuition reductions under section 117(d) may be provided for graduate-level courses in cases of graduate students who are engaged in teaching or research activities for the educational organization (sec. 117(d)(5)).

[4] Specifically, section 529(c)(3)(A) provides that any distribution under a qualified State tuition program shall be includible in the gross income of the distributee in the same manner as provided under present-law section 72 to the extent not excluded from gross income under any other provision of the Code.

[5] The HOPE credit may not be claimed against a taxpayer's alternative minimum tax (AMT) liability.

[6] The Treasury Department is granted authority to issue regulations providing that the HOPE credit will be recaptured in cases where the student or taxpayer receives a refund of tuition and related expenses with respect to which a credit was claimed in a prior year.

Election of HOPE credit or proposed deduction for qualified higher education expenses

For each taxable year, a taxpayer may elect with respect to an eligible student *either* the HOPE credit *or* the proposed deduction for qualified higher education expenses (described below). Thus, for example, if a parent claims a child as a dependent for a taxable year, then all qualified tuition expenses paid by *both* the parent and child are deemed paid by the parent, and the parent may claim the HOPE credit (assuming that the AGI phaseout does not apply) on the parent's return. As an alternative, the parent may elect for that taxable year the deduction for qualified higher education expenses with respect to the dependent child (as described below).[7] On the other hand, if a child is *not* claimed as a dependent by the parent (or by any other taxpayer) for the taxable year, then the child him- or herself has the option of electing either the HOPE credit or deduction for qualified higher education expenses paid during that year.

Qualified tuition and related expenses

The HOPE credit is available for "qualified tuition and related expenses," meaning tuition, fees, and books required for the enrollment or attendance of an eligible student at an eligible educational institution. Charges and fees associated with meals, lodging, student activities, athletics, insurance, transportation, and similar personal, living or family expenses are not included. The expenses of education involving sports, games, or hobbies are not qualified tuition expenses unless this education is part of the student's degree program.

Qualified tuition and related expenses generally include only out-of-pocket expenses. Qualified tuition and related expenses do not include expenses covered by educational assistance that is not required to be included in the gross income of either the student or the taxpayer claiming the credit. Thus, total qualified tuition and related expenses are reduced by any scholarship or fellowship grants excludable from gross income under present-law section 117 and any other tax-free educational benefits received by the student during the taxable year. No reduction of qualified tuition and related expenses is required for a gift, bequest, devise, or inheritance within the meaning of section 102(a). Under the provision, a HOPE credit is not allowed with respect to any education expense for which a deduction is claimed under section 162 or any other section of the Code.[8]

Eligible students

An eligible student for purposes of the HOPE credit is an individual who is enrolled in a degree, certificate, or other program (including a program of study abroad approved for credit by the institution at which such student is enrolled) leading to a recognized educational credential at an eligible educational institution. The student must pursue a course of study on at least a half-time basis. (In other words, for at least one academic period which begins during the taxable year, the student must carry at least one-half the normal full-time work load for the course of study the student is pursuing.) An eligible student may not have been convicted of a Federal or State felony consisting of the possession or distribution of a controlled substance.

Eligible educational institutions

Eligible educational institutions are defined by reference to section 481 of the Higher Education Act of 1965. Such institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, or another recognized post-secondary credential. Certain proprietary institutions and post-secondary vocational institutions also are eligible educational institutions. The institution must be eligible to participate in Department of Education student aid programs.

Regulations

The Secretary of the Treasury (in consultation with the Secretary of Education) is granted authority to issue regulations to implement the provision. The Secretary of the Treasury will have authority to issue regulations providing appropriate rules for recordkeeping and information reporting. These regulations may address the information reports that eligible educational institutions will be required to file to assist students and the IRS in calculating the amount of the HOPE credit potentially available.

Effective date

The provision is effective for expenses paid after December 31, 1997, for education furnished in academic periods beginning after such date.

Senate Amendment

The Senate amendment is the same as the House bill, except: (1) the credit rate is 75 percent (rather than 50 percent) for students attending two-year community colleges and vocational schools;[9] (2) an eligible student must have earned a high-school diploma (or equivalent degree) prior to attending any post-secondary classes with respect to which the HOPE credit is claimed, with the exception of students who did not receive a high-school degree by reason of enrollment in an early admission program at a post-secondary institution; and (3) for a taxable year, a taxpayer may elect with respect to an eligible student either the HOPE credit or the proposed exclusion from gross income for certain distributions from a qualified tuition program or education IRA provided for by the Senate amendment.

Conference Agreement

In general

The conference agreement follows the House bill, except: (1) the HOPE credit rate is 100 percent on the first $1,000 of qualified tuition and fees, and 50 percent on the next $1,000 of qualified tuition and fees;[10] (2) the HOPE credit is available only for tuition and fees required for the enrollment or attendance of an eligible student at an eligible institution, and is *not* available for expenses incurred to purchase books; and (3) for a taxable year, a taxpayer may elect with respect to an eligible student the HOPE credit, the 20-percent "Lifetime Learning" credit (as described below), or the exclusion from gross income for certain distributions from an education IRA (as provided by the conference agreement).

Lifetime Learning credit for qualified tuition and fees

Allowance of credit.—The conference agreement provides that individual taxpayers are allowed to claim a nonrefundable "Lifetime Learning" credit against Federal income taxes equal to 20 percent of qualified tuition and fees incurred during the taxable year on behalf of the taxpayer, the taxpayer's spouse, or any dependents. For expenses paid after June 30, 1998, and prior to January 1, 2003, up to $5,000 of qualified tuition and fees per taxpayer return will be eligible for the 20-percent Lifetime Learning credit (i.e., the maximum credit per taxpayer return will be $1,000). For expenses paid after December 31, 2002, up to $10,000 of qualified tuition and fees per taxpayer return will be eligible for the 20-percent Lifetime Learning credit (i.e., the maximum credit per taxpayer return will be $2,000).

In contrast to the HOPE credit, a taxpayer may claim the Lifetime Learning credit for an unlimited number of taxable years. Also in contrast to the HOPE credit, the maximum amount of the Lifetime Learning credit that may be claimed on a taxpayer's return will not vary based on the number of students in the taxpayer's family.

The Lifetime Learning credit is phased out ratably over the same phaseout range that applies for purposes of the HOPE credit—i.e., taxpayers with modified AGI between $40,000 and $50,000 ($80,000 and $100,000 for joint returns). The income phase-out ranges will be indexed for inflation occurring after the year 2000, rounded down to the closest multiple of $1,000. The first taxable year for which the inflation adjustment could be made to increase the income phase-out ranges will be 2002.

The Lifetime Learning credit is available in the taxable year the expenses are paid, subject to the requirement that the education commence or continue during that year or during the first three months of the next year. Qualified tuition and fees paid with the proceeds of a loan generally are eligible for the Lifetime Learning credit (rather than repayment of the loan itself).

Dependent students.—As with the HOPE credit, a taxpayer may claim the Lifetime Learning credit with respect to a student who is not the taxpayer or the taxpayer's spouse (e.g., in cases where the student is the

[7] For any taxable year, a taxpayer may claim the HOPE credit for qualified tuition and related expenses paid with respect to one student and also claim the proposed deduction (described below) for higher education expenses paid with respect to one or more other students. If the HOPE credit is claimed with respect to one student for one or two taxable years, then the proposed deduction for higher education expenses may be available with respect to that student for subsequent taxable years.

[8] In addition, the bill amends present-law section 135 to provide that the amount of qualified higher education expenses taken into account for purposes of that section is reduced by the amount of such expenses taken into account in determining the HOPE credit claimed by any taxpayer with respect to the student for the taxable year.

[9] Thus, under the Senate amendment, students attending two-year community colleges or vocational schools may be eligible for the $1,500 maximum HOPE credit if they incur $2,000 of qualified tuition and related expenses. In contrast, students attending other institutions (e.g., four-year colleges) may be eligible for the $1,500 maximum HOPE credit if they incur $3,000 of qualified tuition and related expenses.

[10] Thus, an eligible student who incurs $1,000 of qualified tuition and fees is eligible (subject to the AGI phaseout) for a $1,000 HOPE credit; and if such a student incurs $2,000 of qualified tuition and fees, then he or she is eligible for a $1,500 HOPE credit.

The maximum HOPE credit amount will be indexed for inflation occurring after the year 2000, by increasing the cap on qualified tuition and fees subject to the 100-percent credit rate and the cap on such tuition and fees subject to the 50-percent credit rate (both caps rounded down to the closest multiple of $100). The first taxable year for which the inflation adjustment could be made to increase the cap on qualified tuition and fees will be 2002. In addition, under the conference agreement, the income phase-out ranges for the HOPE credit will be indexed for inflation occurring after the year 2000, rounded down to the closest multiple of $1,000. The first taxable year for which the inflation adjustment could be made to increase the income phase-out ranges will be 2002.

taxpayer's child) only if the taxpayer claims the student as a dependent for the taxable year for which the credit is claimed. If a student is claimed as a dependent by the parent or other taxpayer, the student him- or herself is *not* entitled to claim the Lifetime Learning credit for that taxable year on the student's own tax return. If a parent (or other taxpayer) claims a student as a dependent, any qualified tuition and related expenses paid by the student are treated as paid by the parent (or other taxpayer) for purposes of the provision.

Election of Lifetime Learning credit, HOPE credit, or exclusion from gross income for certain distributions from education IRAs.—A taxpayer may claim the Lifetime Learning credit for a taxable year with respect to one or more students, even though the taxpayer also claims a HOPE credit (or claims an exclusion from gross income for certain distributions from qualified State tuition programs or education IRAs) for that same taxable year with respect to *other* students. If, for a taxable year, a taxpayer claims a HOPE credit with respect to a student (or claims an exclusion for certain distributions from an education IRA with respect to a student), then the Lifetime Learning credit will *not* be available with respect to that same student for that year (although the Lifetime Learning credit may be available with respect to that same student for other taxable years).

Qualified tuition and fees.—The Lifetime Learning credit is available for "qualified tuition and fees," meaning tuition and fees required for the enrollment or attendance of the eligible student at an eligible institution. Charges and fees associated with meals, lodging, student activities, athletics, insurance, transportation, and similar personal, living or family expenses are not included. The 20-percent credit is not available for expenses incurred to purchase books. The expenses of education involving sports, games, or hobbies are not qualified tuition expenses unless this education is part of the student's degree program.

In contrast to the HOPE credit, qualified tuition and fees for purposes of the Lifetime Learning credit include tuition and fees incurred with respect to undergraduate or graduate-level (and professional degree) courses.[11] In addition to allowing a credit for the tuition and fees of a student who attends classes on at least a half-time basis as part of a degree or certificate program, the Lifetime Learning credit also is available with respect to any course of instruction at an eligible educational institution (whether enrolled in by the student on a full-time, half-time, or less than half-time basis) to acquire or improve job skills of the student.

Qualified tuition and fees are defined in the same manner as under the HOPE credit provisions. Thus, qualified tuition and fees generally include only out-of-pocket expenses. Qualified tuition and fees do not include expenses covered by educational assistance that is not required to be included in the gross income of either the student or the taxpayer claiming the credit. Thus, total qualified tuition and fees are reduced by any scholarship or fellowship grants excludable from gross income under present-law section 117 and any other tax-free educational benefits received by the student during the taxable year (such as employer-provided educational assistance excludable under section 127). No reduction of qualified tuition and fees is required for a gift, bequest, devise, or inheritance within the meaning of section 102(a). Under the provision, a Lifetime Learning credit is not allowed with respect to any education expense for which a deduction is claimed under section 162 or any other section of the Code.[12]

Eligible educational institutions.—Eligible educational institutions are (as with the HOPE credit) defined by reference to section 481 of the Higher Education Act of 1965. Such institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, graduate-level or professional degree, or another recognized post-secondary credential. Certain proprietary institutions and post-secondary vocational institutions also are eligible educational institutions. The institution must be eligible to participate in Department of Education student aid programs.

Regulations.—The Secretary of the Treasury (in consultation with the Secretary of Education) is granted authority to issue regulations to implement the provision. The Secretary of the Treasury will have authority to issue regulations providing appropriate rules for recordkeeping and information reporting. These regulations may address the information reports that eligible educational institutions will be required to file to assist students and the IRS in calculating the amount of the Lifetime Learning credit potentially available.

Effective date.—The provision is effective for expenses paid after June 30, 1998, for education furnished in academic periods beginning after such date.

2. Tax treatment of qualified State tuition programs and education IRAs; exclusion for certain distributions from education IRAs used to pay qualified higher education expenses (secs. 202(a), (b), and (d) and 211-212 of the House bill and secs. 211-213 of the Senate amendment)

Present Law

Deductibility of education expenses

Taxpayers generally may not deduct education and training expenses. However, a deduction for education expenses generally is allowed under section 162 if the education or training (1) maintains or improves a skill required in a trade or business currently engaged in by the taxpayer, or (2) meets the express requirements of the taxpayer's employer, or requirements of applicable law or regulations, imposed as a condition of continued employment (Treas. Reg. sec. 1.162-5). However, education expenses are not deductible if they relate to certain minimum educational requirements or to education or training that enables a taxpayer to begin working in a new trade or business. In the case of an employee, education expenses (if not reimbursed by the employer) may be claimed as an itemized deduction only if such expenses meet the above- described criteria for deductibility under section 162 and only to the extent that the expenses, along with other miscellaneous deductions, exceed 2 percent of the taxpayer's adjusted gross income (AGI).

Exclusion for employer-provided educational assistance

A special rule allows an employee to exclude from gross income for income tax purposes and from wages for employment tax purposes up to $5,250 annually paid by his or her employer for educational assistance (sec. 127). In order for the exclusion to apply, certain requirements must be satisfied, including a requirement that not more than 5 percent of the amounts paid or incurred by the employer during the year for educational assistance under a qualified educational assistance program can be provided for the class of individuals consisting of more than 5-percent owners of the employer and the spouses or dependents of such more than 5-percent owners. This special rule for employer-provided educational assistance expired with respect to courses beginning after June 30, 1997 (and does not apply to graduate level courses beginning after June 30, 1996).

For purposes of the special exclusion, educational assistance means the payment by an employer of expenses incurred by or on behalf of the employee for education of the employee including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment. Educational assistance also includes the provision by the employer of courses of instruction for the employee (including books, supplies, and equipment). Educational assistance does not include tools or supplies which may be retained by the employee after completion of a course or meals, lodging, or transportation. The exclusion does not apply to any education involving sports, games, or hobbies.

In the absence of the special exclusion, employer-provided educational assistance is excludable from gross income and wages as a working condition fringe benefit (sec. 132(d)) only to the extent the education expenses would be deductible under section 162.

Exclusion for interest earned on savings bonds

Another special rule (sec. 135) provides that interest earned on a qualified U.S. Series EE savings bond issued after 1989 is excludable from gross income if the proceeds of the bond upon redemption do not exceed qualified higher education expenses paid by the taxpayer during the taxable year.[13] "Qualified higher education expenses" include tuition and fees (but not room and board expenses) required for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer at certain colleges, universities, or vocational schools. The exclusion provided by section 135 is phased out for certain higher-income taxpayers, determined by the taxpayer's modified AGI during the year the bond is redeemed. For 1996, the exclusion was phased out for taxpayers with modified AGI between $49,450 and $64,450 ($74,200 and $104,200 for joint returns). To prevent taxpayers from effectively avoiding the income phaseout limitation through issuance of bonds directly in the child's name, section 135(c)(1)(B) provides that the interest exclusion is available only with respect to U.S. Series EE savings bonds issued to taxpayers who are at least 24 years old.

Qualified scholarships

Section 117 excludes from gross income amounts received as a qualified scholarship

[11] The HOPE credit is available only with respect to the first two years of a student's undergraduate education.

[12] In addition, the conference agreement amends present-law section 135 to provide that the amount of qualified higher education expenses taken into account for purposes of that section is reduced by the amount of such expenses taken into account in determining the Lifetime Learning credit claimed by any taxpayer with respect to the student for the taxable year.

[13] If the aggregate redemption amount (i.e., principal plus interest) of all Series EE bonds redeemed by the taxpayer during the taxable year exceeds the qualified education expenses incurred, then the excludable portion of interest income is based on the ratio that the education expenses bears to the aggregate redemption amount (sec. 135(b)).

by an individual who is a candidate for a degree and used for tuition and fees required for the enrollment or attendance (or for fees, books, supplies, and equipment required for courses of instruction) at a primary, secondary, or post-secondary educational institution. The tax-free treatment provided by section 117 does not extend to scholarship amounts covering regular living expenses, such as room and board. There is, however, no dollar limitation for the section 117 exclusion, provided that the scholarship funds are used to pay for tuition and required fees. In addition to the exclusion for qualified scholarships, section 117 provides an exclusion from gross income for qualified tuition reductions for education below the graduate level provided to employees (and their spouses and dependents) of certain educational organizations.[14] Section 117(c) specifically provides that the exclusion for qualified scholarships and qualified tuition reductions does not apply to any amount received by a student that represents payment for teaching, research, or other services by the student required as a condition for receiving the scholarship or tuition reduction.

Student loan forgiveness

In the case of an individual, section 108(f) provides that gross income subject to Federal income tax does not include any amount from the forgiveness (in whole or in part) of certain student loans, provided that the forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers (e.g., providing health care services to a nonprofit organization). Student loans eligible for this special rule must be made to an individual to assist the individual in attending an education institution that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its education activities are regularly carried on. Loan proceeds may be used not only for tuition and required fees, but also to cover room and board expenses (in contrast to tax-free scholarships under section 117, which are limited to tuition and required fees). In addition, the loan must be made by (1) the United States (or an instrumentality or agency thereof), (2) a State (or any political subdivision thereof), (3) certain tax-exempt public benefit corporations that control a State, county, or municipal hospital and whose employees have been deemed to be public employees under State law, or (4) an educational organization that originally received the funds from which the loan was made from the United States, a State, or a tax-exempt public benefit corporation. Thus, loans made with private, nongovernmental funds are not qualifying student loans for purposes of the section 108(f) exclusion. As with section 117, there is no dollar limitation for the section 108(f) exclusion.

Qualified State prepaid tuition programs

Section 529 (enacted as part of the Small Business Job Protection Act of 1996) provides tax-exempt status to "qualified State tuition programs," meaning certain programs established and maintained by a State (or agency or instrumentality thereof) under which persons may (1) purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to a waiver or payment of qualified higher education expenses of the beneficiary, or (2) make contributions to an account that is established for the purpose of meeting qualified higher education expenses of the designated beneficiary of the account. "Qualified higher education expenses" are defined as tuition, fees, books, supplies, and equipment required for the enrollment or attendance at a college or university (or certain vocational schools). Qualified higher education expenses do not include room and board expenses. Section 529 also provides that no amount shall be included in the gross income of a contributor to, or beneficiary of, a qualified State tuition program with respect to any distribution from, or earnings under, such program, except that (1) amounts distributed or educational benefits provided to a beneficiary (e.g., when the beneficiary attends college) will be included in the beneficiary's gross income (unless excludable under another Code section) to the extent such amounts or the value of the educational benefits exceed contributions made on behalf of the beneficiary, and (2) amounts distributed to a contributor (e.g., when a parent receives a refund) will be included in the contributor's gross income to the extent such amounts exceed contributions made by that person.[15]

Estate and gift tax rules

In general, a taxpayer may exclude $10,000 of gifts made by an individual ($20,000 in the case of a married couple that elects to split their gifts) to any one donee during a calendar year (sec. 2503(b)). This annual exclusion does not apply to gifts of future interests, and thus may not be applicable to contributions made to a State tuition program.

Contributions made to a qualified State tuition program are treated as incomplete gifts for Federal gift tax purposes (sec. 529(c)(2)). Thus, any Federal gift tax consequences are determined at the time that a distribution is made from an account under the program. The waiver (or payment) of qualified higher education expenses of a designated beneficiary by (or to) an educational institution under a qualified State tuition program is treated as a qualified transfer for purposes of present-law section 2503(e). Amounts contributed to a qualified State tuition program (and earnings thereon) are includible in the contributor's estate for Federal estate tax purposes in the event that the contributor dies before such amounts are distributed under the program (sec. 529(c)(4)).

Individual retirement arrangements ("IRAs")

An individual may make deductible contributions to an individual retirement arrangement ("IRA") for each taxable year up to the lesser of $2,000 or the amount of the individual's compensation for the year if the individual is not an active participant in an employer-sponsored qualified retirement plan (and, if married, the individual's spouse also is not an active participant). Contributions may be made to an IRA for a taxable year up to April 15th of the following year. An individual who makes excess contributions to an IRA, i.e., contributions in excess of $2,000, is subject to an excise tax on such excess contributions unless they are distributed from the IRA before the due date for filing the individual's tax return for the year (including extensions). If the individual (or his or her spouse, if married) is an active participant, the $2,000 limit is phased out between $40,000 and $50,000 of adjusted gross income ("AGI") for married couples and between $25,000 and $35,000 of AGI for single individuals.

Present law permits individuals to make nondeductible contributions (up to $2,000 per year) to an IRA to the extent an individual is not permitted to (or does not) make deductible contributions. Earnings on such contributions are includible in gross income when withdrawn.

An individual generally is not subject to income tax on amounts held in an IRA, including earnings on contributions, until the amounts are withdrawn from the IRA. Amounts withdrawn from an IRA are includible in gross income (except to the extent of nondeductible contributions). In addition, a 10-percent additional tax generally applies to distributions from IRAs made before age 59½, unless the distribution is made (1) on account of death or disability, (2) in the form of annuity payments, (3) for medical expenses of the individual and his or her spouse and dependents that exceed 7.5 percent of AGI, or (4) for medical insurance of the individual and his or her spouse and dependents (without regard to the 7.5 percent of AGI floor) if the individual has received unemployment compensation for at least 12 weeks, and the withdrawal is made in the year such unemployment compensation is received or the following year.

House Bill

In general

Individual taxpayers are allowed a deduction of up to $10,000 per student per year for qualified higher education expenses paid by the taxpayer during the taxable year for education furnished to the taxpayer, the taxpayer's spouse, or a dependent. The deduction is allowed regardless of whether the taxpayer otherwise itemizes deductions or claims the standard deduction.[16] A deduction is not allowed under the House bill with respect to an otherwise eligible student if the HOPE credit (as described previously) is claimed with respect to that student for the same taxable year.[17]

The deduction is allowed only to the extent that the taxpayer is required to include in gross income for the taxable year amounts distributed from a "qualified tuition program" or "education investment account." In other words, amounts distributed from a qualified tuition program or education investment account that are includible in the taxpayer's gross income (i.e., earnings) and that are used to pay for qualified higher education expenses during the taxable year will be deductible under the provision (subject to a $10,000 annual limit per student). Amounts distributed from qualified tuition programs or education investment accounts generally will be includible in the gross income of the distributee in the same manner as provided under present-law section 72 (to the extent not excluded under any other section, such as section 117).

Under the House bill, the deduction is limited to $10,000 per student for each taxable year. Aggregate deductions under the bill with respect to any one student may not exceed $40,000 for all taxable years. A deduction

[14] A special rule provides that qualified tuition reductions under section 117(d) may be provided for graduate-level courses in cases of graduate students who are engaged in teaching or research activities for the educational organization (sec. 117(d)(5)).

[15] Specifically, section 529(c)(3)(A) provides that any distribution under a qualified State tuition program shall be includible in the gross income of the distributee in the same manner as provided under present-law section 72 to the extent not excluded from gross income under any other provision of the Code.

[16] The deduction will be claimed after a taxpayer computes adjusted gross income (AGI). The deduction is not a preference item for alternative minimum tax (AMT) purposes.

[17] If a HOPE credit was claimed with respect to a student for an earlier taxable year (i.e., the student's first or second year of post-secondary education), the deduction provided for by the House bill may be claimed with respect to that student for a subsequent taxable year.

is not permitted with respect to a student after he or she completes the equivalent of the first four years of post-secondary education at an eligible educational institution.

Dependent students

If a parent (or other taxpayer) claims a student as a dependent for a taxable year, then only the parent (or other taxpayer)—and not the student—may claim the deduction for qualified higher education expenses for that taxable year. In such a case where the parent claims the proposed deduction for qualified higher education expenses, amounts includible in gross income by reason of a distribution from a qualified tuition program or education investment account will be includible in the parent's (or other taxpayer's) gross income for that taxable year.[18] If a parent (or other taxpayer) claims a student as a dependent for a taxable year, then all qualified higher education expenses paid that year by both the parent (or other taxpayer) and the student are deemed to be paid by the parent (or other taxpayer). If the student is not claimed as a dependent by another taxpayer, then only the student him- or herself may claim the deduction provided for by the bill (or, as an alternative, the HOPE credit described above) on the student's own tax return for the taxable year.[19]

Qualified higher education expenses

Under the House bill, the term "qualified higher education expenses" means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a student at an eligible education institution, as well as room and board expenses (meaning the minimum room and board allowance applicable to the student as determined by the institution in calculating costs of attendance for Federal financial aid programs under sec. 472 of the Higher Education Act of 1965). Qualified higher education expenses do not include expenses for any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree.

Qualified higher education expenses generally include only out-of-pocket expenses. Qualified higher education expenses do not include expenses covered by educational assistance that is not required to be included in the gross income of either the student or the taxpayer claiming the credit. Thus, total qualified higher education expenses are reduced by any scholarship or fellowship grants excludable from gross income under present-law section 117 and any other tax-free educational benefits received by the student during the taxable year. In addition, no deduction is allowed under the bill for expenses paid with amounts that are excludible under section 135. No reduction of qualified tuition expenses is required for a gift, bequest, devise, or inheritance within the meaning of section 102(a). If a student's education expenses for a taxable year are deducted under section 162 or any other section of the Code, then no deduction is available for such expenses under the bill.

Eligible students

To be eligible for the deduction provided for by the bill, a student must be at least a half-time student in a degree or certificate program at an eligible educational institution. For this purpose, a student is at least a half-time student if, during at least one academic period which begins during the taxable year, he or she is carrying at least one-half the normal full-time work load for the course of study the student is pursuing. A student will no longer be an eligible student once he or she has completed the equivalent of the first four years of post-secondary education at an eligible educational institution. An eligible student may not have been convicted of a Federal or State felony consisting of the possession or distribution of a controlled substance.

Eligible educational institution

Eligible educational institutions are defined by reference to section 481 of the Higher Education Act of 1965. Such institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, or another recognized post-secondary credential. Certain proprietary institutions and post-secondary vocational institutions also are eligible educational institutions. The institution must be eligible to participate in Department of Education student aid programs.

Qualified tuition programs and education investment accounts

Under the House bill, a "qualified tuition program" means any qualified State tuition program, generally as defined under present-law section 529, as well as any program established and maintained by one or more eligible educational institutions (which may be private institutions that are not State-owned) that satisfy the requirements under section 529 (other than present-law, State ownership rule). An "education investment account" means a trust which is created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the account holder and which satisfies certain other requirements.

Contributions to qualified tuition programs or education investment accounts may be made only in cash.[20] Such contributions may not be made after the designated beneficiary or account holder reaches age 18. Any balance remaining in a qualified tuition program or education investment account must be distributed within 30 days after the earlier of the date that the beneficiary or account holder becomes 30 years old (or dies) or the date that the beneficiary or account holder completes the equivalent of the first four years of post-secondary education at one or more eligible institutions. Transfers or rollovers of credits or account balances from one account benefiting one beneficiary to another account benefiting another beneficiary will not be considered a distribution from a qualified tuition program or education investment account (nor will a change in the designated beneficiary or account holder) if the new beneficiary is a member of the family of the old beneficiary.[21] In the case of an education investment account or qualified tuition program maintained by one or more private educational institutions, contributions to an account established on behalf of a particular beneficiary (or to a program on behalf of a named beneficiary) may not exceed $5,000 per year, with an aggregate limit of $50,000 for contributions on behalf of that beneficiary for all years. The $50,000 aggregate contribution limit per beneficiary is applied by taking into account all amounts contributed to all education investment accounts for the beneficiary for the current taxable year and all prior taxable years, as well as all amounts contributed to all qualified tuition programs on behalf of such beneficiary for the current taxable year and all prior taxable years.[22]

Qualified tuition programs and education investment accounts (as separate legal entities) will be exempt from Federal income tax, other than taxes imposed under the

[18] Such an income inclusion is required on the parent's return only if the parent both claims the student as a dependent and elects the deduction provided for by the bill. In contrast, if the parent claims the student as a dependent but elects the HOPE credit, then, if there is any distribution from a qualified tuition program or education investment account during that year, the earnings portion of such distributions will be includible in the student's (or other distributee's) gross income, as provided for by present-law section 529(c)(3).

[19] For example, assume an education investment account (or qualified tuition program account) has a balance of $20,000, of which $12,000 represents contributions of principal and $8,000 represents accumulated earnings. If the student has expenses of $10,000 consisting of $7,000 tuition and related expenses and $3,000 in room and board, a distribution of $10,000 from such account to pay these expenses will, under present-law section 72, be deemed to consist of the pro-rata share of principal and accumulated earnings in the account—in this case, $6,000 in principal and $4,000 in accumulated earnings. If the parent claims the student as a dependent and elects the proposed deduction for qualified higher education expenses, the parent will include the $4,000 of accumulated earnings in the parent's gross income and then is allowed to claim an offsetting deduction for the same $4,000, thus resulting in no tax liability for the $4,000 in earnings. Under no circumstances will the principal portion of any distribution from the account be includible in gross income, nor will a deduction be allowed under the bill for education expenses paid with such principal. Alternatively, the parent may elect to claim the HOPE credit (assuming that the AGI phaseout does not apply and the student is claimed as a dependent and has not yet completed the first two years of post-secondary education), and the $4,000 in accumulated earnings will be includible in the distributee's (i.e., the student's) gross income and an offsetting deduction will not be available. Additionally, the qualified expenses for purposes of the HOPE credit will not include room and board expenses, so only $7,000 in expenses will qualify for the HOPE credit. The 50-percent HOPE credit rate will then be applied to this amount, which indicates a credit amount of $3,500, but the credit that could be claimed will be limited to the statutory maximum of $1,500 per student. As a final alternative, if the parent does not claim the student as a dependent, then the student may elect to claim either the HOPE credit or the deduction as described above.

[20] The House bill allows taxpayers to redeem U.S. Savings Bonds and be eligible for the exclusion under section 135 (as if the proceeds were used to pay qualified higher education expenses) if the proceeds from the redemption are contributed to a qualified tuition program or education investment account on behalf of the taxpayer, the taxpayer's spouse, or a dependent. In such a case, the beneficiary's or account holder's basis in the bond proceeds contributed on his or her behalf to the qualified tuition program or education investment will be the contributor's basis in the bonds (i.e., the original purchase price paid by the contributor for such bonds).

The House bill also provides that funds from an education investment account are deemed to be distributed to pay qualified higher education expenses if the funds are used to purchase tuition credits from, or to make contributions to, a qualified tuition program for the benefit of the account holder.

[21] For this purpose, a "member of the family" means persons described in paragraphs (1) through (8) of section 152(a), and any spouse of such persons.

[22] To the extent contributions exceed the $50,000 aggregate limit, an excise tax penalty may be imposed on the contributor under present-law section 4973, unless the excess contributions (and any earnings thereon) are returned to the contributor before the due date for the return for the taxable year during which the excess contribution is made.

State-sponsored qualified tuition programs will continue to be governed by the rule contained in present-law section 529(b)(7) that such programs provide adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary. State-sponsored qualified tuition programs will not be subject to a specific dollar cap under section 529 on annual (or aggregate) contributions that can be made under the program on behalf of a named beneficiary.

present-law unrelated business income tax (UBIT) rules.[23]

Under the House bill, an additional tax of 10 percent will be imposed on distributions from qualified tuition programs or education investment account to the extent the distribution exceeds qualified higher education expenses paid by the taxpayer (and is not made on account of the death, disability, or scholarship received by the designated beneficiary or account holder).

Estate and gift tax treatment

For Federal estate and gift tax purposes, any contribution to a qualified tuition program or education investment account will be treated as a completed gift of a present interest from the contributor to the beneficiary at the time of the contribution. Thus, annual contributions—which cannot exceed $5,000 per year in the case of an education investment account or qualified tuition program maintained by one or more private education institutions—will be eligible for the present-law gift tax exclusion provided by Code section 2503(b) and also will be excludable for purposes of the generation-skipping transfer tax (provided that the contribution, when combined with any other contributions made by the donor to that same beneficiary, does not exceed the annual $10,000 gift-tax exclusion limit). Similar gift tax and generation-skipping tax treatment will apply to contributions of up to $10,000 per donor per beneficiary made to a State-sponsored qualified tuition program. Contributions to a qualified tuition program (either a State-sponsored program or one maintained by a private education institution) or to an education investment account will not, however, be eligible for the educational expense exclusion provided by Code section 2503(e). In no event will a distribution from a qualified tuition program or education investment account be treated as a taxable gift.

Transfers or rollovers of credits or account balances from an account benefiting one beneficiary to an account benefiting another beneficiary (or a change in the designated beneficiary) will not be treated as a taxable gift to the extent that the new beneficiary is: (1) a member of the family of the old beneficiary (as defined above), and (2) assigned to the same generation as the old beneficiary (within the meaning of Code section 2651). In all other cases, a transfer from one beneficiary to another beneficiary (or a change in the designated beneficiary) will be treated as a taxable gift from the old beneficiary to the new beneficiary to the extent it exceeds the $10,000 present-law gift tax exclusion. Thus, a transfer of an account from a brother to his sister will not be treated as a taxable gift, whereas a transfer from a father to his son will be treated as a taxable gift (to the extent it exceeds the $10,000 present-law gift tax exclusion).

For estate tax purposes, the value of any interest in a qualified tuition program or education investment account will be includible in the estate of the designated beneficiary. In no event will such interests be includible in the estate of the contributor.

Effective date

The deduction for qualified higher education expenses, and the expansion of the definition of qualified higher education expenses under section 529 to cover room and board expenses, are effective for expenses paid after December 31, 1997, for education furnished in academic periods beginning after such date. The provisions governing the tax-exempt status of qualified tuition plans and education investment accounts generally are effective after December 31, 1997. The gift tax provisions are effective for contributions (or transfers) made after the date of enactment, and the estate tax provisions are effective for decedents dying after June 8, 1997.

Senate Amendment

In general

Under the Senate amendment, amounts distributed from qualified tuition programs and certain education investment accounts (referred to as "education IRAs") are excludable from gross income to the extent that the amounts distributed do not exceed qualified higher education expenses of an eligible student incurred during the year the distribution is made.[24] In addition, distributions from education IRAs (but not qualified tuition programs) in taxable years beginning in 2001 or later will be excludable from gross income to the extent that the amounts distributed do not exceed certain qualified elementary and secondary education expenses. An exclusion is not allowed under the bill with respect to an otherwise eligible student if the HOPE credit (as described previously) is claimed with respect to that student for the taxable year the distribution is made.[25]

Distributions from a qualified tuition program or education IRA generally will be deemed to consist of distributions of principal (which, under all circumstances, are excludable from gross income) and earnings (which may be excludable from gross income under the Senate amendment) by applying the ratio that the aggregate amount of contributions to the program or account for the beneficiary bears to the total balance (or value) of the program or account for the beneficiary at the time the distribution is made.[26] If the qualified higher education expenses of the student for the year are at least equal to the total amount of the distribution (i.e., principal and earnings combined) from a qualified tuition program or education IRA, then the earnings in their entirety will be excludable from gross income. If, on the other hand, the qualified higher education expenses of the student for the year are less than the total amount of the distribution (i.e., principal and earnings combined) from a qualified tuition program or education IRA, then the qualified higher education expenses will be deemed to be paid from a pro-rata share of both the principal and earnings components of the distribution. Thus, in such a case, only a portion of the earnings will be excludable under the bill (i.e., a portion of the earnings based on the ratio that the qualified higher education expenses bear to the total amount of the distribution) and the remaining portion of the earnings will be includible in the gross income of the distributee.[27]

Eligible students

To be an eligible student, an individual must be at least a half-time student in a degree or certificate undergraduate or graduate program at an eligible educational institution. For this purpose, a student is at least a half-time student if he or she is carrying at least one-half the normal full-time work load for the course of study the student is pursuing. An eligible student may not have been convicted of a Federal or State felony consisting of the possession or distribution of a controlled substance.

Eligible educational institution

Eligible educational institutions are defined by reference to section 481 of the Higher Education Act of 1965. Such institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, a graduate-level or professional degree, or another recognized post-secondary credential. Certain proprietary institutions and post-secondary vocational institutions also are eligible institutions. The institution must be eligible to participate in Department of Education student aid programs.

Qualified education expenses

"Qualified higher education expenses" include tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a student at an eligible education institution, as well as room and board expenses (meaning the minimum room and board allowance applicable to the student as determined by the institution in calculating costs of attendance for Federal financial aid programs under sec. 472 of the Higher Education Act of 1965) for any period during which the student is at least a half-time student. Qualified higher education expenses include expenses with respect to undergraduate or graduate-level courses.

In addition, in taxable years beginning after December 31, 2000, the exclusion is available to the extent that distributions from an education IRA (but not a qualified tuition program) do not exceed "qualified elementary and secondary education expenses," meaning tuition, fees, tutoring, special needs services, books, supplies, equipment, transportation, and supplementary expenses (including homeschooling expenses if the requirements of State or local law are satisfied with respect to such homeschooling) required for the enrollment

[23] An interest in a qualified tuition program is not treated as debt for purposes of the debt-financed property UBIT rules of section 514.

[24] The exclusion will not be a preference item for alternative minimum tax (AMT) purposes.

[25] If a HOPE credit was claimed with respect to a student for an earlier taxable year (i.e., the student's first or second year of post-secondary education), the exclusion provided for by the bill may be claimed with respect to that student for a subsequent taxable year.

[26] Specifically, the Senate amendment provides as a general rule that distributions from a qualified tuition program or education IRA are includible in gross income to the extent allocable to income on the program or account and are not includible in gross income to the extent allocable to the investment (i.e., contributions) in the program or account. However, the Senate amendment further provides that, if the HOPE credit is not claimed with respect to the student for the taxable year, then a distribution from a qualified tuition program or education IRA will not be includible in gross income to the extent that the distribution does not exceed the qualified higher expenses of the student for the year. If a distribution consists of providing in-kind education benefits to the student which, if paid for by the student, would constitute payment of qualified higher education expenses, then no portion of such distribution will be includible in gross income.

At the time that a final distribution is made from a qualified tuition program or education IRA, the distribution will be deemed to include the full amount of any basis remaining with respect to the program or account.

[27] For example, if a $1,000 distribution from a qualified tuition program or education IRA consists of $600 of principal (i.e., contributions) and $400 of earnings, and if the student incurs $750 of qualified higher education expenses during the year, then $300 of the earnings will be excludable from gross income under the bill (i.e., an exclusion will be provided for the pro-rata portion of the earnings, based on the ratio that the $750 of qualified expenses bears to the $1,000 total distribution) and the remaining $100 of earnings will be includible in the distributee's gross income.

or attendance of a depend ent of the taxpayer at a public, private, or sectarian elementary or secondary school (through grade 12).

Qualified higher education expenses (and qualified elementary and secondary education expenses) generally include only out-of-pocket expenses. Such qualified education expenses do not include expenses covered by educational assistance that is not required to be included in the gross income of either the student or the taxpayer claiming the credit. Thus, total qualified education expenses are reduced by scholarship or fellowship grants excludable from gross income under present-law section 117, as well as any other tax-free educational benefits, such as employer-provided educational assistance that is excludable from the employee's gross income under section 127. In addition, qualified education expenses do not include expenses paid with amounts that are excludible under section 135. No reduction of qualified education expenses is required for a gift, bequest, devise, or inheritance within the meaning of section 102(a). If education expenses for a taxable year are deducted under section 162 or any other section of the Code, then such expenses are not qualified education expenses under the Senate amendment.

Qualified tuition programs and education IRAs

Under the Senate amendment, a "qualified tuition program" means any qualified State-sponsored tuition program, defined under section 529 (as modified by the bill), as well as any program established and maintained by one or more eligible educational institutions (which could be private institutions) that satisfy the requirements under section 529 (other than present-law State ownership rule). An "education IRA" means a trust (or custodial account) which is created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses (and qualified elementary and secondary education expenses) of the account holder and which satisfies certain other requirements.

Contributions to qualified tuition programs or education IRAs may be made only in cash.[28] Such contributions may not be made after the designated beneficiary or account holder reaches age 18. Annual contributions to a qualified tuition program not maintained by a State (i.e., a qualified tuition program operated by one or more private schools) or to an education IRA are limited to $2,000 per beneficiary or account holder, plus the amount of any child credit (as provided for by the Senate amendment) that is allowed for the taxable year with respect to the beneficiary or account holder.[29] Thus, in the case of any child with respect to whom the maximum $500 child credit is allowed for the taxable year, the contribution limit with respect to such child for the year will be $2,500.[30] Trustees of qualified tuition programs not maintained by a State and trustees of education IRAs are prohibited from accepting contributions to any account on behalf of a beneficiary in excess of $2,500 for any year (except in cases involving certain tax-free rollovers, as described below).[31]

If any balance remaining in an education IRA is not distributed by the time that the account holder becomes 30 years old, then the account will be deemed to be an IRA Plus account (as provided for by the bill and described below) established on behalf of the same account holder.[32] The Senate amendment allows (but does not require) tax-free transfers or rollovers of account balances from a qualified tuition program to an IRA Plus account when the beneficiary becomes 30 years old, provided that the funds from the qualified tuition program account are deposited in the IRA Plus account within 60 days after being distributed from the qualified tuition program.[33] In addition, the Senate amendment allows tax-free transfers or rollovers of credits or account balances from one qualified tuition program or education IRA account benefiting one beneficiary to another program or account benefiting another beneficiary (as well as redesignations of the named beneficiary), provided that the new beneficiary is a member of the family of the old beneficiary.[34]

Qualified tuition programs and education IRAs (as separate legal entities) will be exempt from Federal income tax, other than taxes imposed under the present-law unrelated business income tax (UBIT) rules.[35]

Under the Senate amendment, an additional 10-percent penalty tax will be imposed on any distribution from a qualified tuition program not maintained by a State or from an education IRA to the extent that the distribution exceeds qualified higher education expenses (or, in the case of an education IRA, qualified elementary and secondary education expenses) incurred by the taxpayer (and is not made on account of the death, disability, or scholarship received by the designated beneficiary or account holder).[36]

Estate and gift tax treatment

Contributions to qualified tuition programs and education IRAs will not be considered taxable gifts for Federal gift tax purposes, and in no event will distributions from a qualified tuition programs or education IRAs be treated as taxable gifts.[37] For estate tax purposes, the value of any interest in a qualified tuition program or education IRA will be includible in the estate of the designated beneficiary. In no event will such an interest be includible in the estate of the contributor.

Effective date

The provision applies to distributions made, and qualified higher education expenses paid, after December 31, 1997, for education furnished in academic periods beginning after such date. In addition, in the case of education IRAs, the provision applies to qualified elementary and secondary expenses paid in taxable years beginning after December 31, 2000. The provisions governing contributions to, and the tax-exempt status of, qualified tuition plans and education IRAs generally apply after December 31, 1997. The gift tax provisions are effective for contributions (or transfers) made after the date of enactment, and the estate tax provisions are effective for decedents dying after June 8, 1997.

Conference Agreement

Qualified State tuition programs

The conference agreement makes the following modifications to present-law section 529, which governs the tax treatment of qualified State tuition programs.

Room and board expenses.—The conference agreement expands the definition of "qualified higher education expenses" under section 529(e)(3) to include room and board expenses (meaning the minimum room and board allowance applicable to the student as determined by the institution in calculating costs of attendance for Federal financial aid programs under sec. 472 of the Higher Education Act of 1965) for any period during which the student is at least a half-time student.

Eligible educational institution.—The conference agreement expands the definition of "eligible educational institution" for purposes of section 529 by defining such term by reference to section 481 of the Higher Education Act of 1965. Such institutions generally are accredited post-secondary educational institutions offering credit toward a bachelor's degree, an associate's degree, a

[28] The Senate amendment allows taxpayers to redeem U.S. Savings Bonds and be eligible for the exclusion under section 135 (as if the proceeds were used to pay qualified higher education expenses) if the proceeds from the redemption are contributed to a qualified tuition program or education IRA on behalf of the taxpayer, the taxpayer's spouse, or a dependent. In such a case, the beneficiary's or account holder's basis in the bond proceeds contributed on his or her behalf to the qualified tuition program or education IRA will be the contributor's basis in the bonds (i.e., the original purchase price paid by the contributor for such bonds).

The Senate amendment also provides that funds from an education IRA are deemed to be distributed to pay qualified higher education expenses if the funds are used to make contributions to (or purchase tuition credits from) a qualified tuition program for the benefit of the account holder.

[29] State-sponsored qualified tuition programs will continue to be governed by the rule contained in present-law section 529(b)(7) that such programs provide adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary. State-sponsored qualified tuition programs will not be subject to a specific dollar limit on annual contributions that can be made under the program on behalf of a designated beneficiary.

[30] The maximum contribution limit for the year is increased even if the child is younger than age 13—that is, even in cases where the parent is not required (under the provision described previously) but may elect to deposit an amount equal to the child credit into a qualified tuition program or education IRA on behalf of the child.

[31] The annual $2,000 to $2,500 contribution limit is applied by taking into account all contributions made to any qualified tuition program not maintained by a State and any education IRA on behalf of a designated individual (but not any contributions made to State-sponsored qualified tuition programs). To the extent contributions exceed the annual contribution limit, an excise tax penalty may be imposed on the contributor under present-law section 4973, unless the excess contributions (and any earnings thereon) are returned to the contributor before the due date for the return for the taxable year during which the excess contribution is made.

[32] In such cases, the 5-year holding period applicable to IRA Plus accounts begins with the taxable year in which the education IRA is deemed to be an IRA Plus account.

[33] In the event of such a rollover, the 5-year holding period applicable to IRA Plus accounts begins with the taxable year in which the rollover occurs.

[34] For this purpose, a "member of the family" means persons described in paragraphs (1) through (8) of section 152(a), and any spouse of such persons.

[35] An interest in a qualified tuition program is not treated as debt for purposes of the debt-financed property UBIT rules of section 514.

[36] Distributions from State-sponsored qualified tuition programs will *not* be subject to this 10-percent additional penalty tax, but will continue to be governed by the present-law section 529(b)(3) rule that the State-sponsored programs themselves are required to impose a "more than de minimis penalty" on any refund of earnings not used for qualified higher education expenses (other than in cases where the refund is made on account of death or disability of, or receipt of a scholarship by, the beneficiary).

[37] Contributions to only one State-sponsored qualified tuition program per beneficiary will be excluded from the gift tax by reason of the bill (although a contributor may also make contributions excluded from the gift tax on behalf of *other* beneficiaries to the same State-sponsored program or any other State-sponsored program).

graduate-level or professional degree, or another recognized post-secondary credential. Certain proprietary institutions and post-secondary vocational institutions also are eligible institutions. The institution must be eligible to participate in Department of Education student aid programs.

Definition of "member of family".—The conference agreement expands the definition of the term "member of the family" for purposes of allowing tax-free transfers or rollovers of credits or account balances in qualified State tuition programs (and redesignations of named beneficiaries), so that the term means persons described in paragraphs (1) through (8) of section 152(a)—e.g., sons, daughters, brothers, sisters, nephews and nieces, certain in-laws, etc.—and any spouse of such persons.[38]

Prohibition against investment direction.—The conference clarifies the present-law rule contained in section 529(b)(5) that qualified State tuition programs may not allow contributors or designated beneficiaries to direct the investment of contributions to the program (or earnings thereon) by specifically providing that contributors and beneficiaries may not "directly or indirectly" direct the investment of contributions to the program (or earnings thereon).

Interaction with HOPE credit and Lifetime Learning credit.—Under the conference agreement (as under present law), no amount will be includible in the gross income of a contributor to, or beneficiary of, a qualified State tuition program with respect to any contribution to or earnings on such a program until a distribution is made from the program, at which time the earnings portion of the distribution (whether made in cash or in-kind) will be includible in the gross income of the distributee. However, to the extent that a distribution from a qualified State tuition program is used to pay for qualified tuition and fees, the distributee (or another taxpayer claiming the distributee as a dependent) will be able to claim the HOPE credit or Lifetime Learning credit provided for by the conference agreement with respect to such tuition and fees (assuming that the other requirements for claiming the HOPE credit or Lifetime Learning credit are satisfied and the modified AGI phaseout for those credits does not apply).[39]

Effective date.—The modifications to section 529 generally are effective after December 31, 1997. The expansion of the term "qualified higher education expenses" to cover certain room and board expenses is effective as if included in the Small Business Job Protection Act of 1996 (enacted on August 20, 1996).

Education IRAs

The conference agreement generally follows the Senate amendment with respect to the treatment of education IRAs, with the following modifications.

Contribution limit.—Under the conference agreement, annual contributions to education IRAs are limited to $500 per beneficiary. This $500 annual contribution limit for education IRAs is phased out ratably for contributors with modified AGI between $95,000 and $110,000 ($150,000 and $160,000 for joint returns). Individuals with modified AGI above the phase-out range are not allowed to make contributions to an education IRA established on behalf of any other individual.[40]

Qualified expenses.—Education IRAs must be created exclusively for the purpose of paying qualified higher education expenses, meaning post-secondary tuition, fees, books, supplies, equipment, and certain room and board expenses, and *not* including elementary or secondary school expenses.

Expansion of exclusion for part-time students.—The conference agreement provides that distributions from an education IRA are excludable from gross income to the extent that the distribution does not exceed qualified higher education expenses incurred by the beneficiary during the year the distribution is made, regardless of whether the beneficiary is enrolled at an eligible educational institution on a full-time, half-time, or less than half-time basis. However, room and board expenses (meaning the minimum room and board allowance applicable to the student as determined by the institution in calculating costs of attendance for Federal financial aid programs under sec. 472 of the Higher Education Act of 1965) are qualified higher education expenses only if the student incurring such expenses is enrolled at an eligible educational institution on at least a half-time basis.

Termination of education IRAs.—Under the conference agreement, any balance remaining in an education IRA at the time a beneficiary becomes 30 years old must be distributed, and the earnings portion of such a distribution will be includible in gross income of the beneficiary and subject to an additional 10-percent penalty tax because the distribution was not for educational purposes. However, as under the Senate amendment, prior to the beneficiary reaching age 30, the conference agreement allows tax-free (and penalty-free) transfers and rollovers of account balances from one education IRA benefiting one beneficiary to another education IRA benefiting a different beneficiary (as well as redesignations of the named beneficiary), provided that the new beneficiary is a member of the family of the old beneficiary.[41]

Interaction with qualified State tuition programs.—The conference agreement provides that no contribution may be made by any person to an education IRA established on behalf of a beneficiary during any taxable year in which any contributions are made by anyone to a qualified State tuition program (defined under sec. 529) on behalf of the same beneficiary.

Interaction with HOPE credit and Lifetime Learning credit.—The conference agreement provides that, in any taxable year in which an exclusion from gross income is claimed with respect to a distribution from an education IRA on behalf of a beneficiary, neither a HOPE credit nor a Lifetime Learning credit may be claimed with respect to educational expenses incurred during that year on behalf of the same beneficiary. The HOPE credit or Lifetime Learning credit will be available in other taxable years with respect to that beneficiary (provided that no exclusion is claimed in such other taxable years for distributions from an education IRA on behalf of the beneficiary and provided that the requirements of the HOPE credit or Lifetime Learning credit are satisfied in such other taxable years).

Effective date.—The provisions governing education IRAs apply to taxable years beginning after December 31, 1997.

Estate and gift tax treatment

The conference agreement follows the House bill with respect to the estate and gift tax treatment of contributions to qualified State tuition programs and education IRAs, except that a special rule is provided in the case of contributions that exceed the annual gift tax exclusion limit (presently $10,000 in the case of an individual or $20,000 in the case of a married couple that splits their gifts, but this amount is scheduled to increase under other provisions of the conference agreement). For such contributions, the contributor may elect to have the contribution treated as if made ratably over a five-year period.

Thus, for Federal estate and gift tax purposes, any contribution to a qualified tuition program or education IRA will be treated as a completed gift of a present interest from the contributor to the beneficiary at the time of the contribution. Annual contributions are eligible for the present-law gift tax exclusion provided by Code section 2503(b) and also are excludable for purposes of the generation-skipping transfer tax (provided that the contribution, when combined with any other contributions made by the donor to that same beneficiary, does not exceed the annual gift-tax exclusion limit of $10,000, or $20,000 in the case of a married couple).

If a contribution in excess of $10,000 ($20,000 in the case of a married couple) is made in one year—which, under the conference agreement, can occur only in the case of a qualified State tuition program and not an education IRA (which cannot receive contributions in excess of $500 per year)—the contributor may elect to have the contribution treated as if made ratably over five years beginning in the year the contribution is made. For example, a $30,000 contribution to a qualified State tuition program would be treated as five annual contributions of $6,000, and the donor could therefore make up to $4,000 in other transfers to the beneficiary each year without payment of gift tax. Under this rule, a donor may contribute up to $50,000 every five years ($100,000 in the case of a married couple) with no gift tax consequences, assuming no other gifts are made from the donor to the beneficiary in the five-year period. A gift tax return must be filed with respect to any contribution in excess of the annual gift-tax exclusion limit, and the election for five-year averaging must be made on the contributor's gift tax return.

If a donor making an over-$10,000 contribution dies during the five-year averaging period, the portion of the contribution that has not been allocated to the years prior to death is includible in the donor's estate. For example, if a donor makes a $40,000 contribution, elects to treat the transfer as being made over a five-year period, and dies the following year, $8,000 would be allocated to the year of contribution, another $8,000

[38] The conference agreement also provides a special rule that, in the case of any contract issued prior to August 20, 1996 (i.e., the date of enactment of section 529), section 529(c)(3)(C) will be applied without regard to the requirement that a distribution be transferred to a member of the family or the requirement that a change in beneficiaries may be made only to a member of the family.

[39] In cases where in-kind benefits are provided to a beneficiary under a qualified State prepaid tuition program, present-law section 529(c)(3)(B) provides that the provision of such benefits is treated as a distribution to the beneficiary. Thus, to the extent such in-kind benefits, if paid for by the beneficiary, would constitute payment of qualified tuition and fees for purposes of the HOPE credit or Lifetime Learning credit, the beneficiary (or another taxpayer claiming the beneficiary as a dependent) may be able to claim the HOPE credit or Lifetime Learning credit with respect to payments that are deemed to be made by the beneficiary with respect to the in-kind benefit.

[40] The conference agreement clarifies that no amount is includible in the gross income of a beneficiary of an education IRA with respect to any contribution to or earnings on such account.

[41] For this purpose, a "member of the family" means—as under the conference agreement modifications to section 529—persons described in paragraphs (1) through (8) of section 152(a), and any spouse of such persons.

would be allocated to the year of death, and the remaining $24,000 would be includible in the estate.

If a beneficiary's interest is rolled over to another beneficiary, there are no transfer tax consequences if the two beneficiaries are in the same generation. If a beneficiary's interest is rolled over to a beneficiary in a lower generation (e.g., parent to child or uncle to niece), the five-year averaging rule described above may be applied to exempt up to $50,000 of the transfer from gift tax.

The Federal estate and gift tax treatment of educational accounts has no effect on the actual rights and obligations of the parties pursuant to the terms of the contracts under State law.

Effective date.—The gift tax provisions are effective for contributions (or transfers) made after the date of enactment, and the estate tax provisions are effective for decedents dying after June 8, 1997.

3. Phase out qualified tuition reduction exclusion (sec. 202(c) of the House bill)

Present Law

Under present law, a "qualified tuition reduction" is excluded from gross income (sec. 117(d)). A "qualified tuition reduction" means any reduction in tuition provided to an employee of an educational organization for the education of the employee,[42] the employee's spouse, and dependent children at that organization or another such organization. For this purpose, qualifying educational organizations are those that normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where the educational activities are regularly carried out. In general, the qualified tuition reduction is limited to education below the graduate level; however, this limitation does not apply to graduate students engaged in teaching or research activities. The exclusion does not apply to any amount that represents payment for teaching, research, or other services rendered by the student in exchange for receiving the tuition reduction.

House Bill

The House bill phases out the special rule contained in section 117(d) that excludes qualified tuition reductions from gross income. For 1998, 80 percent of a qualified tuition reduction is excludable from gross income. For 1999, the excludable percentage is 60 percent; for 2000, the excludable percentage is 40 percent; and for 2001, the excludable percentage is 20 percent. No exclusion for a qualified tuition reduction is permitted after 2001.

Effective date.—The provision is effective for qualified tuition reductions with respect to courses of instruction beginning after December 31, 1997 (subject to the phaseout described above).

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

4. Deduction for student loan interest (sec. 202 of the Senate amendment)

Present Law

The Tax Reform Act of 1986 repealed the deduction for personal interest. Student loan interest generally is treated as personal interest and thus is not allowable as an itemized deduction from income.

Taxpayers generally may not deduct education and training expenses. However, a deduction for education expenses generally is allowed under section 162 if the education or training (1) maintains or improves a skill required in a trade or business currently engaged in by the taxpayer, or (2) meets the express requirements of the taxpayer's employer, or requirements of applicable law or regulations, imposed as a condition of continued employment (Treas. Reg. sec. 1.162-5). Education expenses are not deductible if they relate to certain minimum educational requirements or to education or training that enables a taxpayer to begin working in a new trade or business. In the case of an employee, education expenses (if not reimbursed by the employer) may be claimed as an itemized deduction only if such expenses relate to the employee's current job and only to the extent that the expenses, along with other miscellaneous deductions, exceed 2 percent of the taxpayer's adjusted gross income (AGI).

House Bill

No provision.

Senate Amendment

Under the Senate amendment, certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for such interest expenses, up to a maximum deduction of $2,500 per year. The deduction is allowed only with respect to interest paid on a qualified education loan during the first 60 months in which interest payments are required. Months during which the qualified education loan is in deferral or forbearance do not count against the 60-month period. No deduction is allowed to an individual if that individual is claimed as a dependent on another taxpayer's return for the taxable year. Beginning in 1999, the maximum deduction of $2,500 is indexed for inflation, rounded down to the closest multiple of $50.

A qualified education loan generally is defined as any indebtedness incurred to pay for the qualified higher education expenses of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred in attending (1) post-secondary educational institutions and certain vocational schools defined by reference to section 481 of the Higher Education Act of 1965, or (2) institutions conducting internship or residency programs leading to a degree or certificate from an institution of higher education, a hospital, or a health care facility conducting postgraduate training. Qualified higher education expenses are defined as the student's cost of attendance as defined in section 472 of the Higher Education Act of 1965 (generally, tuition, fees, room and board, and related expenses), reduced by (1) any amount excluded from gross income under section 135 (i.e., United States savings bonds used to pay higher education tuition and fees), (2) any amount distributed from a qualified tuition program or education investment account and excluded from gross income (under the provision described above), and (3) the amount of any scholarship or fellowship grants excludable from gross income under present-law section 117, as well as any other tax-free educational benefits, such as employer-provided educational assistance that is excludable from the employee's gross income under section 127. Such expenses must be paid or incurred within a reasonable period before or after the indebtedness is incurred, and must be attributable to a period when the student is at least a half-time student.

The deduction is phased out ratably for taxpayers with modified adjusted gross income (AGI) between $40,000 and $50,000 ($80,000 and $100,000 for joint returns). Modified AGI includes amounts otherwise excluded with respect to income earned abroad (or income from Puerto Rico or U.S. possessions), and is calculated after application of section 86 (income inclusion of certain Social Security benefits), section 219 (deductible IRA contributions), and section 469 (limitation on passive activity losses and credits).[43] Beginning in 2001, the income phase-out ranges are indexed for inflation, rounded down to the closest multiple of $5,000.

Any person in a trade or business or any governmental agency that receives $600 or more in qualified education loan interest from an individual during a calendar year must provide an information report on such interest to the IRS and to the payor.

Effective date.—The provision is effective for payments of interest due after December 31, 1996, on any qualified education loan. Thus, in the case of already existing qualified education loans, interest payments qualify for the deduction to the extent that the 60-month period has not expired. For purposes of counting the 60 months, any qualified education loan and all refinancing (that is treated as a qualified education loan) of such loan are treated as a single loan.

Conference Agreement

The conference agreement follows the Senate amendment, except that the maximum deduction is phased in over 4 years, with a $1,000 maximum deduction in 1998, $1,500 in 1999, $2,000 in 2000, and $2,500 in 2001. The maximum deduction amount is not indexed for inflation. In addition, the deduction is phased out ratably for individual taxpayers with modified AGI of $40,000-$55,000 ($60,000-$75,000 for joint returns); such income ranges will be indexed for inflation occurring after the year 2002, rounded down to the closest multiple of $5,000. Thus, the first taxable year for which the inflation adjustment could be made will be 2003. For purposes of the deduction, modified AGI includes amounts excludable from gross income under section 137 (qualified adoption expenses).[44]

Qualified higher education expenses are defined as the student's cost of attendance as defined in section 472 of the Higher Education Act of 1965 (generally, tuition, fees, room and board, and related expenses), reduced by (1) any amount excluded from gross income under section 135, (2) any amount distributed from an education IRA and excluded from gross income, and (3) the amount of any scholarship or fellowship grants excludable from gross income under present-law section 117, as well as any other tax-free educational benefits, such as employer-provided educational assistance that is excludable from the employee's gross income under section 127.

The conferees expect that the Secretary of Treasury will issue regulations setting forth reporting procedures that will facilitate the administration of this provision. Specifically, such regulations should require lenders separately to report to borrowers the amount of interest that constitutes deductible student loan interest (i.e., interest on a

[42] Eligible beneficiaries also include retired and disabled employees, surviving spouses of retired or disabled employees, and children of deceased employees if the children are under the age of 25.

[43] For purposes of sections 86, 135, 219, and 469, adjusted gross income is determined without regard to the deduction for student loan interest.

[44] For purposes of section 137, adjusted gross income is determined without regard to the deduction for student loan interest.

qualified education loan during the first 60 months in which interest payments are required). In this regard, the regulations should include a method for borrower certification to a lender that the loan proceeds are being used to pay for qualified higher education expenses.

The provision is effective for interest payments due and paid after December 31, 1997, on any qualified education loan.

5. Penalty-free withdrawals from IRAs for higher education expenses (sec. 203 of the House bill and Senate amendment)

Present Law

Under present law, amounts held in an individual retirement arrangement ("IRA") are includible in income when withdrawn (except to the extent the withdrawal is a return of nondeductible contributions). Amounts withdrawn prior to attainment of age 59½ are subject to an additional 10-percent early withdrawal tax, unless the withdrawal is due to death or disability, is made in the form of certain periodic payments, is used to pay medical expenses in excess of 7.5 percent of AGI, or is used to purchase health insurance of an unemployed individual.

House Bill

The House bill provides that the 10-percent early withdrawal tax does not apply to distributions from IRAs if the taxpayer used the amounts to pay qualified higher education expenses (including those related to graduate level courses) of the taxpayer, the taxpayer's spouse, or any child, or grandchild of the individual or the individual's spouse.

The penalty-free withdrawal is available for "qualified higher education expenses," meaning tuition, fees, books, supplies, equipment required for enrollment or attendance, and room and board at a post-secondary educational institution (defined by reference to sec 481 of the Higher Education Act of 1965). Qualified higher education expenses are reduced by any amount excludable from gross income under section 135 relating to the redemption of a qualified U.S. savings bond and certain scholarships and veterans benefits.

Effective date.—The provision is effective for distributions made after December 31, 1997, which respect to expenses paid after such date for education furnished in academic periods beginning after such date.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

6. Tax credit for expenses for education which supplements elementary and secondary education (sec. 204 of the House bill)

Present Law

In general, taxpayers may not deduct education and training expenses that relate to basic elementary or secondary education. (Treas. reg. sec. 1.162-5). Students who are employed may be eligible for the special exclusion for employer-provided educational assistance under section 127. In addition, qualified scholarships received by such students are excluded from gross income under section 117, and such students may be eligible for the special rules for student loan forgiveness under section 108(f). No tax credit is available under present law for expenses incurred with respect to elementary or secondary education.

House Bill

The House bill provides a nonrefundable tax credit equal to the lesser of (1) $150 or (2) 50 percent of qualified educational assistance expenses paid with respect to an eligible student.

Eligible students are children under age 18 enrolled full-time in elementary or secondary school. Qualified educational assistance expenses are costs of supplementary education (e.g., tutoring). Such supplementary education must be provided with respect to a student's current classes by a supplementary education service provider that is accredited by an accreditation organization recognized by the Secretary of Education. Qualified expenses do not include the cost of courses that prepare students for college entrance exams.

The credit is phased out for taxpayers with adjusted gross income between $80,000–$92,000 for joint filers and between $50,000–$62,000 for individual filers.

Effective date.—The credit is available for taxable years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

7. Certain teacher education expenses not subject to 2-percent floor on miscellaneous itemized deductions (sec. 224 of the Senate amendment)

Present Law

In general, taxpayers are not permitted to deduct education expenses. However, employees may deduct the cost of certain work-related education. For costs to be deductible, the education must either be required by the taxpayer's employer or by law to retain taxpayer's current job or be necessary to maintain or improve skills required in the taxpayer's current job. Expenses incurred for education that is necessary to meet minimum education requirements of an employee's present trade or business or that can qualify an employee for a new trade or business are not deductible.

An employee is allowed to deduct work-related education and other business expenses only to the extent such expenses (together with other miscellaneous itemized deductions) exceed 2 percent of the taxpayer's adjusted gross income.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, qualified professional development expenses incurred by an elementary or secondary school teacher[45] with respect to certain courses of instruction are not subject to the 2-percent floor on miscellaneous itemized deductions. Qualified professional development expenses mean expenses for tuition, fees, books, supplies, equipment and transportation required for enrollment or attendance in a qualified course, *provided* that such expenses are otherwise deductible under present law section 162. A qualified course of instruction means a course at an institution of higher education (as defined in sec. 481 of the Higher Education Act of 1965) which is part of a program of professional development that is approved and certified by the appropriate local educational agency as furthering the individual's teaching skills.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement does not include the Senate amendment.

B. Other Education-Related Tax Provisions

1. Extension of exclusion for employer-provided educational assistance (sec. 221 of the House bill and sec. 221 of the Senate amendment)

Present Law

Under present law, an employee's gross income and wages do not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts are paid or incurred pursuant to an educational assistance program that meets certain requirements. This exclusion is limited to $5,250 of educational assistance with respect to an individual during a calendar year. The exclusion does not apply to graduate-level courses beginning after June 30, 1996. The exclusion expires with respect to courses of instruction beginning after June 30, 1997.[46] In the absence of the exclusion, educational assistance is excludable from income only if it is related to the employee's current job.

House Bill

The exclusion for employer-provided educational assistance is extended through courses beginning on or before December 31, 1997.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 1996.

Senate Amendment

The exclusion for employer-provided educational assistance is extended permanently. Beginning in 1997, the exclusion applies to graduate-level courses.

Effective date.—The extension of the exclusion with respect to undergraduate courses applies with respect to taxable years beginning after December 31, 1996. The extension of the exclusion with respect to graduate-level courses applies to courses beginning after December 31, 1996.

Conference Agreement

The conference agreement follows the House bill, with modifications. Under the conference agreement, the exclusion for undergraduate education is extended with respect to courses beginning before June 1, 2000. As under the House bill, the exclusion does not apply with respect to graduate-level courses.

2. Modification of $150 million limit on qualified 501(c)(3) bonds other than hospital bonds (sec. 222 of the House bill and sec. 222 of the Senate amendment)

Present Law

Interest on State and local government bonds generally is excluded from income if the bonds are issued to finance activities carried out and paid for with revenues of these governments. Interest on bonds issued by these governments to finance activities of other persons, e.g., private activity bonds, is taxable unless a specific exception is included in the Code. One such exception is for private activity bonds issued to finance activities of private, charitable organizations described in Code section 501(c)(3) ("section

[45] To be eligible, a teacher must have completed at least two academic years as a K–12 teacher in an elementary or secondary school before the qualified professional development expenses are incurred.

[46] The legislative history reflects congressional intent that the provision expire with respect to courses beginning after May 31, 1997.

501(c)(3) organizations") when the activities do not constitute an unrelated trade or business.

Present law treats section 501(c)(3) organizations as private persons; thus, bonds for their use may only be issued as private activity "qualified 501(1)(3) bonds," subject to the restrictions of Code section 145. The most significant of these restrictions limits the amount of outstanding bonds from which a section 501(c)(3) organization may benefit to $150 million. In applying this "$150 million limit," all section 501(c)(3) organizations under common management or control are treated as a single organization. The limit does not apply to bonds for hospital facilities, defined to include only acute care, primarily inpatient, organizations.

House Bill

Under the House bill, the $150 million limit is increased annually in $10 million increments until it is $200 million. Specifically, the limitation is $160 million in 1998, $170 million in 1999, $180 million in 2000, $190 million in 2001, and $200 million in 2002 and thereafter.

Effective date.—The provision is effective on January 1, 1998.

Senate Amendment

The Senate amendment repeals the $150 million limit for bonds issued after the date of enactment to finance capital expenditures incurred after the date of enactment.

Effective date.—The provision is effective for bonds issued after the date of enactment to finance capital expenditures incurred after such date.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—The provision is effective for bonds issued after the date of enactment. Because this provision of the conference agreement applies only to bonds issued with respect to capital expenditures incurred after the date of enactment, the $150 million limit will continue to govern issuance of other non-hospital qualified 501(c)(3) bonds (e.g., refunding bonds or new-money bonds for capital expenditures incurred before the date of enactment). Thus, the conferees understand that bond issuers will continue to need Treasury Department guidance on the application of this limit in the future and expect that the Treasury will continue to provide interpretative rules on this limit.

3. Enhanced deduction for corporate contributions of computer technology and equipment (sec. 223 of the House bill)

Present Law

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair market value of property contributed to a charitable organization.[47] However, in the case of a charitable contribution of inventory or other ordinary-income property, short-term capital gain property, or certain gifts to private foundations, the amount of the deduction is limited to the taxpayer's basis in the property. In the case of a charitable contribution of tangible personal property, a taxpayer's deduction is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(I)).

Special rules in the Code provide augmented deductions for certain corporate[48] contributions of inventory property for the care of the ill, the needy, or infants (sec. 170(e)(3)), and certain corporate contributions of scientific equipment constructed by the taxpayer, provided the original use of such donated equipment is by the donee for research or research training in the United States in physical or biological sciences (sec. 170(e)(4)).[49] Under these special rules, the amount of the augmented deduction available to a corporation making a qualified contribution is equal to its basis in the donated property plus one-half of the amount of ordinary income that would have been realized if the property had been sold. However, the augmented deduction cannot exceed twice the basis of the donated property.

House Bill

The House bill expands the list of qualified contributions that would qualify for the augmented deduction currently available under Code section 170(e)(3) and 170(e)(4). Under the House bill, qualified contributions mean gifts of computer technology and equipment (i.e., computer software, computer or peripheral equipment, and fiber optic cable related to computer use) to be used within the United States for educational purposes in any of grades K–12.

Eligible donees are: (1) any educational organization that normally maintains a regular faculty and curriculum and has a regularly enrolled body of pupils in attendance at the place where its educational activities are regularly carried on; and (2) Code section 501(c)(3) entities that are organized primarily for purposes of supporting elementary and secondary education. A private foundation also is an eligible donee, provided that, within 30 days after receipt of the contribution, the private foundation contributes the property to an eligible donee described above.

Qualified contributions are limited to gifts made no later than two years after the date the taxpayer acquired or substantially completed the construction of the donated property. Such donated property could be computer technology or equipment that is inventory or depreciable trade or business property in the hands of the donor. The House bill permits payment by the donee organization of shipping, transfer, and installation costs.[50] The special treatment applies only to donations made by C corporations; as under present law section 170(e)(4), S corporations, personal holding companies, and service organizations are not eligible donors.

Effective date.—The provision is effective for contributions made in taxable years beginning after 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the provision is sunset after three years. Thus, the provision is effective for contributions made in taxable years beginning after 1997 and before January 1, 2001. In addition, the conference agreement clarifies that the original use of the donated property must commence with the donor or the donee. Accordingly, qualified contributions generally are limited to property that is no more than two years old.

4. Expansion of arbitrage rebate exception for certain bonds (sec. 223 of the Senate amendment)

Present Law

Generally, all arbitrage profits earned on investments unrelated to the purpose of the borrowing ("nonpurpose investments") when such earnings are permitted must be rebated to the Federal Government.

An exception is provided for bonds issued by governmental units having general taxing powers if the governmental unit (and all subordinate units) issue $5 million or less of governmental bonds during the calendar year ("the small-issuer exception"). This exception does not apply to private activity bonds.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that up to $5 million of bonds used to finance public school capital expenditures incurred after December 31, 1997, are excluded from application of the present-law $5 million limit. Thus, small issuers will continue to benefit from the small issue exception from arbitrage rebate if they issue no more than $10 million in governmental bonds per calendar year and no more than $5 million of the bonds is used to finance expenditures other than for public school capital expenditures.

Effective date.—The provision is effective for bonds issued after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Treatment of cancellation of certain student loans (sec. 224 of the House bill and sec. 225 of the Senate amendment)

Present Law

In the case of an individual, gross income subject to Federal income tax does not include any amount from the forgiveness (in whole or in part) of certain student loans, provided that the forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers (sec. 108(f)).

Student loans eligible for this special rule must be made to an individual to assist the individual in attending an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its education activities are regularly carried on. Loan proceeds may be used not only for tuition and required fees, but also to cover room and board expenses (in contrast to tax-free scholarships under section 117, which are limited to tuition and required fees). In addition, the loan must be made by (1) the United States (or an instrumentality or agency thereof), (2) a State (or any political subdivision thereof), (3) certain tax-exempt public benefit corporations that control a State, county, or municipal hospital and whose employees have been deemed to be public employees under State law, or (4) an educational organization that originally received the funds from which the loan was made from the United States, a State, or a tax-exempt public benefit corporation. Thus, loans made

[47] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)). Corporations are entitled to claim a deduction for charitable contributions, generally limited to 10 percent of their taxable income (computed without regard to the contributions) for the taxable year.

[48] S corporations are not eligible donors for purposes of section 170(e)(3) or section 170(e)(4).

[49] Eligible donees under section 170(e)(4) are limited to post-secondary educational institutions, scientific research organizations, and certain other organizations that support scientific research.

[50] In the case of contributions made through private foundations, the bill permits the payment by the private foundation of shipping, transfer, and installation costs.

with private, nongovernmental funds are not qualifying student loans for purposes of the section 108(f) exclusion.

House Bill

The House bill expands section 108(f) so that an individual's gross income does not include forgiveness of loans made by tax-exempt charitable organizations (e.g., educational organizations or private foundations) if the proceeds of such loans are used to pay costs of attendance at an educational institution or to refinance outstanding student loans and the student is not employed by the lender organization. As under present law, the section 108(f) exclusion applies only if the forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers. In addition, in the case of loans made by tax-exempt charitable organizations, the student's work must fulfill a public service requirement. The student must work in an occupation or area with unmet needs and such work must be performed for or under the direction of a tax-exempt charitable organization or a governmental entity.

The exclusion also is expanded to cover forgiveness of direct student loans made through the William D. Ford Federal Direct Loan Program where loan repayment and forgiveness are contingent on the borrower's income level and any unpaid amounts are forgiven in full by the Secretary of Education at the end of a 25-year period. Thus, Federal Direct Loan borrowers who have elected the income-contingent repayment option and who have not repaid their loans in full at the end of a 25-year period would not be required to include the outstanding loan balance in income as a result of the forgiveness of the loan.

Effective date.—The provision applies to discharges of indebtedness after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except that the conference agreement does not include the provision expanding the exclusion to cover forgiveness of direct student loans made through the William D. Ford Federal Direct Loan Program where loan repayment and forgiveness are contingent on the borrower's income level and any unpaid amounts are forgiven in full by the Secretary of Education at the end of a 25-year period.

6. Tax credit for holders of qualified zone academy bonds

Present Law

Under present law, interest on bonds issued for general governmental purposes, including public schools, is exempt from Federal income tax.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, certain financial institutions (i.e., banks, insurance companies, and corporations actively engaged in the business of lending money) that hold "qualified zone academy bonds" are entitled to a nonrefundable tax credit in an amount equal to a credit rate (set by the Treasury Department) multiplied by the face amount of the bond. The credit rate applies to all such bonds purchased in each month. A taxpayer holding a qualified zone academy bond is entitled to a credit for each year the taxpayer holds the bond. The credit is includible in gross income, but may be claimed against regular income tax and AMT liability.

The Treasury Department will set the credit rate each month so that such bonds can be issued without discount and without any interest cost to the issuer. The maximum term of the bond issued in a given month also is determined by the Treasury Department so that the present value of the obligation to repay the bond is 50 percent of the face value of the bond. Such present value will be determined using as a discount rate the average annual interest rate of tax-exempt obligations with a term of 10 years or more issued during the month.

"Qualified zone academy bonds" are defined as any bond issued by a State or local government, provided that (1) 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a "qualified zone academy" and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds.

A school is a "qualified zone academy" if (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates, and (3) either (a) the school is located in an empowerment zone or enterprise community (including empowerment zones designated or authorized to be designated under the conference agreement), or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

A total of $400 million of "qualified zone academy bonds" may be issued in each of 1998 and 1999. The $800 million aggregate bond cap will be allocated to the States according to their respective populations of individuals below the poverty line. A State may carry over any unused allocation into subsequent years. Each State, in turn, will allocate the credit to qualified zone academies within such State.

Effective date.—The provision is effective for bonds issued after 1997.

III. SAVINGS AND INVESTMENT TAX INCENTIVES

A. Individual Retirement Arrangements

1. Increase deductible IRA phase-out range and modify active participant rule (sec. 301 of the Senate amendment)

Present Law

If an individual (or, if married, the individual's spouse) is an active participant in an employer-sponsored retirement plan, the $2,000 IRA deduction limit is phased out over the following levels of adjusted gross income ("AGI"): $25,000 to $35,000 in the case of a single taxpayer and $40,000 to $50,000 in the case of married taxpayers.

House Bill

No provision.

Senate Amendment

An individual is not considered to be an active participant in an employer-sponsored retirement plan merely because the individual's spouse is such an active participant.

The income phase-out range for single individuals is increased as follows: for 1998 and 1999, the phase-out range is $30,000 to $40,000; for 2000 and 2001, $35,000 to $45,000; for 2002 and 2003, $40,000 to $50,000; and for 2004 and thereafter, $50,000 to $60,000.

The income phase-out range for married individuals is increased as follows: for 1998 and 1999, the phase-out range is $50,000 to $60,000; for 2000 and 2001, $60,000 to $70,000; for 2002 and 2003, $70,000 to $80,000; and 2004 and thereafter, $80,000 to $100,000.

Effective date.—The provisions are effective for taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications.

Under the conference agreement, as under the Senate amendment, an individual is not considered an active participant in an employer-sponsored retirement plan merely because the individual's spouse is an active participant. However, under the conference agreement, the maximum deductible IRA contribution for an individual who is not an active participant, but whose spouse is, is phased out for taxpayers with AGI between $150,000 and $160,000.

Under the conference agreement, the deductible IRA income phase-out limits are increased as follows:

	Phase-out range
Joint Returns	
Taxable years beginning in:	
1998	$50,000—$60,000
1999	$51,000—$61,000
2000	$52,000—$62,000
2001	$53,000—$63,000
2002	$54,000—$64,000
2003	$60,000—$70,000
2004	$65,000—$75,000
2005	$70,000—$80,000
2006	$75,000—$85,000
2007 and thereafter	$80,000—$100,000
Single Taxpayers	
Taxable years beginning in:	
1998	$30,000—$40,000
1999	$31,000—$41,000
2000	$32,000—$42,000
2001	$33,000—$43,000
2002	$34,000—$44,000
2003	$40,000—$50,000
2004	$45,000—$55,000
2005 and thereafter	$50,000—$60,000

The following examples illustrate the income phase-out rules.

Example 1.—Suppose for a year W is an active participant in an employer-sponsored retirement plan, and W's husband, H, is not. Further assume that the combined AGI of H and W for the year is $200,000. Neither W nor H is entitled to make deductible contributions to an IRA for the year.

Example 2.—Same as example 1, except that the combined AGI of W and H is $125,000. H can make deductible contributions to an IRA. However, a deductible contribution could not be made for W.

2. Tax-free nondeductible IRAs (sec. 301 of the House bill and sec. 302 of the Senate amendment)

Present Law

No provision. However, present law provides that an individual can make nondeductible contributions to an IRA to the extent the individual cannot or does not make

deductible contributions. Earnings on nondeductible contributions are includible in income when withdrawn.

House Bill

In general

The House bill replaces present-law nondeductible IRAs with new American Dream IRAs ("AD IRAs") to which individuals may make nondeductible contributions of up to $2,000 annually. No income limits apply to AD IRAs, and contributions to AD IRAs are in addition to other IRA contributions. The $2,000 contribution limit is indexed for inflation in $50 increments.

Taxation of distributions

Qualified distributions from an AD IRA are not includible in income. Qualified distributions are distributions (1) made after the 5-taxable year period beginning with the first taxable year for which a contribution was made to an AD IRA and (2) which are (a) made on or after the date on which the individual attains age 59½, (b) made to a beneficiary on or after the death of the individual, (c) attributable to the individual's being disabled, or (d) for a qualified special purpose distribution. A qualified special purpose distribution is a distribution for first-time homebuyer expenses.

Conversions of IRAs to AD IRAs

An IRA may be converted to an AD IRA before January 1, 1999. Amounts that would have been includible in income had the amounts converted been withdrawn are includible in income ratably over 4 years. The additional tax on early withdrawals does not apply to conversions of IRAs to AD IRAs.

Effective date

Taxable years beginning after December 31, 1997.

Senate Amendment

In general

Same as the House bill, except that: (1) the new IRAs are called IRA Plus accounts and (2) no more than $2,000 of annual contributions can be made to all an individual's IRAs.

Taxation of distributions

Same as the House bill, except that special purpose distributions also include distributions to long-term unemployed individuals.

Conversions of IRAs to AD IRAs

Same as the House bill, except that conversions of an IRA to an IRA Plus can be made at any time. If the conversion is made before January 1, 1999, the amounts that would have been includible in income had the amounts converted been withdrawn are includible in income ratably over 4 years. In any case, the 10-percent tax on early withdrawals does not apply.

Effective date

Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications. Under the conference agreement, the new IRA is called the "Roth IRA" rather than the IRA Plus. The maximum contribution that can be made to a Roth IRA is phased out for individuals with AGI between $95,000 and $110,000 and for joint filers with AGI between $150,000 and $160,000. Under the conference agreement, distributions to long-term unemployed individuals do not qualify as special purpose distributions. Thus, only first-time homebuyer expenses (as defined under the Senate amendment) qualify as special purpose distributions.

Under the conference agreement, only taxpayers with AGI of less than $100,000[51] are eligible to roll over or convert an IRA into a Roth IRA.

The conference agreement retains present-law nondeductible IRAs. Thus, an individual who cannot (or does not) make contributions to a deductible IRA or a Roth IRA can make contributions to a nondeductible IRA. In no case can contributions to all an individual's IRAs for a taxable year exceed $2,000.

3. Modifications to early withdrawal tax (sec. 301 of the House bill and sec. 303 of the Senate amendment)

Present Law

Under present law, a 10-percent additional tax applies to distributions from an IRA prior to age 59½, unless an exception applies.

House Bill

The House bill adds an additional exception to the early withdrawal tax for AD IRAs only. The early withdrawal tax does not apply to distributions from an AD IRA for first-time homebuyer expenses, subject to a $10,000 life-time cap.

Effective date.—Taxable years beginning after December 31, 1997.

Senate Amendment

The early withdrawal tax does not apply to distributions from any IRA for first-time homebuyer expenses or for long-term unemployed individuals.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment but does not include the provision relating to long-term unemployed individuals.[52]

4. IRA investments in coins and bullion (sec. 304 of the Senate amendment)

Present Law

IRA assets may not be invested in collectibles. This prohibition does not apply to certain gold and silver coins or to coins issued by a State.

House Bill

No provision.

Senate Amendment

IRA assets may be invested in certain platinum coins and in certain gold, silver, platinum or palladium bullion.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

B. Capital Gains Provisions

1. Maximum rate of tax on net capital gain of individuals (sec. 311 of the House bill and sec. 311 of the Senate amendment)

Present Law

In general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. On the sale or exchange of capital assets, the net capital gain is taxed at the same rate as ordinary income, except that individuals are subject to a maximum marginal rate of 28 percent of the net capital gain. Net capital gain is the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for the year. Gain or loss is treated as long-term if the asset is held for more than one year.

A capital asset generally means any property except (1) inventory, stock in trade, or property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business, (2) depreciable or real property used in the taxpayer's trade or business, (3) specified literary or artistic property, (4) business accounts or notes receivable, or (5) certain U.S. publications. In addition, the net gain from the disposition of certain property used in the taxpayer's trade or business is treated as long-term capital gain. Gain from the disposition of depreciable personal property is not treated as capital gain to the extent of all previous depreciation allowances. Gain from the disposition of depreciable real property is generally not treated as capital gain to the extent of the depreciation allowances in excess of the allowances that would have been available under the straight-line method of depreciation.

House Bill

Under the House bill, the maximum rate of tax on the net capital gain of an individual is reduced from 28 percent to 20 percent. In addition, any net capital gain which otherwise would be taxed at a 15-percent rate is taxed at a rate of 10 percent. These rates apply for purposes of both the regular tax and the minimum tax.

The tax on the net capital gain attributable to any long-term capital gain from the sale or exchange of collectibles will remain at a maximum rate of 28 percent; any long-term capital gain from the sale or exchange of section 1250 property (i.e., depreciable real estate) to the extent the gain would have been treated as ordinary income if the property had been section 1245 property will be taxed at a maximum rate of 26 percent. Gain from the disposition of a collectible which is an indexed asset (described below) will not be eligible for the 28-percent rate unless the taxpayer elects to forgo indexing.

Effective date.—The provision generally applies to sales and exchanges (and installment payments received) after May 6, 1997.

Senate Amendment

The Senate amendment is the same as the House bill except the maximum rate on gain attributable to the depreciation of section 1250 property is 24 percent (rather than 26 percent). (Differences in the provisions relating to indexing and small business stock are described below.)

Effective date.—The effective date is the same as the House bill.

Conference Agreement

The conference agreement generally follows the House bill and the Senate amendment. The maximum rate of tax on gain attributable to the depreciation of section 1250 property will be 25 percent.

In addition, for taxable years beginning after December 31, 2000, the maximum capital gains rates for assets which are held more than 5 years, are 8 percent and 18 percent (rather than 10 percent and 20 percent). The 18-percent rate only applies to assets the holding period for which begins after December 31, 2000. A taxpayer holding a capital asset or asset used in the taxpayer's trade or business on January 1, 2001, may elect to treat the asset as having been sold on such date for an amount equal to its fair market value, and as having been reacquired for an amount equal to such value. If the election is made, any gain is recognized (and any loss

[51] For this purpose, AGI is determined before any amount includible in income as a result of the rollover or conversion.

[52] As under the House bill and Senate amendment, the conference agreement includes a penalty-free withdrawal provision for education expenses.

disallowed). The conference agreement allows the Treasury Department to issue regulations coordinating the capital gain provisions with other rules involving the treatment of sales and exchanges by pass-thru entities and of interests therein.

Under the conference agreement, the lower capital gains rates do not apply to the sale or exchange of assets held for 18 months or less, effective for amounts properly taken into account after July 28, 1997. The 28-percent maximum rate will continue to apply to the sale or exchange of capital assets held more than 1 year but not more than 18 months.

2. Small business stock (sec. 311 of the House bill and secs. 312 and 313 of the Senate amendment)

Present Law

The Revenue Reconciliation Act of 1993 provided individuals a 50-percent exclusion for the sale of certain small business stock acquired at original issue and held for at least five years. One-half of the excluded gain is a minimum tax preference.

The amount of gain eligible for the 50-percent exclusion by an individual with respect to any corporation is the greater of (1) 10 times the taxpayer's basis in the stock or (2) $10 million.

In order to qualify as a small business, when the stock is issued, the gross assets of the corporation may not exceed $50 million. The corporation also must meet an active trade or business requirement.

House Bill

Under the House bill, the lower capital gains rates do not apply to the includible portion of the gain from the qualifying sale of small business stock. Thus, the maximum rate of regular tax on the sale of small business stock remains at 14 percent.

Senate Amendment

Under the Senate amendment, the 50-percent exclusion will apply to small business stock (other than stock of a subsidiary corporation) held by a corporation. The minimum tax preference is repealed. Under the provision, in the case of a qualifying sale of small business stock by an individual, the maximum rate of tax, will be 10 percent.

The Senate amendment increases the size of an eligible corporation from gross assets of $50 million to gross assets of $100 million. The Senate amendment also repeals the limitation on the amount of gain a taxpayer can exclude with respect to the stock of any corporation.

The Senate amendment provides that certain working capital must be expended within five years (rather than two years) in order to be treated as used in the active conduct of a trade or business. No limit on the percent of the corporation's assets that are working capital is imposed.

The Senate amendment provides that if the corporation establishes a business purpose for a redemption of its stock, that redemption is disregarded in determining whether other newly issued stock could qualify as eligible stock.

The Senate amendment allows a taxpayer to roll over gain from the sale or exchange of small business stock held more than five years where the taxpayer uses the proceeds to purchase other small business stock within 60 days of the sale of the original stock. If the taxpayer sells the replacement stock, any gain attributable to the original stock is treated as gain from the sale or exchange of small business stock held more than five years, and any remaining gain will be so treated after the replacement stock is held for at least five years. In addition, any gain that otherwise would be recognized from the sale of the replacement stock can be rolled over to other small business stock purchased within 60 days.

Effective date.—The increase in the size of corporations whose stock is eligible for the exclusion applies to stock issued after the date of the enactment of the proposal. The remaining provisions apply to stock issued after August 10, 1993 (the original effective date of the small business stock provision).

Conference Agreement

The conference agreement follows the provisions in the House bill. The conference agreement reduces the minimum tax preference from one-half of the excluded gain to 42 percent of such gain.

In addition, the conference agreement allows an individual to roll over tax-free gain from the sale or exchange of qualified small business stock held more than 6 months where the taxpayer uses the proceeds to purchase other qualified small business stock within 60 days of the sale. For purposes of the rollover provision, the replacement stock must meet the active business requirement for the 6-month period following the purchase. Generally, the holding period of the stock purchased will include the holding period of the stock sold, except for purposes of determining whether the 6-month holding period is met. The provision applies to sales after the date of enactment of this Act.

3. Indexing of basis of certain assets for purposes of determining gain (sec. 312 of the House bill)

Present Law

Under present law, gain or loss from the disposition of any asset generally is the sales price of the asset is reduced by the taxpayer's adjusted basis in that asset. The taxpayer's adjusted basis generally is the taxpayer's cost in the asset adjusted for depreciation, depletion, and certain other amounts. No adjustment is allowed for inflation.

House Bill

The House bill generally provides for an inflation adjustment to (i.e., indexing of) the adjusted basis of certain assets (called "indexed assets") held more than three years for purposes of determining gain (but not loss) upon a sale or other disposition of such assets by a taxpayer other than a C corporation.

Assets eligible for the inflation adjustment generally include common (but not preferred) stock of C corporations and tangible property that are capital assets or property used in a trade or business. A personal residence is not eligible for indexing. To be eligible for indexing, an asset must be held by the taxpayer for more than three years.

The inflation adjustment under the provision is computed by multiplying the taxpayer's adjusted basis in the indexed asset by an inflation adjustment percentage, based on the chain- type price index for GDP ("Gross Domestic Product').

Special rules apply to RICS, REITS, partnerships, S corporations and common trust funds.

Effective date.—The provision applies to property the holding period of which begins after December 31, 2000. A taxpayer holding any indexed asset on January 1, 2001, may elect to treat the indexed asset as having been sold on such date for an amount equal to its fair market value, and as having been reacquired for an amount equal to such value. If the election is made, any gain is recognized (and any loss is disallowed).

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

4. Exclusion of gain on sale of principal residence (sec. 313 of the House bill and sec. 314 of the Senate amendment)

Present Law

Under present law, no gain is recognized on the sale of a principal residence if a new residence at least equal in cost to the sales price of the old residence is purchased and used by the taxpayer as his or her principal residence within a specified period of time (sec. 1034). This replacement period generally begins two years before and ends two years after the date of sale of the old residence. The basis of the replacement residence is reduced by the amount of any gain not recognized on the sale of the old residence by reason of this gain rollover rule.

Also, under present law, in general, an individual, on a one-time basis, may exclude from gross income up to $125,000 of gain from the sale or exchange of a principal residence if the taxpayer (1) has attained age 55 before the sale, and (2) has owned the property and used it as a principal residence for three or more of the five years preceding the sale (sec. 121).

House Bill

Under the House bill, a taxpayer generally is able to exclude up to $250,000 ($500,000 if married filing a joint return) of gain realized on the sale or exchange of a principal residence. The exclusion is allowed each time a taxpayer selling or exchanging a principal residence meets the eligibility requirements, but generally no more frequently than once every two years. The House bill provides that gain would be recognized to the extent of any depreciation allowable with respect to the rental or business use of such principal residence for periods after May 6, 1997.

To be eligible for the exclusion, a taxpayer must have owned the residence and occupied it as a principal residence for at least two of the five years prior to the sale or exchange. A taxpayer who fails to meet these requirements by reason of a change of place of employment, health, or other unforseen circumstances is able to exclude the fraction of the $250,000 ($500,000 if married filing a joint return) equal to the fraction of two years that these requirements are met.

In the case of joint filers not sharing a principal residence, an exclusion of $250,000 is available on a qualifying sale or exchange of the principal residence of one of the spouses. Similarly, if a single taxpayer who is otherwise eligible for an exclusion marries someone who has used the exclusion within the two years prior to the marriage, the bill would allow the newly married taxpayer a maximum exclusion of $250,000. Once both spouses satisfy the eligibility rules and two years have passed since the last exclusion was allowed to either of them, the taxpayers may exclude $500,000 of gain on their joint return.

Under the bill, the gain from the sale or exchange of the remainder interest in the taxpayer's principal residence may qualify for the otherwise allowable exclusion.

Effective date.—The provision is available for all sales or exchanges of a principal residence occurring after May 6, 1997, and replaces the present-law rollover and one-time exclusion provisions applicable to principal residences.

A taxpayer may elect to apply present law (rather than the new exclusion) to a sale or

exchange (1) made before the date of enactment of the Act, (2) made after the date of enactment pursuant to a binding contract in effect on such date or (3) where the replacement residence was acquired on or before the date of enactment (or pursuant to a binding contract in effect of the date of enactment) and the rollover provision would apply. If a taxpayer acquired his or her current residence in a rollover transaction, periods of ownership and use of the prior residence would be taken into account in determining ownership and use of the current residence.

Senate Amendment

The Senate amendment is the same as the House bill with technical modifications.

Conference Agreement

The conference agreement generally follows the House bill and the Senate amendment.

The conferees wish to clarify that the provision limiting the exclusion to only one sale every two years by the taxpayer does not prevent a husband and wife filing a joint return from each excluding up to $250,000 of gain from the sale or exchange of each spouse's principal residence provided that each spouse would be permitted to exclude up to $250,000 of gain if they filed separate returns.

5. Corporate capital gains (sec. 321 of the House bill)

Present Law

Under present law, the net capital gain of a corporation is taxed at the same rate as ordinary income, and subject to tax at graduated rates up to 35 percent.

House Bill

The House bill provides an maximum rate of tax on the net capital gain of a corporation to the extent the gain is attributable to the sale or exchange of property held more than 8 years. The alternative tax is 32 percent on gain attributable to calendar year 1998; 31 percent on gain attributable to calendar year 1999; and 30 percent on gain attributable to calendar years after 1999. The House bill also modifies the application of the corporate alternative capital gains tax so that the alternative capital gains tax applies to the lesser of 8-year gain or taxable income. Gain from the disposition of a collectible or attributable to the depreciation of section 1250 property is not eligible for the lower rate.

Effective date.—The provision applies to taxable years ending after December 31, 1997. However, the lower rate does not apply to amounts properly taken into account before January 1, 1998. For fiscal years beginning in 1998 and 1999, the tax is computed by applying the applicable percentage to the 8-year gain for the first portion of the year (or, if less, the 8-year gain for the entire year), but in an amount not to exceed the taxable income for the entire year and then by applying the applicable percentage to an amount equal to the 8-year gain for the entire year (or, if less, taxable income) reduced by the amount taxed at the applicable percentage for the first portion of the year.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

The conference agreement provides that the amount of gain subject to the alternative rate of tax under section 1201(a)(2) may not exceed the corporation's taxable income. Because the section 1201 alternative tax does not presently apply, this change has no effect under the rate structure of present law.

IV. ALTERNATIVE MINIMUM TAX PROVISIONS

A. Increase Exemption Amount Applicable to Individual Alternative Minimum Tax (sec. 401 of the House bill and sec. 102 of the Senate amendment)

Present Law

Present law imposes a minimum tax on an individual to the extent the taxpayer's minimum tax liability exceeds his or her regular tax liability. This alternative minimum tax is imposed upon individuals at rates of (1) 26 percent on the first $175,000 of alternative minimum taxable income in excess of a phased-out exemption amount and (2) 28 percent on the amount in excess of $175,000. The exemptions amounts are $45,000 in the case of married individuals filing a joint return and surviving spouses; $33,750 in the case of other unmarried individuals; and $22,500 in the case of married individuals filing a separate return. These exemption amounts are phased-out by an amount equal to 25 percent of the amount that the individual's alternative minimum taxable income exceeds a threshold amount. These threshold amounts are $150,000 in the case of married individuals filing a joint return and surviving spouses; $112,500 in the case of other unmarried individuals; and $75,000 in the case of married individuals filing a separate return, estates, and trusts. The exemption amounts, the threshold phase-out amounts, and the $175,000 break-point amount are not indexed for inflation.

House Bill

For taxable years beginning in 1999, 2001, 2003, 2005 and 2007, the exemption amounts of the individual alternative minimum tax are increased as follows for each such year: (1) by $1,000 in the case of married individuals filing a joint return and surviving spouses; (2) by $750 in the case of other unmarried individuals; and (3) by $500 in the case of married individuals filing a separate return. For taxable years beginning after 2007, the exemption amounts are indexed for inflation.

Effective date.—The provision is effective for taxable years beginning after December 31, 1998.

Senate Amendment

For taxable years beginning after 2000 and before 2003, the exemption amounts of the individual alternative minimum tax are increased as follows in each year: (1) by $600 in the case of married individuals filing a joint return and surviving spouses; (2) by $450 in the case of other unmarried individuals; and (3) by $300 in the case of married individuals filing separate returns. For taxable years beginning after 2003, the exemption amounts of the individual alternative minimum tax are increased as follows in each year: (1) by $950 in the case of married individuals filing a joint return and surviving spouses; (2) by $700 in the case of other unmarried individuals; and (3) by $475 in the case of married individuals filing separate returns.

Effective date.—The provision is effective for taxable years beginning after December 31, 2000.

Conference Agreement

The conference agreement contains neither the House bill nor the Senate amendment.

B. Repeal Alternative Minimum Tax for Small Businesses and Repeal the Depreciation Adjustment (secs. 402 and 403 of the House bill)

Present Law

Present law imposes a minimum tax on an individual or a corporation to the extent the taxpayer's minimum tax liability exceeds its regular tax liability. The individual minimum tax is imposed at rates of 26 and 28 percent on alternative minimum taxable income in excess of a phased-out exemption amount; the corporate minimum tax is imposed at a rate of 20 percent on alternative minimum taxable income in excess of a phased-out $40,000 exemption amount. Alternative minimum taxable income ("AMTI") is the taxpayer's taxable income increased by certain preference items and adjusted by determining the tax treatment of certain items in a manner that negates the deferral of income resulting from the regular tax treatment of those items. In the case of a corporation, in addition to the regular set of adjustments and preferences, there is a second set of adjustments known as the "adjusted current earnings" adjustment.

The most significant alternative minimum tax adjustment relates to depreciation. In computing AMTI, depreciation on property placed in service after 1986 must be computed by using the class lives prescribed by the alternative depreciation system of section 168(g) and either (1) the straight-line method in the case of property subject to the straight-line method under the regular tax or (2) the 150-percent declining balance method in the case of other property. For regular tax purposes, depreciation on tangible personal property generally is computed using shorter recovery periods and more accelerated methods than are allowed for alternative minimum tax purposes.

House Bill

Repeal of the corporate alternative minimum tax for small businesses

The corporate alternative minimum tax is repealed for small business corporations for taxable years beginning after December 31, 1997. A corporation that had average gross receipts of less than $5 million for the three-year period beginning after December 31, 1994, is a small business corporation for any taxable year beginning after December 31, 1997. A corporation that meets the $5 million gross receipts test will continue to be treated as small business corporation exempt from the alternative minimum tax so long as its average gross receipts do not exceed $7.5 million. A corporation that fails to meet the $7.5 million gross receipts test will become subject to corporate alternative minimum tax only with respect to preferences and adjustments that relate to transactions and investments entered into after the corporation loses its status as a small business corporation.

In addition, the alternative minimum tax credit allowable to a small business corporation is limited to the amount by which corporation's regular tax liability (reduced by other credits) exceeds 25 percent of the excess (if any) of the corporation's regular tax (reduced by other credits) over $25,000.

Repeal of the depreciation adjustment

The alternative minimum tax adjustment relating to depreciation is repealed for all taxpayers for property placed in service after December 31, 1998.

Effective date

Except as provided above, the provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill with respect to the repeal of the corporate alternative minimum tax

for small businesses. In addition, for property (including pollution control facilities) placed in service after December 31, 1998, the conference agreement conforms the recovery periods used for purposes of the alternative minimum tax depreciation adjustment to the recovery periods used for purposes of the regular tax under present law.

C. Repeal AMT Installment Method Adjustment for Farmers (sec. 404 of the House bill and sec. 732 of the Senate amendment)

Present Law

The installment method allows gain on the sale of property to be recognized as payments are received. Under the regular tax, dealers in personal property are not allowed to defer the recognition of income by use of the installment method on the installment sale of such property. For this purpose, dealer dispositions do not include sales of any property used or produced in the trade or business of farming. For alternative minimum tax purposes, the installment method is not available with respect to the disposition of any property that is the stock in trade of the taxpayer or any other property of a kind which would be properly included in the inventory of the taxpayer if held at year end, or property held by the taxpayer primarily for sale to customers. No explicit exception is provided for installment sales of farm property under the alternative minimum tax.

House Bill

The House bill generally provides that for purposes of the alternative minimum tax, farmers may use the installment method of accounting.

Effective date.—The provision generally is effective for dispositions in taxable years beginning after December 31, 1987, with a special rule for dispositions occurring in 1987.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

V. ESTATE, GIFT, AND GENERATION-SKIPPING TAX PROVISIONS

A. Estate and Gift Tax Provisions

1. Increase in estate and gift tax unified credit (sec. 501(a) of the House bill and sec. 401(a) of the Senate amendment)

Present Law

A gift tax is imposed on lifetime transfers by gift and an estate tax is imposed on transfers at death. Since 1976, the gift tax and the estate tax have been unified so that a single graduated rate schedule applies to cumulative taxable transfers made by a taxpayer during his or her lifetime and at death.[53] A unified credit of $192,800 is provided against the estate and gift tax, which effectively exempts the first $600,000 in cumulative taxable transfers from tax (sec. 2010). For transfers in excess of $600,000, estate and gift tax rates begin at 37 percent and reach 55 percent on cumulative taxable transfers over $3 million (sec. 2001(c)). In addition, a 5-percent surtax is imposed upon cumulative taxable transfers between $10 million and $21,040,000, to phase out the benefits of the graduated rates and the unified credit (sec. 2001(c)(2)).[54]

House Bill

The House bill increases the present-law unified credit beginning in 1998, from an effective exemption of $600,000 to an effective exemption of $1,000,000 in 2007. The increase in the effective exemption is phased in according to the following schedule: the effective exemption is $650,000 for decedents dying and gifts made in 1998; $750,000 in 1999; $765,000 in 2000; $775,000 in 2001 through 2004; $800,000 in 2005; $825,000 in 2006; $1 million in 2007. After 2007, the effective exemption is indexed annually for inflation. The indexed exemption amount is rounded to the next lowest multiple of $10,000.

Conforming amendments to reflect the increased unified credit are made (1) to the 5-percent surtax to conform the phase out of the increased unified credit and graduated rates, (2) to the general filing requirements for an estate tax return under section 6018(a), and (3) to the amount of the unified credit allowed under section 2102(c)(3) with respect to nonresident aliens with U.S. situs property who are residents of certain treaty countries.

Effective date.—The provision is effective for decedents dying, and gifts made, after December 31, 1997.

Senate Amendment

The Senate amendment increases the present-law unified credit beginning in 1998, from an effective exemption of $600,000 to an effective exemption of $1,000,000 in 2006. The increase in the effective exemption is phased in according to the following schedule: the effective exemption is $625,000 for decedents dying and gifts made in 1998; $640,000 in 1999; $660,000 in 2000; $675,000 in 2001; $725,000 in 2002; $750,000 in 2003; $800,000 in 2004; $900,000 in 2005; and $1 million in 2006. After 2006, the effective exemption is indexed annually for inflation. The indexed exemption amount is rounded to the next lowest multiple of $10,000.

The Senate amendment includes the same conforming amendments as were made in the House bill.

Effective date.—The provision is effective for decedents dying, and gifts made, after December 31, 1997.

Conference Agreement

The conference agreement increases the present-law unified credit beginning in 1998, from an effective exemption of $600,000 to an effective exemption of $1,000,000 in 2006. The increase in the effective exemption is phased in according to the following schedule: the effective exemption is $625,000 for decedents dying and gifts made in 1998; $650,000 in 1999; $675,000 in 2000 and 2001; $700,000 in 2002 and 2003; $850,000 in 2004; $950,000 in 2005; and $1 million in 2006 and thereafter. The conference does not index the effective exemption for inflation.

The conference agreement includes the conforming amendments made in the House bill and the Senate amendment.

Effective date.—The provision is effective for decedents dying, and gifts made, after December 31, 1997.

2. Indexing of certain other estate and gift tax provisions (sec. 501(b)–(e) of the House bill and sec. 401(b)–(e) of the Senate amendment)

Present Law

Annual exclusion for gifts.—A taxpayer may exclude $10,000 of gifts of present interests in property made by an individual ($20,000 per married couple) to each donee during a calendar year (sec. 2503).

Special use valuation.—An executor may elect for estate tax purposes to value certain qualified real property used in farming or a closely-held trade or business at its current use value, rather than its "highest and best use" value (sec. 2032A). The maximum reduction in value under such an election is $750,000.

Generation-skipping transfer ("GST") tax.—An individual is allowed an exemption from the GST tax of up to $1,000,000 for generation-skipping transfers made during life or at death (sec. 2631).

Installment payment of estate tax.—An executor may elect to pay the Federal estate tax attributable to an interest in a closely held business in installments over, at most, a 14-year period (sec. 6166). The tax on the first $1,000,000 in value of a closely-held business is eligible for a special 4-percent interest rate (sec. 6601(j)).

House Bill

The House bill provides that, after 1998, the $10,000 annual exclusion for gifts, the $750,000 ceiling on special use valuation, the $1,000,000 generation-skipping transfer tax exemption, and the $1,000,000 ceiling on the value of a closely-held business eligible for the special low interest rate (as modified below), are indexed annually for inflation. Indexing of the annual exclusion is rounded to the next lowest multiple of $1,000 and indexing of the other amounts is rounded to the next lowest multiple of $10,000.

Effective date.—The proposal is effective for decedents dying, and gifts made, after December 31, 1998.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Estate tax exclusion for qualified family-owned businesses (sec. 402 of the Senate amendment)

Present Law

There are no special estate tax rules for qualified family-owned businesses. All taxpayers are allowed a unified credit in computing the taxpayer's estate and gift tax, which effectively exempts a total of $600,000 in cumulative taxable transfers from the estate and gift tax (sec. 2010). An executor also may elect, under section 2032A, to value certain qualified real property used in farming or another qualifying closely-held trade or business at its current use value, rather than its highest and best use value (up to a maximum reduction of $750,000). In addition, an executor may elect to pay the Federal estate tax attributable to a qualified closely-held business in installments over, at most, a 14-year period (sec. 6166). The tax attributable to the first $1,000,000 in value of a closely-held business is eligible for a special 4-percent interest rate (sec. 6601(j)).

House Bill

No provision.

Senate Amendment

The Senate amendment allows an executor to elect special estate tax treatment for qualified "family-owned business interests" if such interests comprise more than 50 percent of a decedent's estate and certain other requirements are met. In general, the provision excludes the first $1 million of value in qualified family-owned business interests from a decedent's taxable estate.

This new exclusion for qualified family-owned business interests is provided in addition to the unified credit (which currently effectively exempts $600,000 of taxable transfers from the estate and gift tax, and will be

[53] Prior to 1976, separate tax rate schedules applied to the gift tax and the estate tax.

[54] Thus, if a taxpayer has made cumulative taxable transfers equaling $21,040,000 or more, his or her average transfer tax rate is 55 percent. The phaseout has the effect of creating a 60-percent marginal transfer tax rate on transfers in the phaseout range.

increased to an effective exemption of $1,000,000 of taxable transfers under other provisions of the Senate amendment), the special-use provisions of section 2032A (which permit the exclusion of up to $750,000 in value of a qualifying farm or other closely-held business from a decedent's estate), and the provisions of section 6166 (which provide for the installment payment of estate taxes attributable to closely held businesses).

Qualified family-owned business interests

For purposes of the provision, a qualified family-owned business interest is defined as any interest in a trade or business (regardless of the form in which it is held) with a principal place of business in the United States if ownership of the trade or business is held at least 50 percent by one family, 70 percent by two families, or 90 percent by three families, as long as the decedent's family owns at least 30 percent of the trade or business. Under the provision, members of an individual's family are defined using the same definition as is used for the special-use valuation rules of section 2032A, and thus include (1) the individual's spouse, (2) the individual's ancestors, (3) lineal descendants of the individual, of the individual's spouse, or of the individual's parents, and (4) the spouses of any such lineal descendants. For purposes of applying the ownership tests in the case of a corporation, the decedent and members of the decedent's family are required to own the requisite percentage of the total combined voting power of all classes of stock entitled to vote and the requisite percentage of the total value of all shares of all classes of stock of the corporation. In the case of a partnership, the decedent and members of the decedent's family are required to own the requisite percentage of the capital interest, and the requisite percentage of the profits interest, in the partnership.

In the case of a trade or business that owns an interest in another trade or business (i.e., "tiered entities"), special look-through rules apply. Each trade or business owned (directly or indirectly) by the decedent and members of the decedent's family is separately tested to determine whether that trade or business meets the requirements of a qualified family-owned business interest. In applying these tests, any interest that a trade or business owns in another trade or business is disregarded in determining whether the first trade or business is a qualified family-owned business interest. The value of any qualified family-owned business interest held by an entity is treated as being proportionately owned by or for the entity's partners, shareholders, or beneficiaries. In the case of a multi-tiered entity, such rules are sequentially applied to look through each separate tier of the entity.

For example, if a holding company owns interests in two other companies, each of the three entities will be separately tested under the qualified family-owned business interest rules. In determining whether the holding company is a qualified family-owned business interest, its ownership interest in the other two companies is disregarded. Even if the holding company itself does not qualify as a family-owned business interest, the other two companies still may qualify if the direct and indirect interests held by the decedent and his or her family members satisfy the requisite ownership percentages and other requirements of a qualified family-owned business interest. If either (or both) of the lower-tier entities qualify, the value of the qualified family-owned business interests owned by the holding company are treated as proportionately owned by the holding company's shareholders.

An interest in a trade or business does not qualify if the business's (or a related entity's) stock or securities were publicly-traded at any time within three years of the decedent's death. An interest in a trade or business also does not qualify if more than 35 percent of the adjusted ordinary gross income of the business for the year of the decedent's death was personal holding company income (as defined in section 543). This personal holding company restriction does not apply to banks or domestic building and loan associations.

The value of a trade or business qualifying as a family-owned business interest is reduced to the extent the business holds passive assets or excess cash or marketable securities. Under the provision, the value of qualified family-owned business interests does not include any cash or marketable securities in excess of the reasonably expected day-to-day working capital needs of the trade or business. For this purpose, it is intended that day-to-day working capital needs be determined based on a historical average of the business's working capital needs in the past, using an analysis similar to that set forth in *Bardahl Mfg. Corp.*, 24 T.C.M. 1030 (1965). It is further intended that accumulations for capital acquisitions not be considered "working capital" for this purpose. The value of the qualified family-owned business interests also does not include certain other passive assets. For this purpose, passive assets include any assets that: (1) produce dividends, interest, rents, royalties, annuities and certain other types of passive income (as described in sec. 543(a)); (2) are an interest in a trust, partnership or REMIC (as described in sec. 954(c)(1)(B)(ii)); (3) produce no income (as described in sec. 954(c)(1)(B)(iii)); (4) give rise to income from commodities transactions or foreign currency gains (as described in sec. 954(c)(1)(C) and (D)); (5) produce income equivalent to interest (as described in sec. 954(c)(1)(E)); or (6) produce income from notional principal contracts or payments in lieu of dividends (as described in new secs. 954(c)(1)(F) and (G), added elsewhere in the Senate amendment). In the case of a regular dealer in property, such property is not considered to produce passive income under these rules, and thus, is not considered to be a passive asset.

Qualifying estates

A decedent's estate qualifies for the special treatment only if the decedent was a U.S. citizen or resident at the time of death, and the aggregate value of the decedent's qualified family-owned business interests that are passed to qualified heirs exceeds 50 percent of the decedent's adjusted gross estate (the "50-percent liquidity test"). For this purpose, qualified heirs include any individual who has been actively employed by the trade or business for at least 10 years prior to the date of the decedent's death, and members of the decedent's family. If a qualified heir is not a citizen of the United States, any qualified family-owned business interest acquired by that heir must be held in a trust meeting requirements similar to those imposed on qualified domestic trusts (under present-law sec. 2056A(a)), or through certain other security arrangements that meet the satisfaction of the Treasury Secretary. The 50-percent liquidity test generally is applied by adding all transfers of qualified family-owned business interests made by the decedent to qualified heirs at the time of the decedent's death, plus certain lifetime gifts of qualified family-owned business interests made to members of the decedent's family, and comparing this total to the decedent's adjusted gross estate. To the extent that a decedent held qualified family-owned business interests in more than one trade or business, all such interests are aggregated for purposes of applying the 50-percent liquidity test.

The 50-percent liquidity test is calculated using a ratio, the numerator and denominator of which are described below.

The numerator is determined by aggregating the value of all qualified family-owned business interests that are includible in the decedent's gross estate and are passed from the decedent to a qualified heir, plus any lifetime transfers of qualified business interests that are made by the decedent to members of the decedent's family (other than the decedent's spouse), provided such interests have been continuously held by members of the decedent's family and were not otherwise includible in the decedent's gross estate. For this purpose, qualified business interests transferred to members of the decedent's family during the decedent's lifetime are valued as of the date of such transfer. This amount is then reduced by all indebtedness of the estate, except for the following: (1) indebtedness on a qualified residence of the decedent (determined in accordance with the requirements for deductibility of mortgage interest set forth in section 163(h)(3)); (2) indebtedness incurred to pay the educational or medical expenses of the decedent, the decedent's spouse or the decedent's dependents; and (3) other indebtedness of up to $10,000.

The denominator is equal to the decedent's gross estate, reduced by any indebtedness of the estate, and increased by the amount of the following transfers, to the extent not already included in the decedent's gross estate: (1) any lifetime transfers of qualified business interests that were made by the decedent to members of the decedent's family (other than the decedent's spouse), provided such interests have been continuously held by members of the decedent's family, plus (2) any other transfers from the decedent to the decedent's spouse that were made within 10 years of the date of the decedent's death, plus (3) any other transfers made by the decedent within three years of the decedent's death, except non-taxable transfers made to members of the decedent's family. The Secretary of Treasury is granted authority to disregard de minimis gifts. In determining the amount of gifts made by the decedent, any gift that the donor and the donor's spouse elected to have treated as a split gift (pursuant to sec. 2513) is treated as made one-half by each spouse for purposes of this provision.

Participation requirements

To qualify for the beneficial treatment provided under the Senate amendment, the decedent (or a member of the decedent's family) must have owned and materially participated in the trade or business for at least five of the eight years preceding the decedent's date of death. In addition, each qualified heir (or a member of the qualified heir's family) is required to materially participate in the trade or business for at least five years of any eight-year period within 10 years following the decedent's death. For this purpose, "material participation" is defined as under present-law section 2032A (special use valuation) and the regulations promulgated thereunder. See, e.g., Treas. Reg. sec. 20.2032A-3. Under such regulations, no one factor is determinative of the presence of material participation and the uniqueness of the particular industry (e.g., timber, farming, manufacturing, etc.) must be considered. Physical work and participation in management decisions are the principal factors to

be considered. For example, an individual generally is considered to be materially participating in the business if he or she personally manages the business fully, regardless of the number of hours worked, as long as any necessary functions are performed.

If a qualified heir rents qualifying property to a member of the qualified heir's family on a net cash basis, and that family member materially participates in the business, the material participation requirement will be considered to have been met with respect to the qualified heir for purposes of this provision.

Recapture provisions

The benefit of the exclusions for qualified family-owned business interests are subject to recapture if, within 10 years of the decedent's death and before the qualified heir's death, one of the following "recapture events" occurs: (1) the qualified heir ceases to meet the material participation requirements (i.e., if neither the qualified heir nor any member of his or her family has materially participated in the trade or business for at least five years of any eight-year period); (2) the qualified heir disposes of any portion of his or her interest in the family-owned business, other than by a disposition to a member of the qualified heir's family or through a conservation contribution under section 170(h); (3) the principal place of business of the trade or business ceases to be located in the United States; or (4) the qualified heir loses U.S. citizenship. A qualified heir who loses U.S. citizenship may avoid such recapture by placing the qualified family-owned business assets into a trust meeting requirements similar to a qualified domestic trust (as described in present law sec. 2056A(a)), or through certain other security arrangements.

If one of the above recapture events occurs, an additional tax is imposed on the date of such event. As under section 2032A, each qualified heir is personally liable for the portion of the recapture tax that is imposed with respect to his or her interest in the qualified family-owned business. Thus, for example, if a brother and sister inherit a qualified family-owned business from their father, and only the sister materially participates in the business, her participation will cause both her and her brother to meet the material participation test. If she ceases to materially participate in the business within 10 years after her father's death (and the brother still does not materially participate), the sister and brother would both be liable for the recapture tax; that is, each would be liable for the recapture tax attributable to his or her interest.

The portion of the reduction in estate taxes that is recaptured would be dependent upon the number of years that the qualified heir (or members of the qualified heir's family) materially participated in the trade or business after the decedent's death. If the qualified heir (or his or her family members) materially participated in the trade or business after the decedent's death for less than six years, 100 percent of the reduction in estate taxes attributable to that heir's interest is recaptured; if the participation was for at least six years but less than seven years, 80 percent of the reduction in estate taxes is recaptured; if the participation was for at least seven years but less than eight years, 60 percent is recaptured; if the participation was for at least eight years but less than nine years, 40 percent is recaptured; and if the participation was for at least nine years but less than 10 years, 20 percent of the reduction in estate taxes is recaptured. In general, there is no requirement that the qualified heir (or members of his or her family) continue to hold or participate in the trade or business more than 10 years after the decedent's death. As under present-law section 2032A, however, the 10-year recapture period may be extended for a period of up to two years if the qualified heir does not begin to use the property for a period of up to two years after the decedent's death.

If a recapture event occurs with respect to any qualified family-owned business interest (or portion thereof), the amount of reduction in estate taxes attributable to that interest is determined on a proportionate basis. For example, if the decedent's estate included $2 million in qualified family-owned business interests and $1 million of such interests received beneficial treatment under this proposal, one-half of the value of the interest disposed of is deemed to have received the benefits provided under this proposal.

Effective date

The provision is effective with respect to the estates of decedents dying after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment, except that the exclusion for family-owned business interests may be taken only to the extent that the exclusion for family-owned business interests, plus the amount effectively exempted by the unified credit, does not exceed $1.3 million.

The conferees clarify that a sale or disposition, in the ordinary course of business, of assets such as inventory or a piece of equipment used in the business (e.g., the sale of crops or a tractor) would not result in recapture of the benefits of the qualified family-owned business exclusion.

4. Reduction in estate tax for certain land subject to permanent conservation easement (sec. 403 of the Senate amendment)

Present Law

A deduction is allowed for estate and gift tax purposes for a contribution of a qualified real property interest to a charity (or other qualified organization) exclusively for conservation purposes (secs. 2055(f), 2522(d)). For this purpose, a qualified real property interest means the entire interest of the transferor in real property (other than certain mineral interests), a remainder interest in real property, or a perpetual restriction on the use of real property (sec. 170(h)). A "conservation purpose" is (1) preservation of land for outdoor recreation by, or the education of, the general public, (2) preservation of natural habitat, (3) preservation of open space for scenic enjoyment of the general public or pursuant to a governmental conservation policy, and (4) preservation of historically important land or certified historic structures. Also, a contribution will be treated as "exclusively for conservation purposes" only if the conservation purpose is protected in perpetuity.

A donor making a qualified conservation contribution generally is not allowed to retain an interest in minerals which may be extracted or removed by any surface mining method. However, deductions for contributions of conservation interests satisfying all of the above requirements will be permitted if two conditions are satisfied. First, the surface and mineral estates in the property with respect to which the contribution is made must have been separated before June 13, 1976 (and remain so separated) and, second, the probability of surface mining on the property with respect to which a contribution is made must be so remote as to be negligible (sec. 170(h)(5)(B)).

The same definition of qualified conservation contributions also applies for purposes of determining whether such contributions qualify as charitable deductions for income tax purposes.

House Bill

No provision.

Senate Amendment

Reduction in estate taxes for certain land subject to permanent conservation easement

The Senate amendment allows an executor to elect to exclude from the taxable estate 40 percent of the value of any land subject to a qualified conservation easement that meets the following requirements: (1) the land is located within 25 miles of a metropolitan area (as defined by the Office of Management and Budget) or a national park or wilderness area, or within 10 miles of an Urban National Forest (as designated by the Forest Service of the U.S. Department of Agriculture); (2) the land has been owned by the decedent or a member of the decedent's family at all times during the three-year period ending on the date of the decedent's death; and (3) a qualified conservation contribution (within the meaning of sec. 170(h)) of a qualified real property interest (as generally defined in sec. 170(h)(2)(C)) was granted by the decedent or a member of his or her family. For purposes of the provision, preservation of a historically important land area or a certified historic structure does not qualify as a conservation purpose. To the extent that the value of such land is excluded from the taxable estate, the basis of such land acquired at death is a carryover basis (i.e., the basis is not stepped-up to its fair market value at death). Debt-financed property is not eligible for the exclusion.

The exclusion amount is calculated based on the value of the property after the conservation easement has been placed on the property. The exclusion from estate taxes does not extend to the value of any development rights retained by the decedent or donor, although payment for estate taxes on retained development rights may be deferred for up to two years, or until the disposition of the property, whichever is earlier. For this purpose, retained development rights are any rights retained to use the land for any commercial purpose which is not subordinate to and directly supportive of farming purposes, as defined in section 6420 (e.g., tree farming, ranching, viticulture, and the raising of other agricultural or horticultural commodities).

Maximum benefit allowed

The 40-percent estate tax exclusion for land subject to a qualified conservation easement (described above) may be taken only to the extent that the total exclusion for qualified conservation easements, plus the exclusion for qualified family-owned business interests (described in V.A.3., above), does not exceed $1 million. The executor of an estate holding land subject to a qualified conservation easement and/or qualified family-owned business interests is required to designate which of the two benefits is being claimed with respect to each property on which a benefit is claimed.

If the value of the conservation easement is less than 30 percent of (1) the value of the land without the easement, reduced by (2) the value of any retained development rights, then the exclusion percentage is reduced. The reduction in the exclusion percentage is equal to two percentage points for each point that the above ratio falls below 30 percent. Thus, for example, if the value of the easement is 25 percent of the value of the

land before the easement less the value of the retained development rights, the exclusion percentage is 30 percent (i.e., the 40 percent amount is reduced by twice the difference between 30 percent and 25 percent). Under this calculation, if the value of the easement is 10 percent or less of the value of the land before the easement less the value of the retained development rights, the exclusion percentage is equal to zero.

Treatment of land subject to a conservation easement for purposes of special-use valuation

The granting of a qualified conservation easement (as defined above) is not treated as a disposition triggering the recapture provisions of section 2032A. In addition, the existence of a qualified conservation easement does not prevent such property from subsequently qualifying for special-use valuation treatment under section 2032A.

Retained mineral interests

The Senate amendment also allows a charitable deduction (for income tax purposes or estate tax purposes) to taxpayers making a contribution of a permanent conservation easement on property where a mineral interest has been retained and surface mining is possible, but its probability is "so remote as to be negligible." Present law provides for a charitable deduction in such a case if the mineral interests have been separated from the land prior to June 13, 1976. The provision allows such a charitable deduction to be taken regardless of when the mineral interests had been separated.

Effective date

The estate tax exclusion applies to decedents dying after December 31, 1997. The rules with respect to the treatment of conservation easements under section 2032A and with respect to retained mineral interests are effective for easements granted after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment, except that the maximum exclusion for land subject to a qualified conservation easement is limited to $100,000 in 1998, $200,000 in 1999, $300,000 in 2000, $400,000 in 2001, and $500,000 in 2002 and thereafter. The exclusion for land subject to a qualified conservation easement may be taken in addition to the maximum exclusion for qualified family-owned business interests (i.e., there is no coordination between the two provisions).

The conference agreement provides that de minimis commercial recreational activity that is consistent with the conservation purpose, such as the granting of hunting and fishing licenses, will not cause the property to fail to qualify under this provision. It is anticipated that the Secretary of the Treasury will provide guidance as to the definition of "de minimis" activities. In addition, the conference agreement makes technical modifications (a) to provide that the definition of farming for purposes of this provision is the same as the definition set forth in section 2032A(e)(5), and (b) to clarify that a postmortem conservation easement may be placed on the property, as long as the easement has been made no later than the date of the election.

The conferees clarify that debt-financed property is eligible for this provision to the extent of the net equity in the property. For example, if a $1 million property is subject to an outstanding debt balance of $100,000, it is treated in the same manner as a $900,000 property that is not debt-financed.

5. Installment payments of estate tax attributable to closely held businesses (secs. 502-503 of the House bill and secs. 404-405 of the Senate amendment)

Present Law

In general, the Federal estate tax is due within nine months of a decedent's death. Under Code section 6166, an executor generally may elect to pay the estate tax attributable to an interest in a closely held business in installments over, at most, a 14-year period. If the election is made, the estate may pay only interest for the first four years, followed by up to 10 annual installments of principal and interest. Interest generally is imposed at the rate applicable to underpayments of tax under section 6621 (i.e., the Federal short-term rate plus 3 percentage points). Under section 6601(j), however, a special 4-percent interest rate applies to the amount of deferred estate tax attributable to the first $1,000,000 in value of the closely-held business.

To qualify for the installment payment election, the business must be an active trade or business and the value of the decedent's interest in the closely held business must exceed 35 percent of the decedent's adjusted gross estate. An interest in a closely held business includes: (1) any interest as a proprietor in a business carried on as a proprietorship; (2) any interest in a partnership carrying on a trade or business if the partnership has 15 or fewer partners, or if at least 20 percent of the partnership's assets are included in determining the decedent's gross estate; or (3) stock in a corporation if the corporation has 15 or fewer shareholders, or if at least 20 percent of the value of the voting stock is included in determining the decedent's gross estate.

House Bill

The House bill extends the period for which Federal estate tax installments can be made under section 6166 to a maximum period of 24 years. If the election is made, the estate pays only interest for the first four years, followed by up to 20 annual installments of principal and interest.

In addition, the House bill provides that no interest is imposed on the amount of deferred estate tax attributable to the first $1,000,000 in taxable value of the closely held business (i.e., the first $1,000,000 in value in excess of the effective exemption provided by the unified credit).

The interest rate imposed on the amount of deferred estate tax attributable to the taxable value of the closely held business in excess of $1,000,000 is reduced to an amount equal to 45 percent of the rate applicable to underpayments of tax. The interest paid on estate taxes deferred under section 6166 is not deductible for estate or income tax purposes.

Effective date.—The provision is effective for decedents dying after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement reduces the 4-percent interest rate to 2 percent, and makes the interest paid on estate taxes deferred under section 6166 non-deductible for estate or income tax purposes. The 2-percent interest rate is imposed on the amount of deferred estate tax attributable to the first $1,000,000 in *taxable* value of the closely held business (i.e., the first $1,000,000 in value in excess of the effective exemption provided by the unified credit and any other exclusions).[55] The interest rate imposed on the amount of deferred estate tax attributable to the taxable value of the closely held business in excess of $1,000,000 is reduced to an amount equal to 45 percent of the rate applicable to underpayments of tax.

The conference agreement does not include the provision that extends the repayment period to a maximum period of 24 years or the provision that provides a zero-percent interest rate for a portion of the deferred estate tax attributable to closely held businesses.

Effective date.—The provision is effective for decedents dying after December 31, 1997. Estates deferring estate tax under current law may make a one-time election to use the lower interest rates and forego the interest deduction for installments due after the date of the election (but such estates do not receive the benefit of the increase in the amount eligible for the 6601(j) interest rate—i.e., only the amount that was previously eligible for the 4-percent rate would be eligible for the 2-percent rate).

6. Estate tax recapture from cash leases of specially-valued property (sec. 504 of the House bill and sec. 406 of the Senate amendment)

Present Law

A Federal estate tax is imposed on the value of property passing at death. Generally, such property is included in the decedent's estate at its fair market value. Under section 2032A, the executor may elect to value certain "qualified real property" used in farming or other qualifying trade or business at its current use value rather than its highest and best use. If, after the special-use valuation election is made, the heir who acquired the real property ceases to use it in its qualified use within 10 years (15 years for individuals dying before 1982) of the decedent's death, an additional estate tax is imposed in order to "recapture" the benefit of the special-use valuation (sec. 2032A(c)).

Some courts have held that cash rental of specially-valued property after the death of the decedent is not a qualified use under section 2032A because the heirs no longer bear the financial risk of working the property, and, therefore, results in the imposition of the additional estate tax under section 2032A(c). See *Martin* v. *Commissioner*, 783 F.2d 81 (7th Cir. 1986) (cash lease to unrelated party not qualified use); *Williamson* v. *Commissioner*, 93 T.C. 242 (1989), *aff'd*, 974 F.2d 1525 (9th Cir. 1992) (cash lease to family member not a qualified use); *Fisher* v. *Commissioner*, 65 T.C.M. 2284 (1993) (cash lease to family member not a qualified use); cf. *Minter* v. *U.S.*, 19 F.3d 426 (8th Cir. 1994) (cash lease to family's farming corporation is qualified use); Estate of *Gavin* v. *U.S.*, 1997 U.S. App. Lexis 10383 (8th Cir. 1997) (heir's option to pay cash rent or 50 percent crop share is qualified use).

With respect to a decedent's surviving spouse, a special rule provides that the surviving spouse will not be treated as failing to use the property in a qualified use solely because the spouse rents the property to a member of the spouse's family on a net cash basis. (sec. 2032A(b)(5)). Under section 2032A, members of an individual's family include (1) the individual's spouse, (2) the individual's ancestors, (3) lineal descendants of the individual, of the individual's spouse, or of the individual's parents, and (4) the spouses of any such lineal descendants.

House Bill

The House bill provides that the cash lease of specially-valued real property by a lineal

[55] The $1,000,000 threshold is indexed under other provisions of the bill.

descendant of the decedent to a member of the lineal descendant's family, who continues to operate the farm or closely held business, does not cause the qualified use of such property to cease for purposes of imposing the additional estate tax under section 2032A(c).

Effective date.—The provision is effective for cash rentals occurring after December 31, 1976.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

7. Clarify eligibility for extension of time for payment of estate tax (sec. 505 of the House bill)

Present Law

In general, the Federal estate tax is due within nine months of a decedent's death. Under Code section 6166, an executor generally may elect to pay the estate tax attributable to an interest in a closely held business in installments over, at most, a 14-year period. If the election is made, the estate may pay only interest for the first four years, followed by up to 10 annual installments of principal and interest. To qualify for the installment payment election, the business must meet certain requirements. If certain events occur during the repayment period (e.g., the closely held business is sold), full payment of all deferred estate taxes is required at that time.

Under present law, there is limited access to judicial review of disputes regarding initial or continuing eligibility for the deferral and installment election under section 6166. If the Commissioner determines that an estate was not initially eligible for deferral under section 6166, or has lost its eligibility for such deferral, the estate is required to pay the full amount of estate taxes asserted by the Commissioner as being owed in order to obtain judicial review of the Commissioner's determination.

House Bill

The House bill authorizes the U.S. Tax Court to provide declaratory judgments regarding initial or continuing eligibility for deferral under section 6166.

Effective date.—The provision applies to decedents dying after date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

8. Gifts may not be revalued for estate tax purposes after expiration of statute of limitations (sec. 506 of the House bill)

Present Law

The Federal estate and gift taxes are unified so that a single progressive rate schedule is applied to an individual's cumulative gifts and bequests. The tax on gifts made in a particular year is computed by determining the tax on the sum of the taxable gifts made that year and all prior years and then subtracting the tax on the prior years taxable gifts and the unified credit. Similarly, the estate tax is computed by determining the tax on the sum of the taxable estate and prior taxable gifts and then subtracting the tax on taxable gifts and the unified credit. Under a special rule applicable to the computation of the gift tax (sec. 2504(c)), the value of gifts made in prior years is the value that was used to determine the prior year's gift tax. There is no comparable rule in the case of the computation of the estate tax.

Generally, any estate or gift tax must be assessed within three years after the filing of the return. No proceeding in a court for the collection of an estate or gift tax can be begun without an assessment within the three-year period. If no return is filed, the tax may be assessed, or a suit commenced to collect the tax without assessment, at any time. If an estate or gift tax return is filed, and the amount of unreported items exceeds 25 percent of the amount of the reported items, the tax may be assessed or a suit commenced to collect the tax without assessment, within six years after the return was filed (sec. 6501).

Commencement of the statute of limitations generally does not require that a particular gift be disclosed. A special rule, however, applies to certain gifts that are valued under the special valuation rules of Chapter 14. The gift tax statute of limitations runs for such a gift only if it is disclosed on a gift tax return in a manner adequate to apprise the Secretary of the Treasury of the nature of the item.

Most courts have permitted the Commissioner to redetermine the value of a gift for which the statute of limitations period for the gift tax has expired in order to determine the appropriate tax rate bracket and unified credit for the estate tax. See, e.g., *Evanson* v. *United States*, 30 F.3d 960 (9th Cir. 1994); *Stalcup* v. *United States*, 946 F. 2d 1125 (5th Cir. 1991); *Estate of Levin*, 1991 T.C. Memo 1991-208, aff'd 986 F. 2d 91 (4th Cir. 1993); *Estate of Smith* v. *Commissioner*, 94 T.C. 872 (1990). But see *Boatman's First National Bank* v. *United States*, 705 F. Supp. 1407 (W.D. Mo. 1988) (Commissioner not permitted to revalue gifts).

House Bill

The House bill provides that a gift for which the limitations period has passed cannot be revalued for purposes of determining the applicable estate tax bracket and available unified credit. For gifts made in calendar years after the date of enactment, the House bill also extends the special rule governing gifts valued under Chapter 14 to all gifts. Thus, the statute of limitations will not run on an inadequately disclosed transfer in calendar years after the date of enactment, regardless of whether a gift tax return was filed for other transfers in that same year.

It is intended that, in order to revalue a gift that has been adequately disclosed on a gift tax return, the IRS must issue a final notice of redetermination of value (a "final notice") within the statute of limitations applicable to the gift for gift tax purposes (generally, three years). This rule is applicable even where the value of the gift as shown on the return does not result in any gift tax being owed (e.g., through use of the unified credit). It also is anticipated that the IRS will develop an administrative appeals process whereby a taxpayer can challenge a redetermination of value by the IRS prior to issuance of a final notice.

A taxpayer who is mailed a final notice may challenge the redetermined value of the gift (as contained in the final notice) by filing a motion for a declaratory judgment with the Tax Court. The motion must be filed on or before 90 days from the date that the final notice was mailed. The statute of limitations is tolled during the pendency of the Tax Court proceeding.

Effective date.—The provision generally applies to gifts made after the date of enactment. The extension of the special rule under chapter 14 to all gifts applies to gifts made in calendar years after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

9. Repeal of throwback rules applicable to domestic trusts (sec. 507 of the House bill)

Present Law

A nongrantor trust is treated as a separate taxpayer for Federal income tax purposes. Such a trust generally is treated as a conduit with respect to amounts distributed currently[56] and taxed with respect to any income which is accumulated in the trust rather than distributed. A separate graduated tax rate structure applies to trusts which historically has permitted accumulated trust income to be taxed at lower rates than the rates applicable to trust beneficiaries. This benefit often was compounded through the creation of multiple trusts.

The Internal Revenue Code has several rules intended to limit the benefit that would otherwise occur from using the lower rates applicable to one or more trusts. Under the so-called "throwback" rules, the distribution of previously accumulated trust income to a beneficiary will be subject to tax (in addition to any tax paid by the trust on that income) where the beneficiary's average top marginal rate in the previous five years is higher than those of the trust.

Under section 643(f), two or more trusts are treated as one trust if (1) the trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose for the existence of the trusts is to avoid Federal income tax. For trusts that were irrevocable as of March 1, 1984, section 643(f) applies only to contributions to corpus after that date.

Under section 644, if property is sold within two years of its contribution to a trust, the gain that would have been recognized had the contributor sold the property is taxed at the contributor's marginal tax rates. In effect, section 644 treats such gains as if the contributor had realized the gain and then transferred the net after-tax proceeds from the sale to the trust as corpus.

Sections 665 through 668 apply different rules to distributions of previously accumulated trust income from a foreign trust than to distributions of such income from domestic trusts. If a foreign trust accumulates income, changes its situs so as to become a domestic trust, and then makes a distribution that is deemed to have been made in a year in which the trust was a foreign trust, the distribution is treated as a distribution from a foreign trust for purposes of the accumulation distribution rules. Rev. Rul. 91-6, 1991-1 C.B. 89.

House Bill

The House bill exempts from the throwback rules amounts distributed by a domestic trust after the date of enactment. The House bill also provides that precontribution gain on property sold by a domestic trust no longer is subject to section 644 (i.e., taxed at the contributor's marginal tax rates).

[56] The conduit treatment is achieved by allowing the trust a deduction for amounts distributed to beneficiaries during the taxable year to the extent of distributable net income and by including such distributions in the beneficiaries' income.

The treatment of foreign trusts, including the treatment of foreign trusts that become domestic trusts,[57] remains unchanged.

Effective date.—The provision with respect to the throwback rules is effective for distributions made in taxable years beginning after the date of enactment. The modification to section 644 applies to sales or exchanges after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the throwback rules continue to apply with respect to (a) foreign trusts, (b) domestic trusts that were once treated as foreign trusts (except as provided in Treasury regulations), and (c) domestic trusts created before March 1, 1984, that would be treated as multiple trusts under sec. 643(f) of the Code.

10. Unified credit of decedent increased by unified credit of spouse used on split gift included in decedent's gross estate (sec. 508 of the House bill)

Present Law

A gift tax is imposed on transfers by gift during life and an estate tax is imposed on transfers at death. The gift and estate taxes are a unified transfer tax system in that one progressive tax is imposed on the cumulative transfers during lifetime and at death. The first $10,000 of gifts of present interests to each donee during any one calendar year are excluded from Federal gift tax. Under section 2513, one spouse can elect to treat a gift made by the other spouse to a third person as made one-half by each spouse (i.e., "gift-splitting").

The amount of estate tax payable generally is determined by multiplying the applicable tax rate (from the unified rate schedule) by the cumulative post-1976 taxable transfers made by the taxpayer and then subtracting any transfer taxes payable for prior taxable periods. This amount is reduced by any remaining available unified credit (and other applicable credits) to determine the estate tax liability. The estate tax is imposed on all of the assets held by the decedent at his death, including the value of certain property previously transferred by the decedent in which the decedent had certain retained powers or interests. In such circumstances, property that has been treated as a gift made one-half by each spouse may be includible in both spouses' estates.

House Bill

With respect to any split-gift property that is subsequently includible in both spouses' estates, the House bill increases the unified credit allowable to the decedent's estate by the amount of the unified credit previously allowed to the decedent's spouse with respect to the split gift.

Effective date.—The provision applies to gifts made after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

11. Reformation of defective bequests to spouse of decedent (sec. 509 of the House bill)

Present Law

A "marital deduction" generally is allowed for estate and gift tax purposes for the value of property passing to a spouse. However, "terminable interest" property (i.e., an interest in property that will terminate or fail) transferred to a spouse generally will only qualify for the marital deduction under certain special rules designed to ensure that there will be an estate or gift tax to the transferee spouse on unspent transferred proceeds. Thus, the effect of a marital deduction with the terminable interest rule is to provide only a method of deferral of the estate or gift tax, not exemption. One of the special terminable interest rules (Code sec. 2056(b)(5)) provides that the marital deduction is allowed where the decedent transfers property to a trust that is required to pay income to the surviving spouse and the surviving spouse has a general power of appointment at that spouse's death (under this so-called "power of appointment trust," the power of appointment both provides the surviving spouse with power to control the ultimate disposition of the trust assets and assures that the trust assets will be subject to estate or gift tax). Another special terminable interest rule called the "qualified terminable interest property" rule ("QTIP") generally permits a marital deduction for transfers by the decedent to a trust that is required to distribute all of the income to the surviving spouse at least annually and an election is made to subject the transferee spouse to transfer tax on the trust property. To qualify for the marital deduction, a power of appointment trust or QTIP trust must meet certain specific requirements. If there is a technical defect in meeting those requirements, the marital deduction may be lost.

House Bill

The House bill allows the marital deduction with respect to a defective power of appointment or QTIP trust if there is a "qualified reformation" of the trust that corrects the defect. In order to qualify, the reformation must change the governing instrument in a manner that cures the defects to qualification of the trust for the marital deduction. In addition, where a reformation proceeding is commenced after the due date for the estate tax return (including extensions), the reformation would qualify only if, prior to reformation, the governing instrument provides (1) that the surviving spouse is entitled to all of the income from the property for life, and (2) no person other than the surviving spouse is entitled to any distributions during the surviving spouse's life. With respect to QTIP, an election to qualify must be made by the executor on the estate tax return as required by section 2056(b)(7)(B)(v).

The determination of whether a marital deduction should be allowed (i.e., the reformation has cured the defects to qualification and otherwise qualifies under this provision) is made either as of the due date for filing the estate or gift tax return (including any extensions) or the time that changes are completed pursuant to a reformation proceeding. The statute of limitations is extended with respect to the estate or gift tax attributable to the trust property until one year after the date the Treasury Department is notified that a qualified reformation has been completed or that the reformation proceeding has otherwise terminated.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

B. Generation-Skipping Tax Provisions

1. Severing of trusts holding property having an inclusion ratio of greater than zero (sec. 511 of the House bill)

Present Law

A generation-skipping transfer tax ("GST" tax) generally is imposed on transfers, either directly or through a trust or similar arrangement, to a skip person (i.e., a beneficiary in more than one generation below that of the transferor). Transfers subject to the GST tax include direct skips, taxable terminations and taxable distributions. An exemption of $1 million is provided for each person making generation-skipping transfers. The exemption may be allocated by a transferor (or his or her executor) to transferred property.

If the value of the transferred property exceeds the amount of the GST exemption allocated to that property, the GST tax generally is determined by multiplying a flat tax rate equal to the highest estate tax rate (i.e., currently 55 percent) by the "inclusion percentage" and the value of the taxable property at the time of the taxable event. The "inclusion percentage" is the number one minus the "exclusion percentage". The exclusion percentage generally is calculated by dividing the amount of the GST exemption allocated to the property by the value of the property.

Under Treasury regulations, trusts that are included in the transferor's gross estate or created under the transferor's will may be validly severed only if (1) the trust is severed according to a direction in the governing instrument; or (2) the trust is severed pursuant to the trustee's discretionary powers, but only if certain other conditions are satisfied (e.g., the severance occurs or a reformation proceeding begins before the estate tax return is due). Treas. Reg. 26.2654–1(b).

House Bill

If a trust with an inclusion ratio of greater than zero is severed into two separate trusts, the House bill allows the trustee to elect to treat one of the separate trusts as having an inclusion ratio of zero and the other separate trust as having an inclusion ratio of one. To qualify for this treatment, the separate trust with the inclusion ratio of one must receive an interest in each property held by the single trust (prior to severance) equal to the single trust's inclusion ratio, except to the extent otherwise provided by regulation. The remaining interests in each property will be transferred to the separate trust with the inclusion ratio of zero. The election must be irrevocable, and must be made at a time and in a manner prescribed by the Treasury Department.

Effective date.—The provision is effective for severances of trusts occurring after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

2. Modification of generation-skipping transfer tax for transfers to individuals with deceased parents (sec. 512 of the House bill and sec. 407 of the Senate amendment)

Present Law

Under the "predeceased parent exception", a direct skip transfer to a transferor's grandchild is not subject to the generation-skipping transfer ("GST") tax if the child of the transferor who was the grandchild's parent is

[57] Rev. Rul. 91–6, 1991–1 C.B. 89.

deceased at the time of the transfer (sec. 2612(c)(2)). This "predeceased parent exception" to the GST tax is not applicable to (1) transfers to collateral heirs, e.g., grandnieces or grandnephews, or (2) taxable terminations or taxable distributions.

House Bill

The House bill extends the predeceased parent exception to transfers to collateral heirs, provided that the decedent has no living lineal descendants at the time of the transfer. For example, the exception would apply to a transfer made by an individual (with no living lineal heirs) to a grandniece where the transferor's nephew or niece who is the parent of the grandniece is deceased at the time of the transfer.

In addition, the House bill extends the predeceased parent exception (as modified by the change in the preceding paragraph) to taxable terminations and taxable distributions, provided that the parent of the relevant beneficiary was dead at the earliest time that the transfer (from which the beneficiary's interest in the property was established) was subject to estate or gift tax. For example, where a trust was established to pay an annuity to a charity for a term for years with a remainder interest granted to a grandson, the termination of the term for years would not be a taxable termination subject to the GST tax if the grandson's parent (who is the son or daughter of the transferor) is deceased at the time the trust was created and the transfer creating the trust was subject to estate or gift tax.

Effective date.—The provision is effective for generation skipping transfers occurring after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

VI. EXTENSION OF CERTAIN EXPIRING TAX PROVISIONS

A. Research Tax Credit (sec. 601 of the House bill and sec. 501 of the Senate amendment)

Present Law

General rule

Section 41 provides for a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceeded its base amount for that year. The research tax credit expired and generally will not apply to amounts paid or incurred after May 31, 1997.[1]

A 20-percent research tax credit also applied to the excess of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) over (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate credit computation is commonly referred to as the "university basic research credit" (see sec. 41(e)).

Computation of allowable credit

Except for certain university basic research payments made by corporations, the research tax credit applies only to the extent that the taxpayer's qualified research expenditures for the current taxable year exceed its base amount. The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984-1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (so-called "start-up firms") are assigned a fixed-base percentage of 3 percent.[2]

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

To prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related entities, a special aggregation rule provides that all members of the same controlled group of corporations are treated as a single taxpayer (sec. 41(f)(1)). Special rules apply for computing the credit when a major portion of a business changes hands, under which qualified research expenditures and gross receipts for periods prior to the change of ownership of a trade or business are treated as transferred with the trade or business that gave rise to those expenditures and receipts for purposes of recomputing a taxpayer's fixed-base percentage (sec. 41(f)(3)).

Alternative incremental research credit regime

As part of the Small Business Job Protection Act of 1996, taxpayers are allowed to elect an alternative incremental research credit regime. If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced. Under the alternative credit regime, a credit rate of 1.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1 percent (i.e., the base amount equals 1 percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 2.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of 2 percent. A credit rate of 2.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 2 percent. An election to be subject to this alternative incremental credit regime may be made only for a taxpayer's first taxable year beginning after June 30, 1996, and before July 1, 1997, and such an election applies to that taxable year and all subsequent years (in the event that the credit subsequently is extended by Congress) unless revoked with the consent of the Secretary of the Treasury. If a taxpayer elects the alternative incremental research credit regime for its first taxable year beginning after June 30, 1996, and before July 1, 1997, then all qualified research expenses paid or incurred during the first 11 months of such taxable year are treated as qualified research expenses for purposes of computing the taxpayer's credit.

Eligible expenditures

Qualified research expenditures eligible for the research tax credit consist of: (1) "in-house" expenses of the taxpayer for wages and supplies attributable to qualified research; (2) certain time-sharing costs for computer use in qualified research; and (3) 65 percent of amounts paid by the taxpayer for qualified research conducted on the taxpayer's behalf (so-called "contract research expenses").[3]

To be eligible for the credit, the research must not only satisfy the requirements of present-law section 174 (described below) but must be undertaken for the purpose of discovering information that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and must pertain to functional aspects, performance, reliability, or quality of a business component. Research does not qualify for the credit if substantially all of the activities relate to style, taste, cosmetic, or seasonal design factors (sec. 41(d)(3)). In addition, research does not qualify for the credit if conducted after the beginning of commercial production of the business component, if related to the adaptation of an existing business component to a particular customer's requirements, if related to the duplication of an existing business component from a physical examination of the component itself or certain other information, or if related to certain efficiency surveys, market research or development, or routine quality control (sec. 41(d)(4)).

Expenditures attributable to research that is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the

[1] When originally enacted, the research tax credit applied to qualified expenses incurred after June 30, 1981. The credit was modified several times and was extended through June 30, 1995. The credit later was extended for the period July 1, 1996, through May 31, 1997 (with a special 11-month extension for taxpayers that elect to be subject to the alternative incremental research credit regime).

[2] The Small Business Job Protection Act of 1996 expanded the definition of "start-up firms" under section 41(c)(3)(B)(I) to include any firm if the first taxable year in which such firm had both gross receipts and qualified research expenses began after 1983.

A special rule (enacted in 1993) is designed to gradually recompute a start-up firm's fixed-base percentage based on its actual research experience. Under this special rule, a start-up firm will be assigned a fixed-base percentage of 3 percent for each of its first five taxable years after 1993 in which it incurs qualified research expenditures. In the event that the research credit is extended beyond the scheduled expiration date, a start-up firm's fixed-base percentage for its sixth through tenth taxable years after 1993 in which it incurs qualified research expenditures will be a phased-in ratio based on its actual research experience. For all subsequent taxable years, the taxpayer's fixed-base percentage will be its actual ratio of qualified research expenditures to gross receipts for any five years selected by the taxpayer from its fifth through tenth taxable years after 1993 (sec. 41(c)(3)(B)).

[3] Under a special rule enacted as part of the Small Business Job Protection Act of 1996, 75 percent of amounts paid to a research consortium for qualified research is treated as qualified research expenses eligible for the research credit (rather than 65 percent under the general rule under section 41(b)(3) governing contract research expenses) if (1) such research consortium is a tax-exempt organization that is described in section 501(c)(3) (other than a private foundation) or section 501(c)(6) and is organized and operated primarily to conduct scientific research, and (2) such qualified research is conducted by the consortium on behalf of the taxpayer and one or more persons not related to the taxpayer.

extent funded by any grant, contract, or otherwise by another person (or governmental entity).

Relation to deduction

Under section 174, taxpayers may elect to deduct currently the amount of certain research or experimental expenditures incurred in connection with a trade or business, notwithstanding the general rule that business expenses to develop or create an asset that has a useful life extending beyond the current year must be capitalized. However, deductions allowed to a taxpayer under section 174 (or any other section) are reduced by an amount equal to 100 percent of the taxpayer's research tax credit determined for the taxable year. Taxpayers may alternatively elect to claim a reduced research tax credit amount under section 41 in lieu of reducing deductions otherwise allowed (sec. 280C(c)(3)).

House Bill

The research tax credit is extended for 19 months—i.e., generally for the period June 1, 1997, through December 31, 1998.

Under the House bill, taxpayers are permitted to elect the alternative incremental research credit regime under section 41(c)(4) for any taxable year beginning after June 30, 1996, and such election will apply to that taxable year and all subsequent taxable years unless revoked with the consent of the Secretary of the Treasury.

Effective date.—The provision generally is effective for qualified research expenditures paid or incurred during the period June 1, 1997, through December 31, 1998. A special rule provides that, notwithstanding the general termination date for the research credit of December 31, 1998, if a taxpayer elects to be subject to the alternative incremental research credit regime for its first taxable year beginning after June 30, 1996, and before July 1, 1997, the alternative incremental research credit will be available during the entire 30-month period beginning with the first month of such taxable year—i.e., the equivalent of the 11-month extension provided for by the Small Business Job Protection Act of 1996 plus an additional 19-month extension provided for by this bill. However, to prevent taxpayers from effectively obtaining more than 30-months of research credits from the Small Business Job Protection Act of 1996 and this bill, the 30-month period for taxpayers electing the alternative incremental research credit regime is reduced by the number of months (if any) after June 1996 with respect to which the taxpayer claimed research credit amounts under the regular, 20-percent research credit rules.

Senate Amendment

The research tax credit is extended for 24 months—i.e., generally for the period June 1, 1997, through May 31, 1999.

Under the Senate amendment, taxpayers are permitted to elect the alternative incremental research credit regime under section 41(c)(4) for any taxable year beginning after June 30, 1996, and such election will apply to that taxable year and all subsequent taxable years unless revoked with the consent of the Secretary of the Treasury.

Effective date.—The provision generally is effective for qualified research expenditures paid or incurred during the period June 1, 1997, through December 31, 1999. A special rule provides that, notwithstanding the general termination date for the research credit of December 31, 1999, if a taxpayer elects to be subject to the alternative incremental research credit regime for its first taxable year beginning after June 30, 1996, and before July 1, 1997, the alternative incremental research credit will be available during the entire 35-month period beginning with the first month of such taxable year—i.e., the equivalent of the 11-month extension provided for by the Small Business Job Protection Act of 1996 plus an additional 24-month extension provided for by the Senate amendment. However, to prevent taxpayers from effectively obtaining more than 35-months of research credits from the Small Business Job Protection Act of 1996 and this bill, the 35-month period for taxpayers electing the alternative incremental research credit regime is reduced by the number of months (if any) after June 1996 with respect to which the taxpayer claimed research credit amounts under the regular, 20-percent research credit rules.

Conference Agreement

Under the conference agreement, the research tax credit is extended for 13 months—i.e., generally for the period June 1, 1997, through June 30, 1998.

Under the provision, taxpayers are permitted to elect the alternative incremental research credit regime under section 41(c)(4) for any taxable year beginning after June 30, 1996, and such election will apply to that taxable year and all subsequent taxable years unless revoked with the consent of the Secretary of the Treasury.

Effective date.—The provision generally is effective for qualified research expenditures paid or incurred during the period June 1, 1997, through June 30, 1998. A special rule provides that, notwithstanding the general termination date for the research credit of June 30, 1998, if a taxpayer elects to be subject to the alternative incremental research credit regime for its first taxable year beginning after June 30, 1996, and before July 1, 1997, the alternative incremental research credit will be available during the entire 24-month period beginning with the first month of such taxable year—i.e., the equivalent of the 11-month extension provided for by the Small Business Job Protection Act of 1996 plus an additional 13-month extension provided for by the conference agreement. However, to prevent taxpayers from effectively obtaining more than 24- months of research credits from the Small Business Job Protection Act of 1996 and this bill, the 24-month period for taxpayers electing the alternative incremental research credit regime is reduced by the number of months (if any) after June 1996 with respect to which the taxpayer claimed research credit amounts under the regular, 20-percent research credit rules.

B. Contributions of Stock to Private Foundations (sec. 602 of the House bill and sec. 502 of the Senate amendment)

Present Law

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair market value of property contributed to a charitable organization.[4] However, in the case of a charitable contribution of short-term gain, inventory, or other ordinary income property, the amount of the deduction generally is limited to the taxpayer's basis in the property. In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer's basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose.[5]

In cases involving contributions to a private foundation (other than certain private operating foundations), the amount of the deduction is limited to the taxpayer's basis in the property. However, under a special rule contained in section 170(e)(5), taxpayers are allowed a deduction equal to the fair market value of "qualified appreciated stock" contributed to a private foundation prior to May 31, 1997.[6] Qualified appreciated stock is defined as publicly traded stock which is capital gain property. The fair-market-value deduction for qualified appreciated stock donations applies only to the extent that total donations made by the donor to private foundations of stock in a particular corporation did not exceed 10 percent of the outstanding stock of that corporation. For this purpose, an individual is treated as making all contributions that were made by any member of the individual's family.

House Bill

The House bill extends the special rule contained in section 170(e)(5) for contributions of qualified appreciated stock made to private foundations during the period June 1, 1997, through December 31, 1998.

Effective date.—The provision is effective for contributions of qualified appreciated stock to private foundations made during the period June 1, 1997, through December 31, 1998.

Senate Amendment

The Senate amendment extends the special rule contained in section 170(e)(5) for contributions of qualified appreciated stock made to private foundations during the period June 1, 1997, through May 31, 1999.

Effective date.—The provision is effective for contributions of qualified appreciated stock to private foundations made during the period June 1, 1997, through May 31, 1999.

Conference Agreement

The conference agreement provides that the special rule contained in section 170(e)(5) is extended for the period June 1, 1997, through June 30, 1998. The provision is effective for contributions of qualified appreciated stock to private foundations made during the period June 1, 1997, through June 30, 1998.

C. Work Opportunity Tax Credit (sec. 603 of the House bill and sec. 503 of the Senate amendment)

Present Law

In general

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of seven targeted groups. The credit generally is

[4] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)).

[5] As part of the Omnibus Budget Reconciliation Act of 1993, Congress eliminated the treatment of contributions of appreciated property (real, personal, and intangible) as a tax preference for alternative minimum tax (AMT) purposes. Thus, if a taxpayer makes a gift to charity of property (other than short-term gain, inventory, or other ordinary income property, or gifts to private foundations) that is real property, intangible property, or tangible personal property the use of which is related to the donee's tax-exempt purpose, the taxpayer is allowed to claim the same fair-market-value deduction for both regular tax and AMT purposes (subject to present-law percentage limitations).

[6] The special rule contained in section 170(e)(5), which was originally enacted in 1984, expired January 1, 1995. The Small Business Job Protection Act of 1996 reinstated the rule for 11 months—for contributions of qualified appreciated stock made to private foundations during the period July 1, 1996, through May 31, 1997.

equal to 35 percent of qualified wages. Generally, qualified wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer.

Generally, no more than $6,000 of wages during the first year of employment is permitted to be taken into account with respect to any individual. Thus, the maximum credit per individual is $2,100. With respect to qualified summer youth employees, the maximum credit is 35 percent of up to $3,000 of qualified first-year wages, for a maximum credit of $1,050.

The deduction for wages is reduced by the amount of the credit.

Targeted groups eligible for the credit

(1) Families receiving AFDC

An eligible recipient is an individual certified by the designated local employment agency as being a member of a family eligible to receive benefits under AFDC or its successor program for a period of at least nine months part of which is during the 9-month period ending on the hiring date. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for the AFDC or its successor program.

(2) Qualified ex-felon

A qualified ex-felon is an individual certified as: (1) having been convicted of a felony under any State or Federal law, (2) being a member of a family that had an income during the six months before the earlier of the date of determination or the hiring date which on an annual basis is 70 percent or less of the Bureau of Labor Statistics lower living standard, and (3) having a hiring date within one year of release from prison or date of conviction.

(3) High-risk-youth

A high-risk youth is an individual certified as being at least 18 but not yet 25 on the hiring date and as having a principal place of abode within an empowerment zone or enterprise community (as defined under Subchapter U of the Internal Revenue Code). Qualified wages will not include wages paid or incurred for services performed after the individual moves outside an empowerment zone or enterprise community.

(4) Vocational rehabilitation referral

Vocational rehabilitation referrals are those individuals who have a physical or mental disability that constitutes a substantial handicap to employment and who have been referred to the employer while receiving, or after completing, vocational rehabilitation services under an individualized, written rehabilitation plan under a State plan approved under the Rehabilitation Act of 1973 or under a rehabilitation plan for veterans carried out under Chapter 31 of Title 38, U.S. Code. Certification will be provided by the designated local employment agency upon assurances from the vocational rehabilitation agency that the employee has met the above conditions.

(5) Qualified summer youth employee

Qualified summer youth employees are individuals: (1) who perform services during any 90-day period between May 1 and September 15, (2) who are certified by the designated local agency as being 16 or 17 years of age on the hiring date, (3) who have not been an employee of that employer before, and (4) who are certified by the designated local agency as having a principal place of abode within an empowerment zone or enterprise community (as defined under Subchapter U of the Internal Revenue Code). As with high-risk youths, no credit is available on wages paid or incurred for service performed after the qualified summer youth moves outside of an empowerment zone or enterprise community. If, after the end of the 90-day period, the employer continues to employ a youth who was certified during the 90-day period as a member of another targeted group, the limit on qualified first-year wages will take into account wages paid to the youth while a qualified summer youth employee.

(6) Qualified veteran

A qualified veteran is a veteran who is a member of a family certified as receiving assistance under: (1) AFDC for a period of at least nine months part of which is during the 12-month period ending on the hiring date, or (2) a food stamp program under the Food Stamp Act of 1977 for a period of at least three months part of which is during the 12-month period ending on the hiring date. For these purposes, members of a family are defined to include only those individuals taken into account for purposes of determining eligibility for: (I) the AFDC or its successor program, and (ii) a food stamp program under the Food Stamp Act of 1977, respectively.

Further, a qualified veteran is an individual who has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability. However, any individual who has served for a period of more than 90 days during which the individual was on active duty (other than for training) is not an eligible employee if any of this active duty occurred during the 60-day period ending on the date the individual was hired by the employer. This latter rule is intended to prevent employers who hire current members of the armed services (or those departed from service within the last 60 days) from receiving the credit.

(7) Families receiving food stamps

An eligible recipient is an individual aged 18 but not yet 25 certified by a designated local employment agency as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for a period of at least six months ending on the hiring date. In the case of families that cease to be eligible for food stamps under section 6(o) of the Food Stamp Act of 1977, the six-month requirement is replaced with a requirement that the family has been receiving food stamps for at least three of the five months ending on the date of hire. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for a food stamp program under the Food Stamp Act of 1977.

Minimum employment period

No credit is allowed for wages paid unless the eligible individual is employed by the employer for at least 180 days (20 days in the case of a qualified summer youth employee) or 400 hours (120 hours in the case of a qualified summer youth employee).

Expiration date

The credit is effective for wages paid or incurred to a qualified individual who begins work for an employer after September 30, 1996, and before October 1, 1997.

House Bill

Extension

The House bill provides a one-year extension of the work opportunity tax credit.

Targeted categories

The bill extends eligibility to members of families receiving AFDC benefits for any nine months during the eighteen month period ending on the hiring date.

Minimum employment period

The minimum employment period is reduced from 400 to 120 hours.

Credit percentage

The House bill provides a credit percentage of 25 percent for employment of less than 400 hours of employment and 40 percent for employment of 400 or more hours.

Alternative minimum tax (AMT)

The House bill allows the credit against the AMT.

Effective date

Generally, the provision is effective for wages paid or incurred to qualified individuals who begin work for the employer after September 30, 1997, and before October 1, 1998. The provision allowing the credit against the AMT is effective for taxable years beginning after December 31, 1997.

Senate Amendment

Extension

The Senate amendment provides a 20-month extension of the work opportunity tax credit.

Targeted categories

Same as the House bill, except the Senate amendment adds SSI beneficiaries as a new category of workers for which the credit is available.

Minimum employment period

Same as the House bill.

Credit percentage

Same as the House bill.

Alternative minimum tax (AMT)

No provision.

Effective date

The provision is effective for wages paid or incurred to qualified individuals who begin work for the employer after September 30, 1997, and before June 1, 1999.

Conference Agreement

Extension

The conference agreement provides for a 9-month extension of the work opportunity tax credit.

Targeted categories

The conference agreement follows the Senate amendment.

Minimum employment period

The conference agreement follows the House bill and the Senate amendment.

Credit percentage

The conference agreement follows the House bill and the Senate amendment.

Alternative minimum tax (AMT)

The conference agreement does not include the House bill provision.

Effective date

The conference agreement is generally effective for wages paid to qualified individuals who begin work for an employer after September 30, 1997, and before July 1, 1998.

D. Orphan Drug Tax Credit (sec. 604 of the House bill and sec. 504 of the Senate amendment)

Present Law

A 50-percent nonrefundable tax credit is allowed for qualified clinical testing expenses incurred in testing of certain drugs for rare diseases or conditions, generally referred to

as "orphan drugs." Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration ("FDA") but before the drug has been approved for sale by the FDA. A rare disease or condition is defined as one that (1) affects less than 200,000 persons in the United States, or (2) affects more than 200,000 persons, but for which there is no reasonable expectation that businesses could recoup the costs of developing a drug for such disease or condition from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).

As with other general business credits (sec. 38), taxpayers are allowed to carry back unused credits to three years preceding the year the credit is earned (but not to a taxable year ending before July 1, 1996) and to carry forward unused credits to 15 years following the year the credit is earned. The credit cannot be used to offset a taxpayer's alternative minimum tax liability.

The orphan drug tax credit expired and does not apply to expenses paid or incurred after May 31, 1997.[7]

House Bill

The orphan drug tax credit provided for by section 45C is permanently extended.

Effective date.—The provision is effective for qualified clinical testing expenses paid or incurred after May 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and Senate amendment—i.e., the orphan drug tax credit is permanently extended.

VII. DISTRICT OF COLUMBIA TAX INCENTIVES (secs. 701–702 of the House bill and sec. 601 of the Senate amendment)

Present Law

Empowerment zones and enterprise communities

In general

Pursuant to the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), the Secretaries of the Department of Housing and Urban Development (HUD) and the Department of Agriculture designated a total of nine empowerment zones and 95 enterprise communities on December 21, 1994. As required by law, six empowerment zones are located in urban areas (with aggregate population for the six designated urban empowerment zones limited to 750,000) and three empowerment zones are located in rural areas.[8] Of the enterprise communities, 65 are located in urban areas and 30 are located in rural areas (sec. 1391). Designated empowerment zones and enterprise communities were required to satisfy certain eligibility criteria, including specified poverty rates and population and geographic size limitations (sec. 1392). Portions of the District of Columbia were designated as an enterprise community.

The following tax incentives are available for certain businesses located in empowerment zones: (1) an annual 20-percent wage credit for the first $15,000 of wages paid to a zone resident who works in the zone; (2) an additional $20,000 of expensing under Code section 179 for "qualified zone property" placed in service by an "enterprise zone business" (accordingly, certain businesses operating in empowerment zones are allowed up to $38,000 of expensing for 1997; the allowable amount will increase to $38,500 for 1998); and (3) special tax-exempt financing for certain zone facilities (described in more detail below).

The 95 enterprise communities are eligible for the special tax-exempt financing benefits but not the other tax incentives available in the nine empowerment zones. In addition to these tax incentives, OBRA 1993 provided that Federal grants would be made to designated empowerment zones and enterprise communities.

The tax incentives for empowerment zones and enterprise communities generally will be available during the period that the designation remains in effect, i.e., a 10-year period.

Definition of "qualified zone property"

Present-law section 1397C defines "qualified zone property" as depreciable tangible property (including buildings), provided that: (1) the property is acquired by the taxpayer (from an unrelated party) after the zone or community designation took effect; (2) the original use of the property in the zone or community commences with the taxpayer; and (3) substantially all of the use of the property is in the zone or community in the active conduct of a trade or business by the taxpayer in the zone or community. In the case of property which is substantially renovated by the taxpayer, however, the property need not be acquired by the taxpayer after zone or community designation or originally used by the taxpayer within the zone or community if, during any 24-month period after zone or community designation, the additions to the taxpayer's basis in the property exceed the greater of 100 percent of the taxpayer's basis in the property at the beginning of the period, or $5,000.

Definition of "enterprise zone business"

Present-law section 1397B defines the term "enterprise zone business" as a corporation or partnership (or proprietorship) if for the taxable year: (1) the sole trade or business of the corporation or partnership is the active conduct of a qualified business within an empowerment zone or enterprise community; (2) at least 80 percent of the total gross income is derived from the active conduct of a "qualified business" within a zone or community; (3) substantially all of the business's tangible property is used within a zone or community; (4) substantially all of the business's intangible property is used in, and exclusively related to, the active conduct of such business; (5) substantially all of the services performed by employees are performed within a zone or community; (6) at least 35 percent of the employees are residents of the zone or community; and (7) no more than 5 percent of the average of the aggregate unadjusted bases of the property owned by the business is attributable to (a) certain financial property, or (b) collectibles not held primarily for sale to customers in the ordinary course of an active trade or business.

A "qualified business" is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license.[9] In addition, the leasing of real property that is located within the empowerment zone or community to others is treated as a qualified business only if (1) the leased property is not residential property, and (2) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses. The rental of tangible personal property to others is not a qualified business unless substantially all of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone or enterprise community.

Tax-exempt financing rules

Tax-exempt private activity bonds may be issued to finance certain facilities in empowerment zones and enterprise communities. These bonds, along with most private activity bonds, are subject to an annual private activity bond State volume cap equal to $50 per resident of each State, or (if greater) $150 million per State.

Qualified enterprise zone facility bonds are bonds 95 percent or more of the net proceeds of which are used to finance (1) "qualified zone property" (as defined above) the principal user of which is an "enterprise zone business" (also defined above[10]), or (2) functionally related and subordinate land located in the empowerment zone or enterprise community. These bonds may only be issued while an empowerment zone or enterprise community designation is in effect.

The aggregate face amount of all qualified enterprise zone bonds for each qualified enterprise zone business may not exceed $3 million per zone or community. In addition, total qualified enterprise zone bond financing for each principal user of these bonds may not exceed $20 million for all zones and communities.

Taxation of capital gains

In general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. On the sale or exchange of capital assets, the net capital gain generally is taxed at the same rate as ordinary income, except that the maximum rate of tax is limited to 28 percent of the net capital gain.[11] Net capital gain is the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for the year. Gain or loss is treated as long-term if the asset is held for more than one year.

Capital losses generally are deductible in full against capital gains. In addition, individual taxpayers may deduct capital losses against up to $3,000 of ordinary income in each year. Any remaining unused capital losses may be carried forward indefinitely to another taxable year.

A capital asset generally means any property except (1) inventory, stock in trade, or property held primarily for sale to customers in the ordinary course of the taxpayer's

[7] The orphan drug tax credit originally was enacted in 1983 and was extended on several occasions. The credit expired on December 31, 1994, and later was reinstated for the period July 1, 1996, through May 31, 1997.

[8] The six designated urban empowerment zones are located in New York City, Chicago, Atlanta, Detroit, Baltimore, and Philadelphia-Camden (New Jersey). The three designated rural empowerment zones are located in Kentucky Highlands (Clinton, Jackson, and Wayne counties, Kentucky), Mid-Delta Mississippi (Bolivar, Holmes, Humphreys, Leflore counties, Mississippi), and Rio Grande Valley Texas (Cameron, Hidalgo, Starr, and Willacy counties, Texas).

[9] Also, a qualified business does not include certain facilities described in section 144(c)(6)(B) (e.g., massage parlor, hot tub facility, or liquor store) or certain large farms.

[10] For purposes of the tax-exempt financing rules, an "enterprise zone business" also includes a business located in a zone or community which would qualify as an enterprise zone business if it were separately incorporated.

[11] The Revenue Reconciliation Act of 1993 added Code section 1202, which provides a 50-percent exclusion for gain from the sale of certain small business stock acquired at original issue and held for at least five years.

trade or business, (2) depreciable or real property used in the taxpayer's trade or business, (3) specified literary or artistic property, (4) business accounts or notes receivable, and (5) certain publications of the Federal Government.

In addition, the net gain from the disposition of certain property used in the taxpayer's trade or business is treated as long-term capital gain. Gain from the disposition of depreciable personal property is not treated as capital gain to the extent of all previous depreciation allowances. Gain from the disposition of depreciable real property generally is not treated as capital gain to the extent of the depreciation allowances in excess of the allowances that would have been available under the straight-line method.

Individual tax rates

To determine tax liability, an individual taxpayer generally must apply the tax rate schedules (or the tax tables) to his or her taxable income. The rate schedules are broken into several ranges of income, known as income brackets, and the marginal tax rate increases as a taxpayer's income increases. Separate rate schedules apply based on an individual's filing status. For 1997, the individual income tax rate schedules are as follows:

If taxable income is—	Then income tax equals
Single individuals	
$0 to $24,650	15 percent of taxable income
$24,651 to $59,750 ...	$3,698, plus 28% of the amount over $24,650
$59,751 to $124,650 ..	$13,526, plus 31% of the amount over $59,750
$124,651 to $271,050	$33,645, plus 36% of the amount over $124,650
Over $271,050	$86,349, plus 39.6% of the amount over $271,050
Heads of households	
$0 to $33,050	15 percent of taxable income
$33,051 to $85,350 ...	$4,958, plus 28% of the amount over $33,050
$85,351 to $138,200 ..	$19,602 plus 31% of the amount over $85,350
$138,201 to $271,050	$35,985, plus 36% of the amount over $138,200
Over $271,050	$83,811, plus 39.6% of the amount over $271,050
Married individuals filing joint returns	
$0 to $41,200	15 percent of taxable income
$41,201 to $99,600 ...	$6,180, plus 28% of the amount over $41,200
$99,601 to $151,750 ..	$22,532, plus 31% of the amount over $99,600
$151,751 to $271,050	$38,698, plus 36% of the amount over $151,750
Over $271,050	$81,646, plus 39.6% of the amount over $271,050
Married individuals filing separate returns	
$0 to $20,600	15 percent of taxable income
$20,601 to $49,800 ...	$3,090, plus 28% of the amount over $20,600
$49,801 to $75,875 ...	$11,266, plus 31% of the amount over $49,800
$75,876 to $135,525 ..	$19,349, plus 36% of the amount over $75,875
Over $135,525	$40,823 plus 39.6% of the amount over $135,525

House Bill

Designation of D.C. Enterprise Zone

Certain economically depressed census tracts within the District of Columbia are designated as the "D.C. Enterprise Zone," within which businesses and individual residents are eligible for special tax incentives. The census tracts that compose the D.C. Enterprise Zone are (1) all census tracts that presently are part of the D.C. enterprise community designated under section 1391 (i.e., portions of Anacostia, Mt. Pleasant, Chinatown, and the easternmost part of the District) and (2) all additional census tracts within the District of Columbia where the poverty rate is at least 35 percent. The D.C. Enterprise Zone designation generally will remain in effect for five years for the period from January 1, 1998, through December 31, 2002.[12]

The following tax incentives will take effect only if, prior to January 1, 1998, a Federal law is enacted creating a District of Columbia economic development corporation that is an instrumentality of the District of Columbia government.[13]

Business development incentives

Empowerment zone wage credit, expensing, and tax-exempt financing

The following tax incentives that are available under present law in empowerment zones would be available in the D.C. Enterprise Zone (modified as described below): (1) a 20-percent wage credit for the first $15,000 of wages paid to D.C. Enterprise Zone residents who work in the D.C. Enterprise Zone; (2) an additional $20,000 of expensing under Code section 179 for qualified zone property; and (3) special tax-exempt financing for certain zone facilities.

In general, the wage credit for certain D.C. Enterprise Zone residents who work in the D.C. Enterprise Zone is the same as is available in empowerment zones under present law. However, the wage credit rate remains at 20 percent for the D.C. Enterprise Zone for the period 1998 through 2002 (and does not phase down to 15 percent in the year 2002 as under present-law section 1396). The wage credit is effective for wages paid (or incurred) to a qualified individual after December 31, 1997, and before January 1, 2003.

The increased expensing under Code section 179 is effective for property placed in service in taxable years beginning after December 31, 1997, and before January 1, 2003. Thus, qualified D.C. Zone property placed in service in taxable years beginning in 1998 is eligible for up to $38,500 of expensing.

A qualified D.C. Zone business (defined as under present law section 1394(b)(3)) is permitted to borrow proceeds from the issuance of qualified enterprise zone facility bonds. Such bonds can be issued only by a newly created economic development corporation and are subject to the requirements applicable under present law to enterprise zone facility bonds, except that the amount of outstanding bond proceeds that can be borrowed by any qualified District business cannot exceed $15 million (rather than $3 million). The special tax-exempt bond provisions apply to bonds issued after December 31, 1997, and prior to January 1, 2003.

Tax credits for equity investments in and loans to businesses located in the District of Columbia

A newly created economic development corporation is authorized to allocate $75 million in tax credits to taxpayers that make certain equity investments in, or loans to, businesses (either corporations or partnerships) engaged in an active trade or business in the District of Columbia. The business need not be located in the D.C. Enterprise Zone, although factors to be considered in the allocation of credits include whether the project would provide job opportunities for low and moderate income residents of the D.C. Enterprise Zone and whether the business is located in the D.C. Enterprise Zone. Eligible businesses are not be required to satisfy the criteria of a qualified D.C. Zone business, described above. Such credits are nonrefundable and can be used to offset a taxpayer's alternative minimum tax (AMT) liability.

Under the House bill, the amount of credit cannot exceed 25 percent of the amount invested (or loaned) by the taxpayer. Thus, the economic development corporation may allocate the full $75 million in tax credits to no less than $300 million in equity investments in, or loans, to eligible businesses.

Under the House bill, credits may be allocated to loans made to an eligible business only if the business uses the loan proceeds to purchase depreciable tangible property and any functionally related and subordinate land. Credits may be allocated to equity investments only if the equity interest was acquired for cash. Any credits allocated to a taxpayer making an equity investment are subject to recapture if the equity interest is disposed of by the taxpayer within five years. A taxpayer's basis in an equity investment is reduced by the amount of the credit.

The House bill applies to credit amounts allocated for taxable years beginning after December 31, 1997, and before January 1, 2003.[14]

Zero-percent capital gains rate

The House bill provides a zero-percent capital gains rate for capital gains from the sale of certain qualified "D.C. Zone assets" held for more than five years. In general, qualified "D.C. Zone assets" mean stock or partnership interests held in or tangible property held by a D.C. Zone business. For this purpose, a qualified D.C. Zone business is defined as an enterprise zone business under present-law section 1397B.

"D.C. Zone business stock" is stock in a domestic corporation originally issued after December 31, 1997, that, at the time of issuance[15] and during substantially all of the taxpayer's holding period, was a qualified D.C. Zone business, provided that such stock was acquired by the taxpayer on original issue from the corporation solely in exchange for cash before January 1, 2003.[16] A "D.C. Zone partnership interest" is a domestic partnership interest originally issued after December 31, 1997, that is acquired by the taxpayer from the partnership solely in exchange for cash before January 1, 2003, provided that, at the time such interest was acquired[17] and during substantially all of the

[12] The status of certain census tracts within the District as an enterprise community designated under section 1391 also terminates on December 31, 2002.

[13] In addition, the House bill assumes the enactment of certain modifications to Federal law (other than Federal tax laws contained in the Internal Revenue Code) similar to those proposed by the Administration that would clarify and expand the District's authority to issue revenue bonds.

[14] As a general business credit, the credit can be carried back three years (but not before January 1, 1998) and forward for 15 years.

[15] In the case of a new corporation, it is sufficient if the corporation is being organized for purposes of being a qualified D.C. Zone business.

[16] D.C. Zone business stock does not include any stock acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefore) in an attempt to avoid the purposes of the provision. A similar rule applies with respect to D.C. Zone partnership interests.

[17] In the case of a new partnership, it is sufficient if the partnership is being formed for purposes of being a qualified D.C. Zone business.

taxpayer's holding period, the partnership was a qualified D.C. Zone business. Finally, "D.C. Zone business property" is tangible property acquired by the taxpayer by purchase (within the meaning of present law section 179(d)(2)) after December 31, 1997, and before January 1, 2003, provided that the original use of such property in the D.C. Enterprise Zone commences with the taxpayer and substantially all of the use of such property during substantially all of the taxpayer's holding period was in a qualified D.C. Zone business of the taxpayer.

A special rule provides that, in the case of business property that is "substantially renovated," such property need not be acquired by the taxpayer after December 31, 1997, nor need the original use of such property in the D.C. Enterprise Zone commence with the taxpayer. For these purposes, property is treated as "substantially renovated" if, prior to January 1, 2003, additions to basis with respect to such property in the hands of the taxpayer during any 24-month period beginning after December 31, 1997, exceed the greater of (1) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (2) $5,000. Thus, substantially renovated real estate located in the D.C. Enterprise Zone may constitute D.C. Zone business property. However, the House bill specifically excludes land that is not an integral part of a qualified D.C. Zone business from the definition of D.C. Zone business property.

In addition, qualified D.C. Zone assets include property that was a qualified D.C. Zone asset in the hands of a prior owner, provided that at the time of acquisition, and during substantially all of the subsequent purchaser's holding period, either (1) substantially all of the use of the property is in a qualified D.C. Zone business, or (2) the property is an ownership interest in a qualified D.C. Zone business.[18]

In general, gain eligible for the zero-percent tax rate means gain from the sale or exchange of a qualified D.C. Zone asset that is (1) a capital asset or (2) property used in the trade or business as defined in section 1231(b). Gain attributable to periods before December 31, 1997, and after December 31, 2007, is not qualified capital gain. No gain attributable to real property, or an intangible asset, which is not an integral part of a qualified D.C. Zone business qualifies for the zero-percent rate.

The House bill provides that property that ceases to be a qualified D.C. Zone asset because the property is no longer used in (or no longer represents an ownership interest in) a qualified D.C. Zone business after the five-year period beginning on the date the taxpayer acquired such property would continue to be treated as a qualified D.C. Zone asset. Under this rule, the amount of gain eligible for the zero-percent capital gains rate cannot exceed the amount which would be qualified capital gain had the property been sold on the date of such cessation.

Special rules are provided for pass-through entities (i.e., partnerships, S corporations, regulated investment companies, and common trust funds). In the case of a sale or exchange of an interest in a pass-through entity that was not a qualified D.C. Zone business during substantially all of the period that the taxpayer held the interest, the zero-percent capital gains rate applies to the extent that the gain is attributable to amounts that would have been qualified capital gain had the assets been sold for their fair market value on the date of the sale or exchange of the interest in the pass-through entity. This rule applies only if the interest in the pass-through entity were held by the taxpayer for more than five years. In addition, the rule applies only to qualified D.C. Zone assets that were held by the pass-through entity for more than five years, and throughout the period that the taxpayer held the interest in the pass-through entity.

The House bill also provides that in the case of a transfer of a qualified D.C. Zone asset by gift, at death, or from a partnership to a partner that held an interest in the partnership at the time that the qualified D.C. Zone asset was acquired, (1) the transferee is to be treated as having acquired the asset in the same manner as the transferor, and (2) the transferee's holding period includes that of the transferor. In addition, rules similar to those contained in section 1202(i)(2) regarding treatment of contributions to capital after the original issuance date and section 1202(j) regarding treatment of certain short positions apply.

Individual resident tax rate reduction

Individuals who have their principal place of abode in any census tract that is part of the D.C. Enterprise Zone are entitled to a 10-percent tax rate on all taxable income that currently is subject to a 15-percent Federal income tax rate. Thus, using the 1997 tax rate schedule, a single taxpayer who resides in the D.C. Enterprise Zone with $24,650 or more of taxable income will receive a Federal income tax reduction of $1,233 under the House bill. Married taxpayers who reside in the D.C. Enterprise Zone and file a joint return with taxable income of $41,200 or more of taxable income will receive a Federal income tax reduction of $2,060 under the House bill.

The special 10-percent rate provision is in effect for the period 1998–2007.

Effective date

The D.C. tax incentives generally are effective January 1, 1998, and remain in effect for five years until the termination of the D.C. Enterprise Zone designation on December 31, 2002. However, the zero-percent tax rate for capital gains and the special 10-percent rate bracket are effective for the period 1998–2007. All of the D.C. tax incentives are contingent upon the enactment of a Federal law, prior to January 1, 1998, creating a District of Columbia economic development corporation that is an instrumentality of the District of Columbia government.

Senate Amendment

First-time homebuyer credit

The Senate amendment provides first-time homebuyers of a principal residence in the District a tax credit of up to $5,000 of the amount of the purchase price. The $5,000 maximum credit amount applies both to individuals and married couples. Married individuals filing separately can claim a maximum credit of $2,500 each. The Secretary of Treasury is directed to prescribe regulations allocating the credit among unmarried purchasers of a residence.[19]

To qualify as a "first-time homebuyer," neither the individual (nor the individual's spouse, if married) can have had a present ownership interest in a principal residence in the District for the one-year period prior to the date of acquisition of the principal residence.[20]

A taxpayer will be treated as a first-time homebuyer with respect to only one residence—i.e., the credit may be claimed one time only. The date of acquisition is the date on which a binding contract to purchase the principal residence is entered into or the date on which construction or reconstruction of such residence commences.

The credit applies to purchases after the date of enactment and before January 1, 2002. Any excess credit may be carried forward indefinitely to succeeding taxable years.

Tax credits for equity investments in and loans to businesses located in the District of Columbia

The Senate amendment is the same as the House bill, except that the economic development corporation is authorized to allocate $60 million (rather than $75 million) in credits.

Zero-percent capital gains rate

Like the House bill, the Senate amendment provides a zero-percent capital gains rate for capital gains from the sale of certain qualified D.C. assets held for more than five years. In general, qualified D.C. assets mean stock or partnership interests held in, or tangible property held by, a qualified D.C. business. However; the Senate amendment provides that capital gain from the sale of any D.C. asset acquired during calendar year 1998 shall be subject to tax at a 10 percent rate. A special rule provides that if the basis of any D.C. asset is determined in whole or part by reference to a D.C. asset acquired in 1998, all gain from the sale or exchange of such asset is taxed at the 10 percent rate.

Qualified D.C. business

A "qualified D.C. business" generally is required to satisfy the requirements of an "enterprise zone business" under present law, applied as if the District (in its entirety) were an empowerment zone. Thus, a corporation or partnership is a qualified D.C. business if: (1) its sole trade or business is the active conduct of a "qualified business" within the District; (2) at least 80 percent of the total gross income is derived from the active conduct of a "qualified business" within the District; (3) substantially all of the business's tangible property is used within the District; (4) substantially all of the business's intangible property is used in, and exclusively related to, the active conduct of such business; (5) substantially all of the services performed by employees are performed within the District; and (6) no more than 5 percent of the average of the aggregate unadjusted bases of the property owned by the business is attributable to (a) certain financial property, or (b) collectibles not held primarily for sale to customers in the ordinary course of an active trade or business.[21] A "qualified business" means any

[18] The termination of the D.C. Zone designation will not, by itself, result in property failing to be treated as a qualified D.C. Zone asset. However, capital gain eligible for the zero-percent capital gains rate does not include any gain attributable to periods after December 31, 2007.

[19] The provision of the Senate amendment that excludes sales of certain personal residences from the real estate transaction reporting requirement would not apply to sales of personal residences in the District of Columbia. In addition, the Senate amendment anticipates that the Secretary of Treasury will require such information as may be necessary to verify eligibility for the D.C. first-time homebuyer credit.

[20] Special rules apply to members of the Armed Forces and certain individuals with tax homes outside the United States with respect to whom the rollover period available under section 1034 (as in effect prior to the enactment of the bill) is suspended pursuant to sections 1034(h) or (k).

[21] The requirement under present-law section 1397B(b)(6) that at least 35 percent of the employees of the business be zone residents does not apply

trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license.[22] In addition, the leasing of real property that is located within the District to others is treated as a qualified business only if (1) the leased property is not residential property, and (2) at least 50 percent of the gross rental income from the real property is from qualified D.C. businesses. The rental of tangible personal property to others is not a qualified business unless substantially all of the rental of such property is by qualified D.C. businesses or by residents of the District.

Qualified D.C. assets

For purposes of the Senate amendment, qualified "D.C. assets" include (1) D.C. business stock, (2) D.C. partnership interests, and (3) D.C. business property.

"D.C. business stock" means stock in a domestic corporation originally issued after December 31, 1997, that, at the time of issuance[23] and during substantially all of the taxpayer's holding period, was a qualified D.C. business, provided that such stock was acquired by the taxpayer on original issue from the corporation solely in exchange for cash before January 1, 2003.[24] A "D.C. partnership interest" means a domestic partnership interest originally issued after December 31, 1997, that is acquired by the taxpayer from the partnership solely in exchange for cash before January 1, 2003, provided that, at the time such interest was acquired[25] and during substantially all of the taxpayer's holding period, the partnership was a qualified D.C. business. Finally, "D.C. business property" means tangible property acquired by the taxpayer by purchase (within the meaning of present law section 179(d)(2)) after December 31, 1997, and before January 1, 2003, provided that the original use of such property in the District commences with the taxpayer and substantially all of the use of such property during substantially all of the taxpayer's holding period was in a qualified D.C. business of the taxpayer.

A special rule provides that, in the case of business property that is "substantially renovated," such property need not be acquired by the taxpayer after December 31, 1997, nor need the original use of such property in the District commence with the taxpayer. For these purposes, property is treated as "substantially renovated" if, prior to January 1, 2003, additions to basis with respect to such property in the hands of the taxpayer during any 24-month period beginning after December 31, 1997, exceed the greater of (1) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (2) $5,000. Thus, substantially renovated real estate located in the District can constitute D.C. business property. However, the bill specifically excludes land that is not an integral part of a qualified D.C. business from the definition of D.C. business property.

In addition, qualified D.C. assets include property that was a qualified D.C. asset in the hands of a prior owner, provided that at the time of acquisition, and during substantially all of the subsequent purchaser's holding period, either (1) substantially all of the use of the property is in a qualified D.C. business, or (2) the property is an ownership interest in a qualified D.C. business.

In general, gain eligible for the zero-percent tax rate means gain from the sale or exchange of a qualified D.C. asset that is (1) a capital asset or (2) property used in the trade or business as defined in section 1231(b). Gain attributable to periods before December 31, 1997, is not qualified capital gain. No gain attributable to real property, or an intangible asset, which is not an integral part of a qualified D.C. business qualifies for the zero-percent rate.

The Senate amendment provides that property that ceases to be a qualified D.C. asset because the property is no longer used in (or no longer represents an ownership interest in) a qualified D.C. business after the five-year period beginning on the date the taxpayer acquired such property continues to be treated as a qualified D.C. asset. Under this rule, the amount of gain eligible for the zero-percent capital gains rate cannot exceed the amount which would be qualified capital gain had the property been sold on the date of such cessation.

Special rules are provided for pass-through entities (i.e., partnerships, S corporations, regulated investment companies, and common trust funds). In the case of a sale or exchange of an interest in a pass-through entity that was not a qualified D.C. business during substantially all of the period that the taxpayer held the interest, the zero-percent capital gains rate applies to the extent that the gain is attributable to amounts that would have been qualified capital gain had the underlying assets been sold for their fair market value on the date of the sale or exchange of the interest in the pass-through entity. This rule applies only if the interest in the pass-through entity were held by the taxpayer for more than five years. In addition, the rule applies only to qualified D.C. assets that were held by the pass-through entity for more than five years, and throughout the period that the taxpayer held the interest in the pass-through entity.

The Senate amendment also provides that, in the case of a transfer of a qualified D.C. asset by gift, at death, or from a partnership to a partner that held an interest in the partnership at the time that the qualified D.C. asset was acquired, (1) the transferee is to be treated as having acquired the asset in the same manner as the transferor, and (2) the transferee's holding period includes that of the transferor. In addition, rules similar to those contained in section 1202(i)(2) regarding treatment of contributions to capital after the original issuance date and section 1202(j) regarding treatment of certain short positions apply.

Trust fund for D.C. schools

The Senate amendment provides for a total of $50 million ($5 million for each year 1998 through 2007) to be transferred from Federal income taxes paid by District individual residents to a Trust Fund for D.C. schools. Amounts in the Trust Fund are to be used to pay debt service on qualified D.C. school bonds, which are taxable bonds issued after March 31, 1998, by the District to finance the rehabilitation and repair of District schools.

Effective dates

The D.C. first-time homebuyer credit is effective for purchases after the date of enactment and before January 1, 2002. The tax credit for equity investments and loans applies to credit amounts allocated for taxable years beginning after December 31, 1997, and before January 1, 2003. The zero-percent tax rate for capital gains is effective for qualified D.C. assets purchased (or substantially renovated) during the period January 1, 1998, through December 31, 2002, for any gain accruing with respect to such assets after the date or purchase (or substantial renovation). The Trust Fund for D.C. schools will be funded $5 million per year for 1998 through 2007.

Conference Agreement

The conference agreement follows the House bill in part and the Senate amendment in part.

Designation of D.C Enterprise Zone

The conference agreement includes the House bill provision that designates certain economically depressed census tracts within the District of Columbia as the "D.C. Enterprise Zone," within which businesses and individual residents are eligible for special tax incentives. Under the conference agreement, however, the census tracts that compose the D.C. Enterprise Zone for purposes of the wage credit, expensing, and tax-exempt financing incentives are expanded to include census tracts within the District of Columbia where the poverty rate is not less than 20 percent. Thus, the D.C. Enterprise Zone consists of (1) all census tracts that presently are part of the D.C. enterprise community designated under Code section 1391 (i.e., portions of Anacostia, Mt. Pleasant, Chinatown, and the easternmost part of the District) and (2) all additional census tracts within the District of Columbia where the poverty rate is not less than 20 percent. As under the House bill, the D.C. Enterprise Zone designation generally will remain in effect for five years for the period from January 1, 1998, through December 31, 2002.

Empowerment zone wage credit, expensing, and tax-exempt financing

The conference agreement includes the House bill provision with respect to the tax incentives that are available in the D.C. Enterprise Zone, modified to provide that the wage credit is available with respect to all residents of the District and is not limited to residents of the D.C. Enterprise Zone and to eliminate the requirement that 35 percent of the employees of a qualified "D.C. Zone business" must be residents of the D.C. Enterprise Zone.[26] Thus, the following tax incentives that are available under present law in empowerment zones generally will be available in the D.C. Enterprise Zone: (1) a 20-percent wage credit for the first $15,000 of wages paid to D.C. residents who work in the D.C. Enterprise Zone; (2) an additional $20,000 of

when determining whether an entity is a qualified D.C. business.

[22] Also, as under present law, a qualified business does not include certain facilities described in section 144(c)(6)(B) (e.g., massage parlor, hot tub facility, or liquor store) or certain large farms.

[23] In the case of a new corporation, it is sufficient if the corporation is being organized for purposes of being a qualified D.C. business.

[24] As under section 1202(c)(3), D.C. business stock does not include any stock acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefore) in an attempt to avoid the purposes of the provision. A similar rule applies with respect to D.C. partnership interests.

[25] In the case of a new partnership, it is sufficient if the partnership is being formed for purposes of being a qualified D.C. business.

[26] The provision of the conference agreement that authorizes the designation of additional empowerment zones also modifies the definition of an enterprise zone business to provide that, in addition to satisfying the other requirements of section 1397B, at least 50 percent (as opposed to 80 percent under present law) of the total gross income of a qualified enterprise zone business must be derived from the active conduct of a "qualified business" within a zone or community. The conference agreement makes certain other modifications to the definition of an enterprise zone business as well. This modified definition of enterprise zone business, determined without regard to the 35-percent zone resident employee requirement, generally applies for purposes of the increased expensing and tax-exempt financing available in the D.C. Enterprise Zone.

expensing under Code section 179 for qualified zone property; and (3) special tax-exempt financing for certain zone facilities.[27] The conference agreement does not include the provision limiting the special tax-exempt financing benefits to bonds issued by the Economic Development Corporation.

Zero-percent capital gains rate

The conference agreement includes the House bill provision that provides a zero-percent capital gains rate for capital gains from the sale of certain qualified D.C Zone assets held for more than five years. For purposes of the zero-percent capital gains rate, the D.C. Enterprise Zone is defined to include all census tracts within the District of Columbia where the poverty rate is not less than 10 percent.

For purposes of the zero-percent capital gains rate, the definition of qualified "D.C. Zone business" generally is the same as the definition applicable for purposes of the increased expensing described above. However, solely for purposes of the zero-percent capital gains rate, a qualified "D.C. Zone business" must derive at least 80 percent (as opposed to 50 percent) of its total gross income from the active conduct of a "qualified business" within the D.C. Enterprise Zone.

First-time homebuyer tax credit

The conference agreement includes the Senate amendment provision that allows first-time homebuyers of a principal residence in the District a tax credit of up to $5,000 of the amount of the purchase price, except that the credit phases out for individual taxpayers with adjusted gross income between $70,000 and $90,000 ($110,000-$130,000 for joint filers). The conference agreement clarifies that the credit is available with respect to purchases of existing property as well as new construction, and specifies that a taxpayer's basis in a property is reduced by the amount of any homebuyer tax credit claimed with respect to such property. In addition, the conference agreement sunsets the credit after December 31, 2000. Thus, the credit is available with respect to property purchased after the date of enactment and before January 1, 2001.

VIII. WELFARE-TO-WORK TAX CREDIT

(sec. 801 of the House bill)

Present Law

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of seven targeted groups. The credit generally is equal to 35 percent of qualified wages. Generally, qualified wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer.

For purposes of the work opportunity tax credit, the targeted groups for which the credit is available include: (1) families receiving Aid to Families with Dependent Children ("AFDC"); (2) qualified ex-felons; (3) high-risk youth; (4) vocational rehabilitation referrals; (5) qualified summer youth employees; (6) qualified veterans; and (7) families receiving food stamps.

Generally, no more than $6,000 of wages during the first year of employment is permitted to be taken into account with respect to any individual. Thus, the maximum credit per individual is $2,100. With respect to qualified summer youth employees, the maximum credit is 35 percent of up to $3,000 of qualified first-year wages, for a maximum credit of $1,050.

The deduction for wages is reduced by the amount of the credit.

The work opportunity tax credit is effective for wages paid or incurred to a qualified individual who begins work for an employer after September 30, 1996, and before October 1, 1997.

House Bill

The House bill provides to employers a tax credit on the first $20,000 of eligible wages paid to qualified long-term family assistance (AFDC or its successor program) recipients during the first two years of employment. The credit is 35 percent of the first $10,000 of eligible wages in the first year of employment and 50 percent of the first $10,000 of eligible wages in the second year of employment. The maximum credit is $8,500 per qualified employee.

Qualified long-term family assistance recipients are: (1) members of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (2) members of a family that has received family assistance for a total of at least 18 months (whether or not consecutive) after the date of enactment of this credit if they are hired within 2 years after the date that the 18-month total is reached; and (3) members of a family who are no longer eligible for family assistance because of either Federal or State time limits, if they are hired within 2 years after the Federal or State time limits made the family ineligible for family assistance.

Eligible wages include cash wages paid to an employee plus amounts paid by the employer for the following: (1) educational assistance excludable under a section 127 program (or that would be excludable but for the expiration of sec. 127); (2) health plan coverage for the employee, but not more than the applicable premium defined under section 4980B(f)(4); and (3) dependent care assistance excludable under section 129.

Effective date.—The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after January 1, 1998 and before May 1, 1999.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

IX. MISCELLANEOUS PROVISIONS

A. Excise Tax Provisions

1. Repeal excise tax on diesel fuel used in recreational motorboats (sec. 901 of the House bill and sec. 701 of the Senate amendment)

Present Law

Before a temporary suspension through December 31, 1997 was enacted in 1996, diesel fuel used in recreational motorboats was subject to the 24.3-cents-per-gallon diesel fuel excise tax. Revenues from this tax were retained in the General Fund.

House Bill

The House bill repeals the application of the diesel fuel tax to fuel used in recreational motorboats.

Effective date.—The provision is effective for fuel sold after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Continued application of tax on imported recycled halon-1211 (sec. 902 of the House bill)

Present Law

An excise tax is imposed on the sale or use by the manufacturer or importer of certain ozone-depleting chemicals (Code sec. 4681). The amount of tax generally is determined by multiplying the base tax amount applicable for the calendar year by an ozone-depleting factor assigned to each taxable chemical. The base tax amount is $6.25 per pound in 1997, and is scheduled to increase by 45 cents per pound per year thereafter. The ozone-depleting factors for taxable halons are 3 for halon-1211, 10 for halon-1301, and 6 for halon-2402.

Taxable chemicals that are recovered and recycled within the United States are exempt from tax. In addition, exemption is provided for imported recycled halon-1301 and halon-2402 if such chemicals are imported from countries that are signatories to the Montreal Protocol on Substances that Deplete the Ozone Layer. Present law further provides that exemption is to be provided for imported recycled halon-1211, for such chemicals imported from countries that are signatories to the Montreal Protocol on Substances that Deplete the Ozone Layer after December 31, 1997.

House Bill

The House bill repeals the present-law exemption for imported recycled halon-1211.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

3. Transfer of General Fund highway fuels tax revenues to the Highway Trust Fund (sec. 704 of the Senate amendment)

Present Law

The Highway Trust Fund receives revenues from taxes on gasoline and special motor fuels (14 cents per gallon) and diesel fuel (20 cents per gallon) used in highway vehicles, through September 30, 1999. These fuels also are subject to an additional, permanent 4.3-cents-per-gallon rate. Revenues from the 4.3-cents-per-gallon rate are retained in the General Fund.

Excise taxes imposed on these three motor fuels (gasoline, diesel fuel, and special motor fuels) generally must be paid to the Treasury in semi-monthly deposits, which are credited to tax liability that is reported on quarterly returns. Subject to special rules for deposits attributable to taxes for the period September 16–26, deposits generally must be made 9 days after the end of each semi-monthly period (14 days in the case of gasoline and diesel fuel taxes deposited electronically).

House Bill

No provision.

Senate Amendment

Transfer of revenues to Highway Trust Fund.—Revenues from the General Fund 4.3-cents-per-gallon tax (net of 0.5-cent-per-gallon transferred to a new Intercity Passenger Rail Fund under sec. 702 of the Senate amendment for the period, October 1, 1997–April 15, 2001) are transferred to the Highway Trust Fund. Of such amounts transferred to

[27] The provision of the conference agreement that authorizes the designation of additional empowerment zones contains certain modifications to the rules applicable to present-law empowerment zone facility bonds. Such modifications (not including the exception to the volume cap) will apply in the D.C. Enterprise Zone as well.

the Highway Trust Fund, 20 percent are to be credited to the Mass Transit Account and 80 percent to the Highway Account.

Conforming amendments ensure that no direct spending increases will occur as a result of the provision.

Deposit rules for highway motor fuels taxes.—No provision.

Effective date.—October 1, 1997.

Conference Agreement

Transfer of revenues to Highway Trust Fund.—The conference agreement follows the Senate amendment with a modification to reflect deletion from the agreement of the Senate amendment provision transferring 0.5 cents per gallon of these revenues to a new Intercity Passenger Rail Fund. As under the Senate amendment, revenues from the 4.3-cents-per-gallon tax will be divided between the Highway Trust Fund's Highway Account (3.45 cents per gallon) and Mass Transit Account (0.85 cents per gallon).

Deposit rules for highway motor fuels taxes.—The conference agreement provides that the excise taxes imposed on gasoline (sec. 4081), diesel fuel (sec. 4081), special motor fuels (sec. 4041), and kerosene (sec. 4081) that otherwise would be required to be deposited with the Treasury after July 31, 1998, and before September 30, 1998, are not required to be deposited until October 5, 1998.

4. Tax certain alternative fuels based on energy equivalency to gasoline (sec. 705 of the Senate amendment)

Present Law

Special motor fuels are subject to an 18.3-cents-per-gallon excise tax: 14 cents per gallon of the tax is dedicated to the Highway Trust Fund, and the remaining 4.3 cents per gallon is retained in the General Fund. Special motor fuels include propane, methanol derived from natural gas, liquefied natural gas, and compressed natural gas. Reduced tax rates apply to methanol from natural gas and compressed natural gas.

House Bill

No provision.

Senate Amendment

The Senate amendment adjusts the aggregate tax rates imposed on propane, liquefied natural gas, and methanol derived from natural gas to reflect the energy content of these fuels relative to gasoline. The revised tax rates per gallon (through September 30, 1999) are—

Propane	13.6 cents.
Methanol	9.15 cents.
Liquified natural gas	11.9 cents.

After September 30, 1999, these three fuels will be taxed based on Btu equivalency to gasoline's 4.3-cents-per-gallon rate. No change is made to the current reduced tax rate on compressed natural gas.

Effective date.—October 1, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Extend and modify tax benefits for ethanol (sec. 605 of the House bill and sec. 707 of the Senate amendment)

Present Law

Ethanol used as a fuel is eligible for a 54-cents-per gallon tax benefit. The benefit may be claimed either as an income tax credit, through reduced excise tax on sales of gasoline that is blended with ethanol, or by expedited refunds of tax paid on such gasoline. This benefit is scheduled to expire after September 30, 1999. However, provisions relating to excise taxes dedicated to trust funds generally are assumed to be permanent for budget scorekeeping purposes.

House Bill

The House bill provides that preferential excise tax rates (and associated credits and refunds) that statutorily are scheduled to expire are not assumed to be permanent for budget scorekeeping purposes.

Senate Amendment

The Senate amendment extends the ethanol tax benefit through 2007, and modifies the benefit rate per gallon of alcohol, as follows: 2001 and 2002—53 cents; 2003 and 2004—52 cents; and 2005, 2006, and 2007—51 cents.

Effective date.—Date of enactment.

Conference Agreement

No provision (i.e., the conference agreement does not include either the House bill or the Senate amendment provision).

6. Treat certain gasoline "chain retailers" as wholesale distributors under the gasoline excise tax refund rules (sec. 904 of the House bill)

Present Law

Gasoline is taxed at 18.3 cents per gallon upon removal from a registered pipeline or barge terminal facility. The position holder in the terminal at the time of removal is liable for payment of the tax. Certain uses of gasoline, including use by States and local governments, are exempt from tax. In general, these exemptions are realized by refunds to the exempt users of tax paid by the party that removed the gasoline from a terminal facility. Present law includes an exception to the general rule that refunds are made to consumers in the case of gasoline sold to States and local governments and certain other exempt users. In those cases, wholesale distributors sell the gasoline net of tax previously paid and receive the refunds. The term wholesale distributor includes only persons that sell gasoline to producers, retailers, or to users in bulk quantities. Retailers that are not also wholesale distributors do not qualify, regardless of their size.

House Bill

The definition of wholesale distributor is expanded to include certain "chain retailers"—retailers who own and make retail sales from 10 or more retail gasoline outlets. This modification conforms the definition of wholesale distributor to that which existed before 1987 when the point of collection of the gasoline tax was moved from the wholesale distribution level to removal from a terminal facility.

Effective date.—The provision is effective after September 30, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

7. Exemption of electric and other clean-fuel motor vehicles from luxury automobile classification (sec. 905 of the House bill)

Present Law

Present law imposes an excise tax on the sale of automobiles whose price exceeds a designated threshold, currently $36,000. The excise tax is imposed at a rate of 8 percent for 1997 on the excess of the sales price above the designated threshold. The 8-percent rate declines by one percentage point per year until reaching 3 percent in 2002, and no tax thereafter. The $36,000 threshold is indexed for inflation. The present-law indexed threshold of $36,000 is the result of adjusting a $30,000 threshold specified in the Code for inflation occurring after 1990 (sec. 4001(e)).

The tax generally applies only to the first retail sale after manufacture, production, or importation of an automobile. It does not apply to subsequent sales of taxable automobiles. A 10-percent tax is imposed on the separate purchase of parts and accessories for a vehicle within six months of the first retail sale when the sum of the separate purchases of the vehicle, parts, and accessories exceeds the luxury tax threshold (sec. 4003).[28]

The tax under section 4001 applies to sales before January 1, 2003. The tax under section 4003 has no termination date.[29]

House Bill

The House bill modifies the threshold above which the luxury excise tax on automobiles will apply for each of two identified classes of automobiles both in the case of a purchase of a vehicle and in the case of the separate purchase of a vehicle and parts and accessories therefor. First, for an automobile that is not a clean-burning fuel vehicle to which retrofit parts and components are installed to make the vehicle a clean-burning vehicle, the threshold would be $30,000, as adjusted for inflation under present law, plus an amount equal to the increment to the retail value of the automobile attributable to the retrofit parts and components installed.

In the case of a passenger vehicle designed to be propelled primarily by electricity and built by an original equipment manufacturer, the threshold applicable for any year is modified to equal 150 percent of $30,000, with the result increased for inflation occurring after 1990 and rounded to the next lowest multiple of $2,000.

Effective date.—The provision is effective for sales and installations occurring on or after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification to the effective date that provides that the provision is effective for sales and installations occurring after the date of enactment.

8. Reduce rate of alcohol excise tax on certain hard ciders (sec. 703 of the Senate amendment)

Present Law

Distilled spirits are taxed at a rate of $13.50 per proof gallon; beer is taxed at a rate of $18 per barrel (approximately 58 cents per gallon); and still wines of 14 percent alcohol or less are taxed at a rate of $1.07 per wine gallon. Higher rates of tax are applied to wines with greater alcohol content and to sparkling wines (champagne).

Certain small wineries may claim a credit against the excise tax on wine of 90 cents per wine gallon on the first 100,000 gallons of wine produced annually (i.e., net tax rate of 17 cents per wine gallon). Certain small breweries pay a reduced tax of $7.00 per barrel (approximately 22.6 cents per gallon) on the first 60,000 barrels of beer produced annually.

Apple cider containing alcohol ("hard cider") is classified and taxed as wine.

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[28] The rate of tax under section 4003 is not determined by reference to section 4001. However, a technical correction under the bill (Title XV) conforms the tax rate applicable under section 4003 to that applicable under section 4001.

[29] A technical correction under both the House bill (Title XV) and the Senate amendment (Title XIV) conforms the expiration date of the tax under section 4003 to the expiration date under section 4001.

House Bill

No provision.

Senate Amendment

The Senate amendment adjusts the tax rate on apple cider having an alcohol content of no more than 7 percent to 22.6 cents per gallon for those persons who produce more than 100,000 gallons of "hard cider" during a calendar year. The tax rate applicable to hard cider produced by persons who produce 100,000 gallons or less in a calendar year will remain as under present law and those persons may continue to claim the 90 cents per wine gallon credit permitted for small wineries. Hard cider production will continue to be counted in determining whether other production of a producer qualifies for the tax credit for small producers. The Senate amendment does not change the classification of qualifying hard cider as wine.

Effective date.—The provision is effective for hard cider removed after September 30, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

9. Study feasibility of moving collection point for distilled spirits excise tax (sec. 706 of the Senate amendment)

Present Law

Distilled spirits are subject to tax at $13.50 per proof gallon. (A proof gallon is a liquid gallon consisting of 50 percent alcohol.) In the case of domestically produced distilled spirits and distilled spirits imported into the United States in bulk containers for domestic bottling, the tax is imposed on removal of the beverage from the distillery (without regard to whether a sale occurs at that time). Bottled distilled spirits that are imported into the United States comprise approximately 15 percent of the current market for these beverages; tax is imposed on these imports when the distilled spirits are removed from the first customs bonded warehouse in which they are deposited upon entry into the United States.

In the case of certain distilled spirits products, a tax credit for alcohol derived from fruit is allowed. This credit reduces the effective tax paid on those beverages. The credit is determined when the tax is paid (i.e., at the distillery or on importation).

House Bill

No provision.

Senate Amendment

The Treasury Department is directed to study options for changing the point at which the distilled spirits excise tax is collected. One of the options evaluated should be collecting the tax at the point at which the distilled spirits are removed from registered wholesale warehouses. As part of this study, the Treasury is to focus on administrative issues associated with the identified options, including the effects on tax compliance. For example, the Treasury is to evaluate the actual compliance record of wholesale dealers that currently pay the excise tax on imported bottled distilled spirits, and the compliance effects of allowing additional wholesale dealers to be distilled spirts taxpayers. The study also is to address the number of taxpayers involved, the types of financial responsibility requirements that might be needed, and any special requirements regarding segregation of non-tax-paid distilled spirits from other products carried by the potential new taxpayers. The study further is to review the effects of the options on Treasury staffing and other budgetary resources as well as projections of the time between when tax currently is collected and the time when tax otherwise would be collected.

The study is required to be completed and transmitted to the Senate Committee on Finance and the House Committee on Ways and Means no later than January 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment with a modification delaying the due date of the study to March 31, 1998.

10. Codify Treasury Department regulations regulating wine labels (sec. 708 of the Senate amendment)

Present Law

The Code includes provisions regulating the labeling of wine when it is removed from a winery for marketing. In general, the regulations under these provisions allow the use of semi-generic names for wine that reflect geographic identifications understood in the industry, provided that the labels include clear indication of any deviation from that which is generally understood in the source of the grapes or the process by which the wine is produced.

House Bill

No provision.

Senate Amendment

The current Treasury Department regulations governing the use of semi-generic wine designations which reflect geographic origin are codified into the Code's wine labeling provisions.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment with a modification deleting the Secretary of the Treasury's discretion to eliminate currently listed semi-generic names.

11. Uniform rate of excise tax on vaccines (sec. 903 of the House bill and sec. 844 of the Senate amendment)

Present Law

A manufacturer's excise tax is imposed on the following vaccines routinely recommended for administration to children: DPT (diphtheria, pertussis, tetanus,), $4.56 per dose; DT (diphtheria, tetanus), $0.06 per dose; MMR (measles, mumps, or rubella), $4.44 per dose; and polio, $0.29 per dose. In general, if any vaccine is administered by combining more than one of the listed taxable vaccines, the amount of tax imposed is the sum of the amounts of tax imposed for each taxable vaccine. However, in the case of MMR and its components, any component vaccine of MMR is taxed at the same rate as the MMR-combined vaccine.

Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund to finance compensation awards under the Federal Vaccine Injury Compensation Program for individuals who suffer certain injuries following administration of the taxable vaccines.

House Bill

The House bill replaces the present-law excise tax rates, that differ by vaccine, with a single rate tax of $0.84 per dose on any listed vaccine component. Thus, the House bill provides that the tax applied to any vaccine that is a combination of vaccine components is 84 cents times the number of components in the combined vaccine. For example, the MMR vaccine is to be taxed at a rate of $2.52 per dose and the DT vaccine is to be taxed at rate of $1.68 per dose.

In addition, the House bill adds three new taxable vaccines to the present-law taxable vaccines: (1) HIB (haemophilus influenza type B); (2) Hepatitis B; and (3) varicella (chickenpox). The three newly listed vaccines also are subject to the 84-cents per dose excise tax.

Effective date.—The provision is effective for vaccine purchases after September 30, 1997. No tax is to be collected or refunds permitted for amounts held for sale on October 1, 1997.

Senate Amendment

The Senate amendment is the same as the House bill regarding rates of tax and taxable vaccines. In addition, the committee report on the Senate amendment directs the Secretary of the Treasury to undertake a study of the efficacy of the new flat-rate vaccine tax system as a means to finance the Vaccine Injury Compensation Trust Fund. Results of the Treasury study are to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means by September 30, 1999.

Effective date.—The provision is effective for vaccine purchases after September 30, 1997. No floor stocks tax is to be collected or refunds permitted for amounts held for sale on October 1, 1997. Returns to the manufacturer occurring on or after October 1, 1997, are assumed to be returns of vaccines to which the new rates of tax apply.

Conference Agreement

The conference agreement generally follows the House bill and the Senate amendment by imposing a uniform rate of tax, but at a rate of $0.75 per dose on any listed vaccine component. The conference agreement also adds the HIB (haemophilus influenza type B), Hepatitis B, and varicella (chickenpox) vaccines to the list of taxable vaccines.

The conference agreement does not require the Secretary to study the new vaccine tax structure.

Effective date.—The provision is effective for sales after the date of enactment. No floor stocks tax is to be collected, or floor stocks refunds permitted, for vaccines held on the effective date. For the purpose of determining the amount of refund of tax on a vaccine returned to the manufacturer or importer, for vaccines returned after the date of enactment and before January 1, 1999, the amount of tax assumed to have been paid on the initial purchase of the returned vaccine shall not exceed $0.75 per dose.

B. Disaster Relief Provisions

1. Authority to postpone certain tax-related deadlines by reason of presidentially declared disaster (sec. 921 of the House bill)

Present Law

In the case of a Presidentially declared disaster, the Secretary of the Treasury has the authority to postpone some (but not all) tax-related deadlines.

House Bill

The House bill provides that, in the case of a taxpayer determined to be affected by a Presidentially declared disaster, the Secretary may specify that, for a period of up to 90 days, certain taxpayer deadlines are postponed. The deadlines that may be postponed are the same as are postponed by reason of service in a combat zone. The provision does not apply for purposes of determining interest on any overpayment or underpayment.

Effective date.—The provision is effective for any period for performing an act that has not expired before the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that it is applicable to all deadlines (not just taxpayer deadlines).

2. Use of certain appraisals to establish amount of disaster loss (sec. 922 of the House bill)

Present Law

In order to claim a disaster loss, a taxpayer must establish the amount of the loss. This may, for example, be done through the use of an appraisal.

House Bill

The House bill provides that nothing in the Code should be construed to prohibit Treasury from issuing guidance providing that an appraisal for the purpose of obtaining a Federal loan or Federal loan guarantee as the result of a Presidentially declared disaster may be used to establish the amount of a disaster loss.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

3. Treatment of livestock sold on account of weather-related conditions (sec. 923 of the House bill and sec. 721 of the Senate amendment)

Present Law

In general, cash-method taxpayers report income in the year it is actually or constructively received. However, present law contains two special rules applicable to livestock sold on account of drought conditions. Code section 451(e) provides that a cash-method taxpayer whose principal trade or business is farming who is forced to sell livestock due to drought conditions may elect to include income from the sale of the livestock in the taxable year following the taxable year of the sale. This elective deferral of income is available only if the taxpayer establishes that, under the taxpayer's usual business practices, the sale would not have occurred but for drought conditions that resulted in the area being designated as eligible for Federal assistance. This exception is generally intended to put taxpayers who receive an unusually high amount of income in one year in the position they would have been in absent the drought.

In addition, the sale of livestock (other than poultry) that is held for draft, breeding, or dairy purposes in excess of the number of livestock that would have been sold but for drought conditions is treated as an involuntary conversion under section 1033(e). Consequently, gain from the sale of such livestock could be deferred by reinvesting the proceeds of the sale in similar property within a two-year period.

House Bill

The House bill amends Code section 451(e) to provide that a cash-method taxpayer whose principal trade or business is farming and who is forced to sell livestock due not only to drought (as under present law), but also to floods or other weather-related conditions, may elect to include income from the sale of the livestock in the taxable year following the taxable year of the sale. This elective deferral of income is available only if the taxpayer establishes that, under the taxpayer's usual business practices, the sale would not have occurred but for the drought, flood or other weather-related conditions that resulted in the area being designated as eligible for Federal assistance.

In addition, the bill amends Code section 1033(e) to provide that the sale of livestock (other than poultry) that are held for draft, breeding, or dairy purposes in excess of the number of livestock that would have been sold but for drought (as under present law), flood or other weather-related conditions is treated as an involuntary conversion.

Effective date.—The provision applies to sales and exchanges after December 31, 1996.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Mortgage bond financing for residences located in Presidentially declared disaster areas (sec. 924 of the House bill and sec. 723 of the Senate amendment)

Present Law

Qualified mortgage bonds are private activity tax-exempt bonds issued by States and local governments acting as conduits to provide mortgage loans to first-time home buyers who satisfy specified income limits and who purchase homes that cost less than statutory maximums.

Present law waives the three buyer targeting requirements for a portion of the loans made with proceeds of a qualified mortgage bond issue if the loans are made to finance homes in statutorily prescribed economically distressed areas.

House Bill

The House bill waives the first-time homebuyer requirement, the income limits, and the purchase price limits for loans to finance homes in certain Presidentially declared disaster areas. The waiver applies only during the one-year period following the date of the disaster declaration.

Effective date.—The provision applies to loans financed with bonds issued after December 31, 1996, and before January 1, 2000.

Senate Amendment

The Senate amendment is the same as the House bill except for the effective date.

Effective date.—The provision applies to loans financed with bonds issued after December 31, 1996, and before January 1, 1999.

Conference Agreement

The conference agreement allows the waivers of the first-time homebuyer requirement, the income limits, and the purchase price limits for loans to finance homes in certain Presidentially declared disaster areas. The waiver applies only during the two-year period following the date of disaster declaration.

Effective date.—The provision applies to loans financed with bonds issued after December 31, 1996 and before January 1, 1999 (i.e., is the same as the Senate amendment).

5. Rules relating to denial of earned income credit on basis of disqualified income (sec. 722 of the Senate amendment)

Present Law

For taxable years beginning after December 31, 1995, an individual is not eligible for the earned income credit if the aggregate amount of "disqualified income" of the taxpayer for the taxable year exceeds $2,200. This threshold is indexed for inflation. Disqualified income is the sum of:

(1) interest (taxable and tax-exempt);

(2) dividends;

(3) net rent and royalty income (if greater than zero);

(4) capital gain net income and;

(5) net passive income (if greater than zero) that is not self-employment income.

House Bill

No provision.

Senate Amendment

The Senate amendment clarifies that gain or loss from the sale of livestock (as defined under sec.1231(b)(3) of the Code) is disregarded for purposes of the calculation of capital gain net income under the disqualified income test of the earned income credit.

Effective date.—The provision is effective for taxable years beginning after December 31, 1995.

Conference Agreement

The conference agreement does not include the Senate amendment.

6. Penalty-free withdrawals from IRAs for disaster-related expenses (sec. 724 of the Senate amendment)

Present Law

Under present law, amounts held in an individual retirement arrangement ("IRA") are includible in income when withdrawn (except to the extent the withdrawal is a return of nondeductible contributions). Amounts withdrawn prior to attainment of age 59-1/2 are subject to an additional 10-percent early withdrawal tax, unless the withdrawal is due to death or disability, is made in the form of certain periodic payments, is used to pay medical expenses in excess of 7.5 percent of AGI, or is used to purchase health insurance of an unemployed individual.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the 10-percent early withdrawal tax does not apply to distributions from IRAs made to a taxpayer for qualified disaster-related expenses.

The penalty-free withdrawal is available for "qualified disaster-related distributions" meaning distributions made to pay for the repair or replacement of tangible property which was located in a disaster area and was destroyed or substantially damaged as a result of the disaster. The term "disaster area" means an area determined by the President of the United States during 1997 to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

The penalty-free withdrawal rule only applies to qualified disaster distributions that (1) are made within the 2-year period beginning on the date the determination is made that the area is a disaster area, (2) are used by the taxpayer within 60 days of the payment or distribution to pay for the disaster-related expenses, and (3) do on exceed $10,000 during the 2-year period.

Effective date.—The provision is effective for distributions after December 31, 1996, with respect to disasters occurring after such date.

Conference Agreement

The conference agreement does not include the Senate amendment.

7. Elimination of 10-percent floor for casualty losses resulting from Presidentially declared disaster (sec. 725 of the Senate amendment)

Present Law

Non-business casualty and theft losses are deductible as an itemized deduction only to the extent each loss is more than $100 and the total of all losses during the year is more than 10 percent of adjusted gross income ("AGI").

House Bill

No provision.

Senate Amendment

The Senate amendment eliminates the 10-percent of AGI floor for casualty losses resulting from a Presidentially declared disaster that occurs in 1997.

Effective date.—Disasters occurring in 1997.

Conference Agreement

The conference agreement does not include the Senate amendment.

8. Requirement to abate interest by reason of Presidentially declared disaster (sec. 726 of the Senate amendment)

Present Law

In the case of a Presidentially declared disaster, the Secretary of the Treasury has the authority to postpone some tax-related deadlines, but there is no authority to abate interest.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to abate interest for the same period of time for which the IRS has provided an extension of time to file tax returns and pay taxes for individuals located in Presidentially declared disaster areas during 1997.

Effective date.—Disasters occurring in 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

C. Provisions Relating to Employment Taxes

1. Employment tax status of distributors of bakery products (sec. 931 of the House bill)

Present Law

Under a special statutory rule, bakery distributors are treated as employees for Social Security payroll tax purposes (even if they are independent contractors for income tax purposes) if: (1) their services are part of a continuing relationship with the person for whom they are performed; (2) the distributor's service contract contemplates that he or she will perform substantially all of the services personally; and (3) the distributor does not have a substantial investment in facilities used in the performance of services, excluding facilities used for transportation. Bakery drivers generally take the position that they are not employees under the statutory rule.

House Bill

The House bill deletes distributors of bakery products from the list of product and service distributors treated as statutory employees for Social Security payroll tax purposes. Thus, the status of such workers is determined under the generally applicable rules.

Effective date.—The provision is effective for services performed after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

2. Clarification of standard to be used in determining tax status of retail securities brokers (sec. 932 of the House bill and sec. 779 of the Senate amendment)

Present Law

Under present law, whether a worker is an employee or independent contractor generally is determined under a common-law facts and circumstances test. An employer-employee relationship is generally found to exist if the service recipient has not only the right to control the result to be accomplished by the work, but also the means by which the result is to be accomplished. Whether such control exists is determined based on the relevant facts and circumstances. The IRS training manual provides that if a business requires its workers to comply with rules established by a third party (e.g., municipal building codes related to construction), the fact that such rules are imposed should be given little weight in determining the worker's status.

House Bill

Under the House bill, in determining the status of a registered representative of a broker-dealer for Federal tax purposes, no weight is to be given to instructions from the service recipient which are imposed only in compliance with governmental investor protection standards or investor protection standards imposed by a governing body pursuant to a delegation by a Federal or State agency.

Effective date.—Services performed after December 31, 1997. No inference is intended that the provision is not present law.

Senate Amendment

Same as the House bill, except that the provision applies only for Federal income tax purposes.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill.

3. Clarification of exemption from self-employment tax for certain termination payments received by former insurance salesmen (sec. 933 of the House bill)

Present Law

Under the self-employment contributions act ("SECA"), taxes are imposed on an individual's net earnings from self employment. In general, net earnings from self employment means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed which are attributable to such trade or business. The SECA tax rate is the same as the combined employer and employee FICA rates (i.e., 12.4 percent for old age, survivors, and disability income (OASDI) and 2.9 percent for Medicare Hospital Insurance taxes) and the maximum amount of earnings subject to the OASDI portion of SECA taxes is coordinated with and is set at the same level as the maximum level of wages and salaries subject to the OASDI portion of FICA taxes ($65,400 for 1997). There is no limit on the amount of self-employment income subject to the HI portion of the tax.

Certain insurance salesmen are independent contractors and therefore subject to tax under SECA. Under case law, certain payments received by a former insurance salesmen who had sold insurance as an independent contractor are not net earnings from self employment and therefore are not subject to SECA. See, e.g., *Jackson* v. *Comm'r*, 108 TC No. 10 (1997); *Gump* v. *U.S.*, 86 F. 3d 1126 (CA FC 1996); *Milligan* v. *Comm'r*, 38 F. 3d 1094 (9th Cir. 1994).

House Bill

The House bill codifies case law by providing that net earnings from self employment do not include any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if (1) such amount is received after termination of the individual's agreement to perform services for the company, (2) the individual performs no services for the company after such termination and before the close of the taxable year, (3) the amount of the payment depends solely on policies sold by the individual during the last year of the agreement and the extent to which such policies remain in force for some period after such termination, and does not depend on the length of service or overall earnings from services performed for the company, and (4) the payments are conditioned upon the salesman agreeing not to compete with the company for at least one year following such termination.

The House bill also amends the Social Security Act to provide that such termination payments are not treated as earnings for purposes of determining social security benefits.

No inference is intended with respect to the SECA tax treatment of payments that are not described in the proposal.

Effective date.—The provision is effective with respect to payments after December 31, 1997. No inference is intended that the proposal is not present law.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with clarifications with respect to the requirement as to the amount of the payments. The conference agreement clarifies that the provision applies if the amount of the payment depends primarily on policies sold by or credited to the account of the individual during the last year of the service agreement and/or the extent to which such policies remain in force for some period after such termination and does not depend on length of service or overall earnings. The conference agreement clarifies that the eligibility for the payment can be based on length of service or overall earnings.

4. Safe harbor for independent contractors (sec. 934 of the House bill)

Present Law

Under present law, whether a worker is an employee or independent contractor is generally determined under a common-law facts and circumstances test. An employer-employee relationship is generally found to exist if the service recipient has not only the right to control the result to be accomplished by the work, but also the means by which the result is to be accomplished. The Internal Revenue Service ("IRS") has developed a set of 20 factors for use in applying the common-law test.

Under a special safe harbor rule (section 530 of the Revenue Act of 1978), a service recipient may treat a worker as an independent contractor for employment tax purposes even though the worker is in fact an employee if the service recipient has a reasonable basis for treating the worker as an independent contractor and certain other requirements are met. Section 530 does not apply to the worker and does not apply for income tax purposes. Section 530 does not apply to technical services personnel.

House Bill

In general

The House bill provides a statutory safe harbor for determining worker classification for Federal tax purposes. If the standards set forth in the bill are met, the worker is not treated as an employee and the service recipient (or payor) is not treated as an employer. If the safe harbor is not satisfied, the

determination of the worker's status is made under the present-law rules.

Standards for determining whether individuals are not employees

Under the House bill, the following three sets of requirements have to be satisfied in order for a worker not to be treated as an employee: (1) worker requirements regarding the service recipient; (2) worker requirements regarding others; and (3) documentation requirements. The requirements regarding the worker are satisfied if, in connection with performing the services, the worker: (1) has a significant investment in assets and/or training; (2) incurs significant unreimbursed expenses; (3) agrees to perform the services for a particular amount of time or to complete a specific result and is liable for damages for early termination without cause; (4) is paid primarily on a commissioned basis; or (5) purchases products for resale.

The requirements regarding others are satisfied if one of the following two requirements is met: (1) a place of business requirement; or (2) a services available to the public requirement. The place of business requirement is satisfied if the worker: (1) has a principal place of business; (2) does not primarily perform services in the service recipient's place of business; or (3) pays a fair market rent for use of the service recipient's place of business. The services available to the public requirement is satisfied if the worker is not required to perform services exclusively for the service recipient, and during the year (or the preceding or subsequent year) the worker: (1) has performed a significant amount of services for other persons; (2) has offered to perform services for other persons through advertising, individual written or oral solicitations, listings with agencies, brokers, or other organizations that provide referrals, or other similar activities; or (3) provides service under a business name that is registered with (or licensed by) a State or a political subdivision (or an agency or instrumentality of a State or political subdivision).

The documentation requirement is satisfied if the services performed by the worker are performed pursuant to a written contract between the worker and the service recipient (or payor) and the contract provides that the worker will not be treated as an employee.

If the service recipient (or payor) fails to file the appropriate Federal tax returns (including information returns) with respect to a worker for a taxable year, the safe harbor is not available for such year.

Effective date

The provision is effective with respect to services performed after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

5. Combined employment tax reporting demonstration project (sec. 769 of the Senate amendment)

Present Law

Traditionally, Federal tax forms are filed with the Federal Government and State tax forms are filed with individual states. This necessitates duplication of items common to both returns. Some States have recently been working with the IRS to implement combined State and Federal reporting of certain types of items on one form as a way of reducing the burdens on taxpayers. The State of Montana and the IRS have cooperatively developed a system to combine State and Federal employment tax reporting on one form. The one form would contain exclusively Federal data, exclusively State data, and information common to both: the taxpayer's name, address, TIN, and signature.

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service ("IRS") to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Implementation of the combined Montana-Federal employment tax reporting project has been hindered because the IRS interprets section 6103 to apply that provision's restrictions on disclosure to information common to both the State and Federal portions of the combined form, although these restrictions would not apply to the State with respect to the State's use of State-requested information if that information were supplied separately to both the State and the IRS.

House Bill

No provision.

Senate Amendment

The Senate amendment permits implementation of a demonstration project to assess the feasibility and desirability of expanding combined reporting in the future. There are several limitations on the demonstration project. First, it is limited to the State of Montana and the IRS. Second, it is limited to employment tax reporting. Third, it is limited to disclosure of the name, address, TIN, and signature of the taxpayer, which is information common to both the Montana and Federal portions of the combined form. Fourth, it is limited to a period of five years.

Effective date.—The provision is effective on the date of enactment, and will expire on the date five years after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with a technical modification providing a cross-reference to the provision in section 6103 of the Code.

D. Provisions Relating to Small Business

1. Delay imposition of penalties for failure to make payments electronically through EFTPS (sec. 941 of the House bill and sec. 731 of the Senate amendment)

Present Law

Employers are required to withhold income taxes and FICA taxes from wages paid to their employees. Employers also are liable for their portion of FICA taxes, excise taxes, and estimated payments of their corporate income tax liability.

The Code requires the development and implementation of an electronic fund transfer system to remit these taxes and convey deposit information directly to the Treasury (Code sec. 6302(h)[30]). The Electronic Federal Tax Payment System ("EFTPS") was developed by Treasury in response to this requirement.[31] Employers must enroll with one of two private contractors hired by the Treasury. After enrollment, employers generally initiate deposits either by telephone or by computer.

The new system is phased in over a period of years by increasing each year the percentage of total taxes subject to the new EFTPS system. For fiscal year 1994, 3 percent of the total taxes are required to be made by electronic fund transfer. These percentages increased gradually for fiscal years 1995 and 1996. For fiscal year 1996, the percentage was 20.1 percent (30 percent for excise taxes and corporate estimated tax payments). For fiscal year 1997, these percentages increased significantly, to 58.3 percent (60 percent for excise taxes and corporate estimated tax payments). The specific implementation method required to achieve the target percentages is set forth in Treasury regulations. Implementation began with the largest depositors.

Treasury had originally implemented the 1997 percentages by requiring that all employers who deposit more than $50,000 in 1995 must begin using EFTPS by January 1, 1997. The Small Business Job Protection Act of 1996 provided that the increase in the required percentages for fiscal year 1997 (which, pursuant to Treasury regulations, was to take effect on January 1, 1997) will not take effect until July 1, 1997.[32] This was done to provide additional time prior to implementation of the 1997 requirements so that employers could be better informed about their responsibilities.

On June 2, 1997, the IRS announced[33] that it will not impose penalties through December 31, 1997, on businesses that make timely deposits using paper Federal tax deposit coupons while converting to the EFTPS system.

House Bill

The House bill provides that no penalty shall be imposed solely by reason of a failure to use EFTPS prior to January 1, 1999, if the taxpayer was first required to use the EFTPS system on or after July 1, 1997.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except it applies to penalties for failures to use EFTPS prior to July 1, 1998.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Home office deduction: clarification of definition of principal place of business (sec. 942 of the House bill)

Present Law

A taxpayer's business use of his or her home may give rise to a deduction for the business portion of expenses related to operating the home (e.g., a portion of rent or depreciation and repairs). Code section 280A(c)(1) provides, however, that business deductions generally are allowed only with respect to a portion of a home that is used exclusively and regularly in one of the following ways: (1) as the principal place of business for a trade or business; (2) as a place of business used to meet with patients, clients, or customers in the normal course of the taxpayer's trade or business; or (3) in connection with the taxpayer's trade or business, if the portion so used constitutes a separate structure not attached to the dwelling unit. In the case of an employee, the Code further requires that the business use of the

[30] This requirement was enacted in 1993 (sec. 523 of P.L. 103-182).

[31] Treasury had earlier developed TAXLINK as the prototype for EFTPS. TAXLINK has been operational for several years; EFTPS is currently operational. Employers currently using TAXLINK will ultimately be required to participate in EFTPS.

[32] Sec. 1809 of P.L. 104-188.

[33] IR-97-32.

home must be for the convenience of the employer (sec. 280A(c)(1)).[34] These rules apply to houses, apartments, condominiums, mobile homes, boats, and other similar property used as the taxpayer's home (sec. 280A(f)(1)). Under Internal Revenue Service (IRS) rulings, the deductibility of expenses incurred for local transportation between a taxpayer's home and a work location sometimes depends on whether the taxpayer's home office qualifies under section 280A(c)(1) as a principal place of business (see Rev. Rul. 94-47, 1994-29 I.R.B. 6).

Prior to 1976, expenses attributable to the business use of a residence were deductible whenever they were "appropriate and helpful" to the taxpayer's business. In 1976, Congress adopted section 280A, in order to provide a narrower scope for the home office deduction, but did not define the term "principal place of business." *In Commissioner* v. *Soliman*, 113 S.Ct. 701 (1993), the Supreme Court reversed lower court rulings and upheld an IRS interpretation of section 280A that disallowed a home office deduction for a self-employed anesthesiologist who practiced at several hospitals but was not provided office space at the hospitals. Although the anesthesiologist used a room in his home exclusively to perform administrative and management activities for his profession (i.e., he spent two or three hours a day in his home office on bookkeeping, correspondence, reading medical journals, and communicating with surgeons, patients, and insurance companies), the Supreme Court upheld the IRS position that the "principal place of business" for the taxpayer was not the home office, because the taxpayer performed the "essence of the professional service" at the hospitals.[35] Because the taxpayer did not meet with patients at his home office and the room was not a separate structure, a deduction was not available under the second or third exception under section 280A(c)(1) (described above).

Section 280A(c)(2) contains a special rule that allows a home office deduction for business expenses related to a space within a home that is used on a regular (even if not exclusive) basis as a storage unit for the inventory or product samples of the taxpayer's trade or business of selling products at retail or wholesale, but only if the home is the sole fixed location of such trade or business.

Home office deductions may not be claimed if they create (or increase) a net loss from a business activity, although such deductions may be carried over to subsequent taxable years (sec. 280A(c)(5)).

House Bill

Section 280A is amended to specifically provide that a home office qualifies as the "principal place of business" if (1) the office is used by the taxpayer to conduct administrative or management activities of a trade or business and (2) there is no other fixed location of the trade or business where the taxpayer conducts substantial administrative or management activities of the trade or business. As under present law, deductions will be allowed for a home office meeting the above two-part test only if the office is exclusively used on a regular basis as a place of business by the taxpayer and, in the case of an employee, only if such exclusive use is for the convenience of the employer.

Thus, under the House bill, a home office deduction is allowed (subject to the present-law "convenience of the employer" rule governing employees) if a portion of a taxpayer's home is exclusively and regularly used to conduct administrative or management activities for a trade or business of the taxpayer, who does not conduct substantial administrative or management activities at any other fixed location of the trade or business, regardless of whether administrative or management activities connected with his trade or business (e.g., billing activities) are performed by others at other locations. The fact that a taxpayer also carries out administrative or management activities at sites that are not fixed locations of the business, such as a car or hotel room, will not affect the taxpayer's ability to claim a home office deduction under the bill. Moreover, if a taxpayer conducts some administrative or management activities at a fixed location of the business outside the home, the taxpayer still is eligible to claim a deduction so long as the administrative or management activities conducted at any fixed location of the business outside the home are not substantial (e.g., the taxpayer occasionally does minimal paperwork at another fixed location of the business). In addition, a taxpayer's eligibility to claim a home office deduction under the bill will not be affected by the fact that the taxpayer conducts substantial non-administrative or non-management business activities at a fixed location of the business outside the home (e.g., meeting with, or providing services to, customers, clients, or patients at a fixed location of the business away from home).

If a taxpayer in fact does not perform substantial administrative or management activities at any fixed location of the business away from home, then the second part of the test will be satisfied, regardless of whether or not the taxpayer opted not to use an office away from home that was available for the conduct of such activities. However, in the case of an employee, the question whether an employee chose not to use suitable space made available by the employer for administrative activities is relevant to determining whether the present-law "convenience of the employer" test is satisfied. In cases where a taxpayer's use of a home office does not satisfy the provision's two-part test, the taxpayer nonetheless may be able to claim a home office deduction under the present-law "principal place of business" exception or any other provision of section 280A.

Effective date.—The provision applies to taxable years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the provision is effective for taxable years beginning after December 31, 1998.

3. Increase deduction for health insurance costs of self-employed individuals (sec. 733 of the Senate amendment)

Present Law

Under present law, self-employed individuals are entitled to deduct the amount paid for health insurance for the self-employed individual and the individual's spouse and dependents as follows: the deduction is 40 percent in 1997; 45 percent in 1998 through 2002; 50 percent in 2003; 60 percent in 2004; 70 percent in 2005; and 80 percent in 2006 and thereafter. The deduction for health insurance expenses of self-employed individuals is not available for any month in which the taxpayer is eligible to participate in a subsidized health plan maintained by the employer of the taxpayer or the taxpayer's spouse.

Under present law employees can exclude from income 100 percent of employee-provided health insurance.

House Bill

No provision.

Senate Amendment

The Senate amendment permits self-employed individuals to deduct a higher percentage of the amount paid for health insurance as follows: the deduction is 50 percent in 1997 and 1998; 60 percent in 1999 through 2002; 70 percent in 2003; 80 percent in 2004; 85 percent in 2005; 90 percent in 2006; and 100 percent in 2007 and all years thereafter.

Effective date.—The provision is effective for taxable years beginning after December 31, 1996.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications. Under the conference agreement, the self-employed health deduction is phased up as follows: the deduction is 40 percent in 1997, 45 percent in 1998 and 1999, 50 percent in 2000 and 2001, 60 percent in 2002, 80 percent in 2003 through 2005, 90 percent in 2006, and 100 percent in 2007 and thereafter.

E. Other Provisions

1. Shrinkage estimates for inventory accounting (sec. 951 of the House bill and sec. 1013 of the Senate amendment)

Present Law

Section 471(a) provides that "(w)henever in the opinion of the Secretary the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer on such basis as the Secretary may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting income." Where a taxpayer maintains book inventories in accordance with a sound accounting system, the net value of the inventory will be deemed to be the cost basis of the inventory, provided that such book inventories are verified by physical inventories at reasonable intervals and adjusted to conform therewith.[36] The physical count is used to determine and adjust for certain items; such as undetected theft, breakage, and bookkeeping errors; collectively referred to as "shrinkage".

Some taxpayers verify and adjust their book inventories by a physical count taken on the last day of the taxable year. Other taxpayers may verify and adjust their inventories by physical counts taken at other times during the year. Still other taxpayers take physical counts at different locations at different times during the taxable year (cycle counting).

If a physical inventory is taken at year-end, the amount of shrinkage for the year is known. If a physical inventory is not taken at year-end, shrinkage through year-end will have to be based on an estimate, or not

[34] If an employer provides access to suitable space on the employer's premises for the conduct by an employee of particular duties, then, if the employee opts to conduct such duties at home as a matter of personal preference, the employee's use of the home office is not "for the convenience of the employer." See, e.g., *W. Michael Mathes*, (1990) T.C. Memo 1990-483.

[35] In response to the Supreme Court's decision in *Soliman*, the IRS revised its Publication 587, Business Use of Your Home, to more closely follow the comparative analysis used in *Soliman* by focusing on the following two primary factors in determining whether a home office is a taxpayer's principal place of business: (1) the relative importance of the activities performed at each business location; and (2) the amount of time spent at each location.

[36] Treas. reg. sec. 1.471-2(d).

taken into account until the following year. In the first decision in *Dayton Hudson* v. *Commissioner*,[37] the U.S. Tax Court held that a taxpayer's method of accounting may include the use of an estimate of shrinkage occurring through year-end, provided the method is sound and clearly reflects income. In the second decision in *Dayton Hudson* v. *Commissioner*,[38] the U.S. Tax Court adhered to this holding. However, the U.S. Tax Court in the second decision determined that this taxpayer had not established that its method of accounting clearly reflected income. Other cases decided by the U.S. Tax Court[39] have held that taxpayers' methods of accounting that included shrinkage estimates do clearly reflect income.

The U.S. Tax Court in the second *Dayton Hudson* opinion noted that "(I)n most cases, generally accepted accounting principles (GAAP), consistently applied, will pass muster for tax purposes. The Supreme Court has made clear, however, that GAAP does not enjoy a presumption of accuracy that must be rebutted by the Commissioner."

House Bill

The House bill provides that a method of keeping inventories will not be considered unsound, or to fail to clearly reflect income, solely because it includes an adjustment for the shrinkage estimated to occur through year-end, based on inventories taken other than at year-end. Such an estimate must be based on actual physical counts. Where such an estimate is used in determining ending inventory balances, the taxpayer is required to take a physical count of inventories at each location on a regular and consistent basis. A taxpayer is required to adjust its ending inventory to take into account all physical counts performed through the end of its taxable year.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

A taxpayer is permitted to change its method of accounting by this section if the taxpayer is currently using a method that does not utilize estimates of inventory shrinkage and wishes to change to a method for inventories that includes shrinkage estimates based on physical inventories taken other than at year-end. Such a change is treated as a voluntary change in method of accounting, initiated by the taxpayer with the consent of the Secretary of the Treasury, provided the taxpayer changes to a permissible method of accounting. The period for taking into account any adjustment required under section 481 as a result of such a change in method is 4 years.

No inference is intended by the adoption of this provision with regard to whether any particular method of accounting for inventories is permissible under present law.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with the following clarifications regarding safe harbor methods for the estimation of inventory shrinkage.

In general.—The conferees expect that the Secretary of the Treasury will issue guidance establishing one or more safe harbor methods for the estimation of inventory shrinkage that will be deemed to result in a clear reflection of income, provided such safe harbor method is consistently applied and the taxpayer's inventory methods otherwise satisfy the clear reflection of income standard.

Safe harbors applicable to retail trade.—In the case of taxpayers primarily engaged in retail trade (the resale of personal property to the general public), where physical inventories are normally taken at each location at least annually, the conferees anticipate that a safe harbor method will be established that will use a historical ratio of shrinkage to sales, multiplied by total sales between the date of the last physical inventory and year-end. This historical ratio is based on the actual shrinkage established by all physical inventories taken during the most recent three taxable years and the sales for related periods. The historical ratio should be separately determined for each store or department in a store of the taxpayer. The historical ratio, or estimated shrinkage determined using the historical ratio, cannot be adjusted by judgmental or other factors (e.g., floors or caps). The conferees expect that estimated shrinkage determined in accordance with the consistent application of the safe harbor method will not be required to be recalculated, through a lookback adjustment or otherwise, to reflect the results of physical inventories taken after year-end.

In the case of a new store or department in a store that has not verified shrinkage by a physical inventory in each of the most recent three taxable years, the historical ratio is the average of the historical ratios of the retailer's other stores or departments. Retailers using last in, first out (LIFO) methods of inventory are expected to be required to allocate shrinkage among their various inventory pools in a reasonable and consistent manner.

The conferees expect that procedures will be provided allowing an automatic election of such method of accounting for a taxpayer's first taxable year ending after the date of enactment. Any adjustment required by section 481 as a result of the change in method of accounting generally will be taken into account over a period of four years.

2. Treatment of workmen's compensation liability under rules for certain personal injury liability assignments (sec. 952 of the House bill)

Present Law

Under present law, an exclusion from gross income is provided for amounts received for agreeing to a qualified assignment to the extent that the amount received does not exceed the aggregate cost of any qualified funding asset (sec. 130). A qualified assignment means any assignment of a liability to make periodic payments as damages (whether by suit or agreement) on account of a personal injury or sickness (in a case involving physical injury or physical sickness), provided the liability is assumed from a person who is a party to the suit or agreement, and the terms of the assignment satisfy certain requirements. Generally, these requirements are that: (1) the periodic payments are fixed as to amount and time; (2) the payments cannot be accelerated, deferred, increased, or decreased by the recipient; (3) the assignee's obligation is no greater than that of the assignor; and (4) the payments are excludable by the recipient under section 104(a)(2) as damages on account of personal injuries or sickness. Present law provides a separate exclusion under section 104(a)(1) for the recipient of amounts received under workmen's compensation acts as compensation for personal injuries or sickness, but a qualified assignment under section 130 does not include the assignment of a liability to make such payments.

House Bill

The House bill extends the exclusion for qualified assignments under Code section 130 to amounts assigned for assuming a liability to pay compensation under any workmen's compensation act. The provision requires that the assignee assume the liability from a person who is a party to the workmen's compensation claim, and requires that the periodic payment be excludable from the recipient's gross income under section 104(a)(1), in addition to the requirements of present law.

Effective date.—Effective for workmen's compensation claims filed after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

3. Tax-exempt status for certain State workmen's compensation act companies (sec. 953 of the House bill and sec. 761 of the Senate amendment)

Present Law

In general, the Internal Revenue Service ("IRS") takes the position that organizations that provide insurance for their members or other individuals are not considered to be engaged in a tax-exempt activity. The IRS maintains that such insurance activity is either (1) a regular business of a kind ordinarily carried on for profit, or (2) an economy or convenience in the conduct of members' businesses because it relieves the members from obtaining insurance on an individual basis.

Certain insurance risk pools have qualified for tax exemption under Code section 501(c)(6). In general, these organizations (1) assign any insurance policies and administrative functions to their member organizations (although they may reimburse their members for amounts paid and expenses), (2) serve an important common business interest of their members, and (3) must be membership organizations financed, at least in part, by membership dues.

State insurance risk pools may also qualify for tax exempt status under section 501(c)(4) as a social welfare organizations or under section 115 as serving an essential governmental function of a State. In seeking qualification under section 501(c)(4), insurance organizations generally are constrained by the restrictions on the provision of "commercial-type insurance" contained in section 501(m). Section 115 generally provides that gross income does not include income derived from the exercise of any essential governmental function and accruing to a State or any political subdivision thereof.

House Bill

The House bill clarifies the tax-exempt status of any organization that is created by State law, and organized and operated exclusively to provide workmen's compensation insurance and related coverage that is incidental to workmen's compensation insurance,[40] and that meets certain additional requirements. The workmen's compensation

[37] 101 T.C. 462 (1993).

[38] T.C. Memo 1997-260.

[39] *Wal-Mart* v. *Commissioner*, T.C. Memo 1997-1 and *Kroger* v. *Commissioner*, T.C. Memo 1997-2.

[40] Related coverage that is incidental to workmen's compensation insurance includes liability under Federal workmen's compensation laws, for example.

insurance must be required by State law, or be insurance with respect to which State law provides significant disincentives if it is not purchased by an employer (such as loss of exclusive remedy or forfeiture of affirmative defenses such as contributory negligence). The organization must provide workmen's compensation to any employer in the State (for employees in the State or temporarily assigned out-of-State) seeking such insurance and meeting other reasonable requirements. The State must either extend its full faith and credit to debt of the organization or provide the initial operating capital of such organization. For this purpose, the initial operating capital can be provided by providing the proceeds of bonds issued by a State authority; the bonds may be repaid through exercise of the State's taxing authority, for example. For periods after the date of enactment, the assets of the organization must revert to the State upon dissolution. Finally, the majority of the board of directors (or comparable oversight body) of the organization must be appointed by an official of the executive branch of the State or by the State legislature, or by both.

Effective date.—Taxable years beginning after December 31, 1997. No inference is intended as to the status of such organizations under present law.

Senate Amendment

The Senate amendment is the same as the House bill. The Senate Finance committee report clarifies that related coverage that is incidental to workmen's compensation insurance includes liability under Federal workmen's compensation laws, the Jones Act, and the Longshore and Harbor Workers Compensation Act, for example. The Senate Finance committee report also clarifies that many organizations described in the provision have been operating as tax-exempt organizations. No inference is intended that organizations described in the provision are not tax-exempt under present law.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with modifications.

The conference agreement modifies the full-faith-and-credit portion of the requirement that the State must extend its full faith and credit to debt of the organization (or provide the initial operating capital of such organization). Under the conference agreement, the State must extend its full faith and credit to the initial debt of the organization.

The conference agreement also modifies the requirement relating to reversion of assets to the State upon dissolution. The conference agreement requires that, in the case of periods after the date of enactment, either the assets of the organization must revert to the State upon dissolution, or State law must not permit the dissolution of the organization, absent an act of the State legislature. Should dissolution of the organization become permissible under applicable State law, then the requirement that the assets of the organization revert to the State upon dissolution applies.

Many organizations described in the provision have been operating as organizations that are exempt from tax (e.g., as an organization that is exempt from tax because it is serving an essential governmental function of a State). No inference is intended that organizations described in the provision are not exempt from tax under present law. In addition, no inference is intended that the benefit plans of such organizations are not properly maintained by the organization. It is anticipated that Federal regulatory agencies will take appropriate action to address transition issues faced by organizations to conform to their benefit plans under the provision. For example, it is intended that an organization that has been maintaining a section 457 plan as an agency or instrumentality of a State could (without creating any inference with respect to present-law treatment) freeze future contributions to the section 457 plan and establish a retirement arrangement (e.g., a section 401(k) plan) that is consistent with the treatment of the organization as a tax-exempt employer under the provision.

4. Election for 1987 partnerships to continue exception from treatment of publicly traded partnerships as corporations (sec. 954 of the House bill and sec. 762 of the Senate amendment)

Present Law

A publicly traded partnership generally is treated as a corporation for Federal tax purposes (sec. 7704). An exception to the rule treating the partnership as a corporation applies if 90 percent of the partnership's gross income consists of "passive-type income," which includes (1) interest (other than interest derived in a financial or insurance business, or certain amounts determined on the basis of income or profits), (2) dividends, (3) real property rents (as defined for purposes of the provision), (4) gain from the sale or other disposition of real property, (5) income and gains relating to minerals and natural resources (as defined for purposes of the provision), and (6) gain from the sale or disposition of a capital asset (or certain trade or business property) held for the production of income of the foregoing types (subject to an exception for certain commodities income).

The exception for publicly traded partnerships with "passive-type income" does not apply to any partnership that would be described in section 851(a) of the Code (relating to regulated investment companies, or "RICs"), if that partnership were a domestic corporation. Thus, a publicly traded partnership that is registered under the Investment Company Act of 1940 generally is treated as a corporation under the provision. Nevertheless, if a principal activity of the partnership consists of buying and selling of commodities (other than inventory or property held primarily for sale to customers) or futures, forwards and options with respect to commodities, and 90 percent of the partnership's income is such income, then the partnership is not treated as a corporation.

A publicly traded partnership is a partnership whose interests are (1) traded on an established securities market, or (2) readily tradable on a secondary market (or the substantial equivalent thereof).

Treasury regulations provide detailed guidance as to when an interest is treated as readily tradable on a secondary market or the substantial equivalent. Generally, an interest is so treated "if, taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market" (Treas. Reg. sec. 1.7704–1(c)(1)).

When the publicly traded partnership rules were enacted in 1987, a 10-year grandfather rule provided that the provisions apply to certain existing publicly traded partnerships only for taxable years beginning after December 31, 1997.[41] An existing publicly traded partnership is any partnership, if (1) it was a publicly traded partnership on December 17, 1987, (2) a registration statement indicating that the partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to the partnership on or before December 17, 1987, or (3) with respect to the partnership, an application was filed with a State regulatory commission on or before December 17, 1987, seeking permission to restructure a portion of a corporation as a publicly traded partnership. A partnership that otherwise would be treated as an existing publicly traded partnership ceases to be so treated as of the first day after December 17, 1987, on which there has been an addition of a substantial new line of business with respect to such partnership. A rule is provided to coordinate this grandfather rule with the exception to the rule treating the partnership as a corporation applies if 90 percent of the partnership's gross income consists of passive-type income. The coordination rule provides that passive-type income exception applies only after the grandfather rule ceases to apply (whether by passage of time or because the partnership ceases to qualify for the grandfather rule).

House Bill

Under the House bill, in the case of an existing publicly traded partnership that elects under the provision to be subject to a tax on gross income from the active conduct of a trade or business, the rule of present law treating a publicly traded partnership as a corporation does not apply. An existing publicly traded partnership is any publicly traded partnership that is not treated as a corporation, so long as such treatment is not determined under the passive-type income exception of Code section 7704(c)(1). The election to be subject to the tax on gross trade or business income, once made, remains in effect until revoked by the partnership, and cannot be reinstated.

The tax is 15 percent of the partnership's gross income from the active conduct of a trade or business. The partnership's gross trade or business income includes its share of gross trade or business income of any lower-tier partnership. The tax imposed under the provision may not be offset by tax credits.

Effective date.—Taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill, except that the tax is 3.5 percent of the partnership's gross income from the active conduct of a trade or business.

Conference Agreement

The conference agreement follows the Senate amendment, with technical modifications. The conference agreement clarifies that the provision applies to any electing 1987 partnership, which means any publicly traded partnership, if (1) it is an existing partnership within the meaning of section 10211(c)(2) of the 1987 Act, (2) it has not been treated as a corporation for taxable years beginning after December 31, 1987, and before January 1, 1998 (and would not have been treated as a corporation even without regard to section 7704(c), the exception for partnerships with "passive-type" income), and (3) the partnership elects under the provision to be subject to a tax on gross income from the active conduct of a trade or business. An electing 1987 partnership ceases to be treated as such as of the first day after December 31, 1997, on which there has been the addition of a substantial new line of business with respect to the partnership.

[41] Omnibus Budget Reconciliation Act of 1987 (P.L. 100–203) (the "1987 Act"), sec. 10211(c).

5. Exclusion from UBIT for certain corporate sponsorship payments (sec. 955 of the House bill and sec. 763 of the Senate amendment)

Present Law

Although generally exempt from Federal income tax, tax-exempt organizations are subject to the unrelated business income tax ("UBIT") on income derived from a trade or business regularly carried on that is not substantially related to the performance of the organization's tax-exempt functions (secs. 511–514). Contributions or gifts received by tax-exempt organizations generally are not subject to the UBIT. However, present-law section 513(c) provides that an activity (such as advertising) does not lose its identity as a separate trade or business merely because it is carried on within a larger complex of other endeavors.[42] If a tax-exempt organization receives sponsorship payments in connection with an event or other activity, the solicitation and receipt of such sponsorship payments may be treated as a separate activity. The Internal Revenue Service (IRS) has taken the position that, under some circumstances, such sponsorship payments are subject to the UBIT.[43]

House Bill

Under the House bill, qualified sponsorship payments received by a tax-exempt organization (or State college or university described in section 511(a)(2)(B)) are exempt from the UBIT.

"Qualified sponsorship payments" are defined as any payment made by a person engaged in a trade or business with respect to which the person will receive no substantial return benefit other than the use or acknowledgment of the name or logo (or product lines) of the person's trade or business in connection with the organization's activities.[44] Such a use or acknowledgment does not include advertising of such person's products or services—meaning qualitative or comparative language, price information or other indications of savings or value, or an endorsement or other inducement to purchase, sell, or use such products or services. Thus, for example, if, in return for receiving a sponsorship payment, an organization promises to use the sponsor's name or logo in acknowledging the sponsor's support for an educational or fundraising event conducted by the organization, such payment will not be subject to the UBIT. In contrast, if the organization provides advertising of a sponsor's products, the payment made to the organization by the sponsor in order to receive such advertising will be subject to the UBIT (provided that the other, present-law requirements for UBIT liability are satisfied).

The House bill specifically provides that a qualified sponsorship payment does not include any payment where the amount of such payment is contingent, by contract or otherwise, upon the level of attendance at an event, broadcast ratings, or other factors indicating the degree of public exposure to an activity. However, the fact that a sponsorship payment is contingent upon an event actually taking place or being broadcast, in and of itself, will not cause the payment to fail to be a qualified sponsorship payment. Moreover, mere distribution or display of a sponsor's products by the sponsor or the tax-exempt organization to the general public at a sponsored event, whether for free or for remuneration, will be considered to be "use or acknowledgment" of the sponsor's product lines (as opposed to advertising), and thus will not affect the determination of whether a payment made by the sponsor is a qualified sponsorship payment.

The provision does not apply to the sale of advertising or acknowledgments in tax-exempt organization periodicals. For this purpose, the term "periodical" means regularly scheduled and printed material published by (or on behalf of) the payee organization that is not related to and primarily distributed in connection with a specific event conducted by the payee organization. For example, the provision will not apply to payments that lead to acknowledgments in a monthly journal, but will apply if a sponsor receives an acknowledgment in a program or brochure distributed at a sponsored event.

The provision specifically provides that, to the extent that a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, such portion of the payment will be treated as a separate payment. Thus, if a sponsorship payment made to a tax-exempt organization entitles the sponsor to both product advertising *and* use or acknowledgment of the sponsor's name or logo by the organization, then the UBIT will not apply to the amount of such payment that exceeds the fair market value of the product advertising provided to the sponsor. Moreover, the provision of facilities, services or other privileges by an exempt organization to a sponsor or the sponsor's designees (e.g., complimentary tickets, pro-am playing spots in golf tournaments, or receptions for major donors) in connection with a sponsorship payment will not affect the determination of whether the payment is a qualified sponsorship payment. Rather, the provision of such goods or services will be evaluated as a separate transaction in determining whether the organization has unrelated business taxable income from the event. In general, if such services or facilities do not constitute a substantial return benefit or if the provision of such services or facilities is a related business activity, then the payments attributable to such services or facilities will not be subject to the UBIT. Moreover, just as the provision of facilities, services or other privileges by a tax-exempt organization to a sponsor or the sponsor's designees (complimentary tickets, pro-am playing spots in golf tournaments, or receptions for major donors) will be treated as a separate transaction that does not affect the determination of whether a sponsorship payment is a qualified sponsorship payment, a sponsor's receipt of a license to use an intangible asset (e.g., trademark, logo, or designation) of the tax-exempt organization likewise will be treated as separate from the qualified sponsorship transaction in determining whether the organization has unrelated business taxable income.

The exemption provided by the provision will be in addition to other present-law exceptions from the UBIT (e.g., the exceptions for activities substantially all the work for which is performed by volunteers and for activities not regularly carried on). No inference is intended as to whether any sponsorship payment received prior to 1998 was subject to the UBIT.

Effective date.—The provision applies to qualified sponsorship payments solicited or received after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and Senate amendment, except that the conference agreement clarifies that the qualified sponsorship payment provision does not apply to payments that entitle the payor to the use or acknowledgment of the payor's trade or business name or logo (or product lines) in tax-exempt organization periodicals. Similarly, the qualified sponsorship payment provision does not apply to payments made in connection with "qualified convention or trade show activities," as defined in present-law section 513(d)(3). Such payments are outside the qualified sponsorship payment provision's safe-harbor exclusion, and, therefore, will be governed by present-law rules that determine whether the payment is subject to the UBIT. Thus, for example, payments that entitle the payor to a depiction of the payor's name or logo in a tax-exempt organization periodical may or may not be subject to the UBIT depending on the application of present-law rules regarding periodical advertising and nontaxable donor recognition.[45]

As a further clarification, the conferees intend that, as provided under Prop. Treas. Reg. sec. 1.513–4, the use of promotional logos or slogans that are an established part of the sponsor's identity would not, by itself, constitute advertising for purposes of determining whether a payment is a qualified sponsorship payment.

6. Timeshare associations (sec. 956 of the House bill and sec. 764 of the Senate amendment)

Present Law

Taxation of homeowners associations making the section 528 election.—Under present law (sec. 528), condominium management associations and residential real estate management associations may elect to be taxable at a 30-percent rate on their "homeowners association income" if they meet certain income, expenditure, and organizational requirements.

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[42] See *United States* v. *American College of Physicians*, 475 U.S. 834 (1986)(holding that activity of selling advertising in medical journal was not substantially related to the organization's exempt purposes and, as a separate business under section 513(c), was subject to tax).

[43] See Prop.Treas. Reg. sec. 1.513–4 (issued January 19, 1993, EE–74–92, IRB 1993–7, 71). These proposed regulations generally exclude from the UBIT financial arrangements under which the tax-exempt organization provides so-called "institutional" or "good will" advertising to a sponsor (i.e., arrangements under which a sponsor's name, logo, or product line is acknowledged by the tax-exempt organization). However, specific product advertising (e.g., "comparative or qualitative descriptions of the sponsor's products") provided by a tax-exempt organization on behalf of a sponsor is not shielded from the UBIT under the proposed regulations.

[44] In determining whether a payment is a qualified sponsorship payment, it is irrelevant whether the sponsored activity is related or unrelated to the organization's exempt purpose.

[45] For guidance regarding the treatment of periodical advertising under the UBIT, see section 513(c); *United States* v. *American College of Physicians*, 475 U.S. 834 (1986); Treas. Reg. 1.513–1(d)(4)(iv), Example 7; Rev. Rul. 82–139, 1982–2 C.B. 108; Rev. Rul. 74–38, 1974–1 C.B. 144; PLR 9137049; and PLR 9234002. For guidance regarding the treatment of donor acknowledgments under the UBIT, see Rev. Rul. 76–93, 1976–1 C.B. 170; PLR 8749085; and PLR 9044071. In the interest of administrative convenience, the conferees encourage the Treasury Department to permit tax-exempt entities to provide combined reporting of payments that are both qualified sponsorship payments and nontaxable payments made in exchange for donor acknowledgments in a periodical or in connection with a qualified convention or trade show. In addition, to the extent tax-exempt entities are required to allocate portions of payments, the conferees encourage the Treasury Department to minimize the reporting burden associated with any such allocation.

"Homeowners association income" is the excess of the association's gross income, excluding "exempt function income," over allowable deductions directly connected with nonexempt function gross income. "Exempt function income" includes membership dues, fees, and assessments for a common activity undertaken by association members or owners of residential units in the condominium or subdivision. Homeowners association income includes passive income (e.g., interest and dividends) earned on reserves and fees for use of association property (e.g., swimming pools, meeting rooms, etc.).

For an association to qualify for this treatment: (1) at least 60 percent of the association's gross income must consist of membership dues, fees, or assessments on owners; (2) at least 90 percent of its expenditures must be for the acquisition, management, maintenance, or care of "association property;" and (3) no part of its net earnings can inure to the benefit of any private shareholder. "Association property" means: (1) property held by the association; (2) property commonly held by association members; (3) property within the association privately held by association members; and (4) property held by a governmental unit for the benefit of association members. In addition to these statutory requirements, Treasury regulations require that the units of the association be used for residential purposes. Use is not a residential use if the unit is occupied by a person or series of persons less than 30 days for more than half of the association's taxable year. Treas. Reg. sec. 1.528-4(d).

Taxation of homeowners associations not making the section 528 election.—Homeowners associations that do not (or cannot) make the section 528 election are taxed either as a tax-exempt social welfare organization under section 501(c)(4) or as a regular C corporation. In order for an organization to qualify as a tax-exempt social welfare organization, the organization must meet the following three requirements: (1) the association must serve a "community" which bears a reasonable, recognizable relationship to an area ordinarily identified as a governmental subdivision or unit; (2) the association may not conduct activities directed to exterior maintenance of any private residence, and (3) common areas of association facilities must be for the use and enjoyment of the general public (Rev. Rul. 74-99, 1974-1 C.B. 131).

Non-exempt homeowners associations are taxed as C corporations, except that: (1) the association may exclude excess assessments that it refunds to its members or applies to the subsequent year's assessments (Rev. Rul. 70-604, 1970-2 C.B. 9); (2) gross income does not include special assessments held in a special bank account (Rev. Rul. 75-370, 75-2 C.B. 25); and (3) assessments for capital improvements are treated as non-taxable contributions to capital (Rev. Rul. 75-370, 1975-2 C.B. 25).

Taxation of timeshare associations.—Under present law, timeshare associations are taxed as regular C corporations because (1) they cannot meet the requirement of the Treasury regulations for the section 528 election that the units be used for residential purposes (i.e., the 30-day rule) and they have relatively large amount of services performed for its owners (e.g., maid and janitorial services) and (2) they cannot meet any of requirements of Rev. Rul. 74-99 for tax-exempt status under section 501(c)(4).

House Bill

In general.—The House bill amends section 528 to permit timeshare associations to qualify for taxation under that section. Timeshare associations will have to meet the requirements of section 528 (e.g., the 60-percent gross income, 90-percent expenditure, and the non-profit organizational and operational requirements). Timeshare associations electing to be taxed under section 528 are subject to a tax on their "timeshare association income" at a rate of 32 percent.

60-percent test.—A qualified timeshare association must receive at least 60 percent of its income from membership dues, fees and assessments from owners of either (a) timeshare rights to use of, or (b) timeshare ownership in, property the timeshare association.

90-percent test.—At least 90 percent of the expenditures of the timeshare association must be for the acquisition, management, maintenance, or care of "association property," and activities provided by the association to, or on behalf of, members of the timeshare association. "Activities provided to or on behalf of members of the [timeshare] association" includes events located on association property (e.g., member's meetings at the association's meeting room, parties at the association's swimming pool, golf lessons on association's golf range, transportation to and from association property, etc.).

Organizational and operational tests.—No part of the net earnings of the timeshare association can inure to the benefit (other than by acquiring, constructing, or providing management, maintenance, and care of property of the timeshare association or rebate of excess membership dues, fees, or assessments) of any private shareholder or individual. A member of a qualified timeshare association must hold a timeshare right to use (or timeshare ownership in) real property of the association. A qualified timeshare association cannot be a condominium management association. Lastly, the timeshare association must elect to be taxed under section 528.

Effective date.—The provision is effective for taxable years beginning after December 31, 1996.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Senate amendment provides that association property includes property in which a timeshare association or members of the association have rights arising out of recorded easements, covenants, and other recorded instruments to use property related to the timeshare project.

Effective date.—The provision applies to taxable years beginning after December 31, 1996.

Conference Agreement

The conference agreement follows the Senate amendment.

7. Deferral of gain on certain sales of farm product refiners and processors (sec. 958 of the House bill)

Present Law

Under present law, if certain requirements are satisfied, a taxpayer may defer recognition of gain on the sale of qualified securities to an employee stock ownership plan ("ESOP") or an eligible worker-owned cooperative to the extent that the taxpayer reinvests the proceeds in qualified replacement property (sec. 1042). Gain is recognized when the taxpayer disposes of the qualified replacement property. One of the requirements that must be satisfied for deferral to apply is that, immediately after the sale, the ESOP must own at least 30 percent of the stock of the corporation issuing the qualified securities. In general, qualified securities are securities issued by a domestic C corporation that has no stock outstanding that is readily tradeable on an established securities market. Deferral treatment does not apply to gain on the sale of qualified securities by a C corporation.

House Bill

The House bill extends the deferral provided under section 1042 to the sale of stock of a qualified refiner or processor to an eligible farmer's cooperative. A qualified refiner or processor is a domestic corporation substantially all of the activities of which consist of the active conduct of the trade or business of refining or processing agricultural or horticultural products and which purchases more than one-half of such products to be refined or processed from farmers who make up the cooperative which is purchasing the stock of the cooperative. An eligible farmers' cooperative is an organization which is treated as a cooperative for Federal income tax purposes and which is engaged in the marketing of agricultural or horticultural products.

The deferral of gain is available only if, immediately after the sale, the eligible farmers' cooperative owns 100 percent of the qualified refiner or processor. The provision applies even if the stock of the qualified refiner or processor is publicly traded. In addition, the House bill applies to gain on the sale of stock by a C corporation.

Effective date.—The provision applies to sales after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with the modification that the requirement that the refiner or processor purchase more than one-half of the products to be refined or processed from farmers who make up the cooperative which is purchasing the stock or the cooperative must be satisfied for at least one year prior to the sale.

8. Exception from real estate reporting requirements for certain sales of principal residences (sec. 959 of the House bill and secs. 314(c) and 601 of the Senate amendment)

Present Law

Persons who close real estate transactions are required to file information returns with the IRS. These returns, filed on Form 1099S, are required to show the name and address of the seller of the real estate, details with regard to the gross proceeds of the sale, and the portion of any real property tax which is treated as a tax imposed on the purchaser. Code section 6045(e) also provides for reporting whether any financing of the seller was federally-subsidized indebtedness, but Treasury regulations do not currently require the reporting of this information.

House Bill

The House bill excludes sales of personal residences with a gross sales price of $500,000 or less ($250,000 or less in the case of a seller who is not married) from the real estate transaction reporting requirement. In order to be eligible for this exclusion, the person who would otherwise be required to file the information return must obtain written assurances from the seller of the real estate, in a form acceptable to the Secretary of the Treasury, that any gain will be exempt from Federal income tax under section 121(a) and that no financing of the seller was federally-subsidized indebtedness.

Effective date.—The provision is effective with regard to sales or exchanges occurring after the date of enactment.

Senate Amendment

The Senate amendment follows the House bill, with two modifications.

First, the requirement that the person who would otherwise be required to file the information return obtain written assurances that no financing of the seller was federally-subsidized indebtedness does not apply until such time as the Secretary of the Treasury requires this information to be included in information returns reporting real estate transactions.

Second, the Senate amendment does not exclude from the information reporting requirement any sale of a personal residence in the District of Columbia, if such sale is required to be reported for the purpose of verifying eligibility for the D.C. first-time homeowner credit. The Senate amendment separately establishes a credit of $5,000 for first-time home buyers in the District of Columbia. The Senate amendment anticipates that the Secretary of the Treasury will require such information as is necessary to verify eligibility for the D.C. first-time home buyer credit.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment with one modification, allowing the Secretary of the Treasury the discretion to increase the dollar thresholds if he determines that such an increase will not materially reduce revenues to the Treasury.

9. Increased deduction for business meals for individuals operating under Department of Transportation hours of service limitations (sec. 960 of the House bill and sec. 765 of the Senate amendment)

Present Law

Ordinary and necessary business expenses, as well as expenses incurred for the production of income, are generally deductible, subject to a number of restrictions and limitations. Generally, the amount allowable as a deduction for food and beverage is limited to 50 percent of the otherwise deductible amount. Exceptions to this 50 percent rule are provided for food and beverages provided to crew members of certain vessels and offshore oil or gas platforms or drilling rigs.

House Bill

The House bill increases to 80 percent the deductible percentage of the cost of food and beverages consumed while away from home by an individual during, or incident to, a period of duty subject to the hours of service limitations of the Department of Transportation.

Individuals subject to the hours of service limitations of the Department of Transportation include:

(1) certain air transportation employees such as pilots, crew, dispatchers, mechanics, and control tower operators pursuant to Federal Aviation Administration regulations,

(2) interstate truck operators and interstate bus drivers pursuant to Department of Transportation regulations,

(3) certain railroad employees such as engineers, conductors, train crews, dispatchers and control operations personnel pursuant to Federal Railroad Administration regulations, and

(4) certain merchant mariners pursuant to Coast Guard regulations.

The increase in the deductible percentage is phased in according to the following schedule:

Taxable years beginning in—	*Deductible percentage*
1998, 1999	55
2000, 2001	60
2002, 2003	65
2004, 2005	70
2006, 2007	75
2008 and thereafter	80

Effective date.—The provision is effective for taxable years beginning after 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

10. Deductibility of meals provided for the convenience of the employer and provided by remote seafood processors (secs. 765 and 778 of the Senate amendment)

Present Law

In general, subject to several exceptions, only 50 percent of business meal and entertainment expenses are allowed as a deduction (sec. 274(n)). Under one exception, the value of meals that are excludable from employees' incomes as a de minimis fringe benefit (sec. 132) are fully deductible by the employer.

In addition, the courts that have considered the issue have held that if meals are provided for the convenience of the employer pursuant to section 119 they are fully deductible pursuant to section 274(n)(2)(B) provided they satisfy the relevant section 132 requirements. (*Boyd Gaming Corp.* v. *Commissioner*[46] and *Gold Coast Hotel & Casino v. I.R.S.*[47]).

Exceptions to this 50-percent rule are also provided for food and beverages provided to crew members of certain vessels and offshore oil or gas platforms or drilling rigs.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that meals that are excludable from employees' incomes because they are provided for the convenience of the employer pursuant to section 119 of the Code are excludable as a de minimis fringe benefit and therefore are fully deductible by the employer, provided they satisfy the relevant section 132 requirements. No inference is intended as to whether such meals are fully deductible under present law.

The Senate amendment also increases to 80 percent the deductible percentage of the cost of food and beverages consumed by workers at remote seafood processing facilities located in the United States north of 53 degrees north latitude. A seafood processing facility is remote when there are insufficient eating facilities in the vicinity of the employer's premises.[48]

The increase in the deductible percentage is phased in according to the following schedule:

Taxable years beginning in—	*Deductible percentage*
1998, 1999	55
2000, 2001	60
2002, 2003	65
2004, 2005	70
2006, 2007	75
2008 and thereafter	80

Effective dates.—The provisions are effective for taxable years beginning after 1997.

[46] 106 T.C. No. 19 (May 23, 1996).

[47] U.S. D.C. Nev. CV-5-94-1146-HDM(LRL) (September 26, 1996).

[48] See Treas. Reg. Sec. 1.119-1(a)(2)(ii)(c) and 1.119-1(f) (Example 7).

Conference Agreement

The conference agreement follows the Senate amendment as to meals provided pursuant to section 119. Because food and beverages consumed by workers at these specified remote seafood processing facilities are provided for the convenience of the employer pursuant to section 119 and therefore will be deductible under the Senate amendment provision as to meals provided pursuant to section 119 (provided they satisfy the relevant section 132 requirements), the conference agreement does not include the Senate amendment provision relating to remote seafood processors because it is subsumed by the section 119 provision.

11. Deduction of traveling expenses while working away from home on qualified construction projects (sec. 775 of the Senate amendment)

Present Law

A taxpayer is allowed, subject to limitations, to deduct the ordinary and necessary expenses of carrying on a trade or business, including the trade or business of being an employee. Expenses of carrying on the trade or business of being an employee are miscellaneous itemized deductions, deductible only to the extent they exceed 2 percent of adjusted gross income.

Deductible expenses include travel expenses (including amounts expended for meals and lodging) while temporarily away from home in pursuit of a trade or business. In the absence of facts and circumstances indicating otherwise, a taxpayer is considered to be temporarily away from home if the period of employment away from home does not exceed one year. If the period of employment away from home exceeds one year, the taxpayer is considered to be on an indefinite or permanent work assignment, and travel expenses (including amounts expended for meals and lodging) are not deductible.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that, in the absence of facts and circumstances indicating otherwise, taxpayers employed on qualified construction projects will be considered to be temporarily away from home if the period of their employment away from home does not exceed 18 months (24 months if the qualified construction project is in a remote location), rather than one year as under present law. A qualified construction project is one that is identifiable and that has a completion date that is reasonably expected to occur within five years of its starting date. A qualified construction project is considered to be in a remote location if it is located in an area which lacks adequate housing, educational, medical or other facilities necessary for families.

These revised standards for workers on qualified construction projects apply only to taxpayers who continue to maintain a household, and therefore incur duplicative expenses, at their place of principal residence.

Effective date.—The provision is effective for amounts paid or incurred in taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement does not include the Senate amendment.

12. Provide above-the-line deduction for certain business expenses (sec. 766 of the Senate amendment)

Present Law

Under present law, individuals may generally deduct ordinary and necessary business expenses in determining adjusted gross

income ("AGI"). This deduction does not apply in the case of an individual performing services as an employee. Employee business expenses are generally deductible only as a miscellaneous itemized deduction, i.e., only to the extent all the taxpayer's miscellaneous itemized deductions exceed 2 percent of the taxpayer's AGI. Employee business expenses are not allowed as a deduction for alternative minimum tax purposes.

House Bill

No provision.

Senate Amendment

Employee business expenses relating to service as an official of a State or local government (or political subdivision thereof) are deductible in computing AGI ("above the line"), provided the official is compensated in whole or in part on a fee basis. Consequently, such expenses are also deductible for minimum tax purposes.

Effective date.—The provision applies to expenses paid or incurred in taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—The conference agreement is effective with respect to expenses paid or incurred in taxable years beginning after December 31, 1986.

13. Increase in standard mileage rate for purposes of computing charitable deduction (sec. 767 of the Senate amendment)

Present Law

In general, individuals who itemize their deductions may deduct charitable contributions. For purposes of computing the charitable deduction for the use of a passenger automobile, the standard mileage rate is 12 cents per mile (sec. 170(i)).

House Bill

No provision.

Senate Amendment

The Senate amendment increases this mileage rate to 15 cents per mile. This rate is indexed for inflation, rounded down to the nearest whole cent.

Effective date.—The increase to 15 cents is effective for taxable years beginning after December 31, 1997. The indexation is effective for inflation occurring after 1997. Accordingly, the first adjustment for indexing will occur in 1999 to reflect inflation in 1998.

Conference Agreement

The conference agreement increases this mileage rate to 14 cents per mile (not indexed for inflation), effective for taxable years beginning after December 31, 1997.

14. Expensing of environmental remediation costs ("brownfields") (sec. 768 of the Senate amendment)

Present Law

Code section 162 allows a deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business. Treasury Regulations provide that the cost of incidental repairs which neither materially add to the value of property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition, may be deducted currently as a business expense. Section 263(a)(1) limits the scope of section 162 by prohibiting a current deduction for certain capital expenditures. Treasury Regulations define "capital expenditures" as amounts paid or incurred to materially add to the value, or substantially prolong the useful life, of property owned by the taxpayer, or to adapt property to a new or different use. Amounts paid for repairs and maintenance do not constitute capital expenditures. The determination of whether an expense is deductible or capitalizable is based on the facts and circumstances of each case.

Treasury regulations provide that capital expenditures include the costs of acquiring or substantially improving buildings, machinery, equipment, furniture, fixtures and similar property having a useful life substantially beyond the current year. In *INDOPCO, Inc.* v. *Commissioner*, 112 S. Ct. 1039 (1992), the Supreme Court required the capitalization of legal fees incurred by a taxpayer in connection with a friendly takeover by one of its customers on the grounds that the merger would produce significant economic benefits to the taxpayer extending beyond the current year; capitalization of the costs thus would match the expenditures with the income produced. Similarly, the amount paid for the construction of a filtration plant, with a life extending beyond the year of completion, and as a permanent addition to the taxpayer's mill property, was a capital expenditure rather than an ordinary and necessary current business expense. *Woolrich Woolen Mills* v. *United States*, 289 F.2d 444 (3d Cir. 1961).

Although Treasury regulations provide that expenditures that materially increase the value of property must be capitalized, they do not set forth a method of determining how and when value has been increased. In *Plainfield-Union Water Co.* v. *Commissioner*, 39 T.C. 333 (1962), nonacq., 1964–2 C.B. 8, the U.S. Tax Court held that increased value was determined by comparing the value of an asset after the expenditure with its value before the condition necessitating the expenditure. The Tax Court stated that "an expenditure which returns property to the state it was in before the situation prompting the expenditure arose, and which does not make the relevant property more valuable, more useful, or longer-lived, is usually deemed a deductible repair."

In several Technical Advice Memoranda (TAM), the Internal Revenue Service (IRS) declined to apply the *Plainfield Union* valuation analysis, indicating that the analysis represents just one of several alternative methods of determining increases in the value of an asset. In TAM 9240004 (June 29, 1992), the IRS required certain asbestos removal costs to be capitalized rather than expensed. In that instance, the taxpayer owned equipment that was manufactured with insulation containing asbestos; the taxpayer replaced the asbestos insulation with less thermally efficient, non-asbestos insulation. The IRS concluded that the expenditures resulted in a material increase in the value of the equipment because the asbestos removal eliminated human health risks, reduced the risk of liability to employees resulting from the contamination, and made the property more marketable. Similarly, in TAM 9411002 (November 19, 1993), the IRS required the capitalization of expenditures to remove and replace asbestos in connection with the conversion of a boiler room to garage and office space. However, the IRS permitted deduction of costs of encapsulating exposed asbestos in an adjacent warehouse.

In 1994, the IRS issued Rev. Rul. 94–38, 1994–1 C.B. 35, holding that soil remediation expenditures and ongoing water treatment expenditures incurred to clean up land and water that a taxpayer contaminated with hazardous waste are deductible. In this ruling, the IRS explicitly accepted the *Plainfield Union* valuation analysis.[49] However, the IRS also held that costs allocable to constructing a groundwater treatment facility are capital expenditures.

In 1995, the IRS issued TAM 9541005 (October 13, 1995) requiring a taxpayer to capitalize certain environmental study costs, as well as associated consulting and legal fees. The taxpayer acquired the land and conducted activities causing hazardous waste contamination. After the contamination, but before it was discovered, the company donated the land to the county to be developed into a recreational park. After the county discovered the contamination, it reconveyed the land to the company for $1. The company incurred the costs in developing a remediation strategy. The IRS held that the costs were not deductible under section 162 because the company acquired the land in a contaminated state when it purchased the land from the county. In January, 1996, the IRS revoked and superseded TAM 9541005 (PLR 9627002). Noting that the company's contamination of the land and liability for remediation were unchanged during the break in ownership by the county, the IRS concluded that the break in ownership should not, in and of itself, operate to disallow a deduction under section 162.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that taxpayers could elect to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred. The deduction applies for both regular and alternative minimum tax purposes. The expenditure must be incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. In general, any expenditure for the acquisition of depreciable property used in connection with the abatement or control of hazardous substances at a qualified contaminated site does not constitute a qualified environmental remediation expenditure. However, depreciation deductions allowable for such property which would otherwise be allocated to the site under the principles set forth in *Comm'r* v. *Idaho Power Co.*[50] and section 263A are treated as qualified environmental remediation expenditures.

A "qualified contaminated site" generally is any property that (1) is held for use in a trade or business, for the production of income, or as inventory; (2) is certified by the appropriate State environmental agency to be located within a targeted area; and (3) contains (or potentially contains) a hazardous substance (so-called "brownfields"). Targeted areas would mean (1) empowerment zones and enterprise communities (as designated under present law, including any supplemental zone designated on December 21, 1994); and (2) sites announced before February, 1997, as being subject to one of the 76 Environmental Protection Agency (EPA) Brownfields Pilots.

Both urban and rural sites qualify. However, sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and

[49] Rev. Rul. 94–38 generally rendered moot the holding in TAM 9315004 (December 17, 1992) requiring a taxpayer to capitalize certain costs associated with the remediation of soil contaminated with polychlorinated biphenyls (PCBs).

[50] *Comm'r* v. *Idaho Power Co.*, 418 U.S. 1 (1974) (holding that equipment depreciation allocable to the taxpayer's construction of capital facilities must be capitalized under section 263(a)(1)).

Liability Act of 1980 (CERCLA) cannot be targeted areas. Appropriate State environmental agencies are designated by the EPA; if no State agency is designated, the EPA is responsible for providing the certification. Hazardous substances generally are defined by reference to sections 101(14) and 102 of CERCLA, subject to additional limitations applicable to asbestos and similar substances within buildings, certain naturally occurring substances such as radon, and certain other substances released into drinking water supplies due to deterioration through ordinary use.

The Senate amendment further provides that, in the case of property to which a qualified environmental remediation expenditure otherwise would have been capitalized, any deduction allowed under the bill would be treated as a depreciation deduction and the property would be treated as subject to section 1245. Thus, deductions for qualified environmental remediation expenditures would be subject to recapture as ordinary income upon sale or other disposition of the property.

Effective date.—The provision applies to eligible expenditures incurred after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except that the definition of "targeted areas" is expanded to include population census tracts with a poverty rate of 20 percent or more and certain industrial and commercial areas that are adjacent to such census tracts. Thus, targeted areas generally would include: (1) empowerment zones and enterprise communities as designated under present law and under the conference agreement[51] (including any supplemental empowerment zone designated on December 21, 1994); (2) sites announced before February 1997, as being subject to one of the 76 Environmental Protection Agency (EPA) Brownfields Pilots; (3) any population census tract with a poverty rate of 20 percent or more; and (4) certain industrial and commercial areas that are adjacent to tracts described in (3) above.

With respect to certification of targeted areas, the conference agreement provides that the chief executive officer of a State may, in consultation with the Administrator of the EPA, designate an appropriate State environmental agency. If no State environmental agency is so designated within 60 days of the date of enactment, the appropriate environmental agency for such State shall be designated by the Administrator of the EPA.

In addition, the conference agreement sunsets the provision after three years. Thus, the provision applies only to eligible expenditures incurred in taxable years ending after date of enactment and before January 1, 2001.

Finally, the conferees wish to clarify that providing current deductions for certain environmental remediation expenditures under the conference agreement creates no inference as to the proper treatment of other remediation expenditures not described in the agreement.

[51] Thus, the 20 additional empowerment zones authorized to be designated under the conference agreement as well as the D.C. Enterprise Zone established under the conference agreement are "targeted areas" for purposes of this provision.

15. Treatment of consolidation of certain mutual savings bank life insurance departments (sec. 962 of the House bill)

Present Law

Special rules for mutual savings banks with life insurance business

Present law provides for special treatment of a mutual savings bank conducting a life insurance business in a separate life insurance department (Code sec. 594). Under the special rule, the insurance and noninsurance businesses of such banks are bifurcated, and the tax imposed is the sum of the partial taxes computed on (a) the taxable income of the mutual savings bank determined without regard to items properly allocable to the life insurance business, and (b) the income of the life insurance department, calculated in accordance with the rules applicable to life insurance companies (subchapter L of the Code). This special treatment applies so long as the mutual savings bank is authorized under State law to engage in the business of issuing life insurance contracts, the life insurance business is conducted in a separate department the accounts of which are maintained separately from the other accounts of the mutual savings bank, and the life insurance department would qualify as a life insurance company under Code section 816 if it were treated as a separate corporation.

Rules for corporate reorganizations

Present law provides that certain corporate reorganization transactions, including recapitalizations, generally are treated as tax-free transactions (sec. 368(a)(1)(E)). No gain or loss is recognized if stock or securities in a corporation that is a party to a reorganization are (in pursuance of the plan of reorganization) exchanged solely for stock or securities in that corporation or in another corporation that is a party to the reorganization, except that gain (if any) to the recipient is recognized to the extent the principal amount of securities received exceeds the principal amount of the securities surrendered (secs. 354, 356(a)(1)). If such an exchange has the effect of distribution of a dividend, then the portion of the distributee's gain that does not exceed his ratable share of the corporation's earnings and profits is treated as a dividend (sec. 356(a)(2)).

Rules for life insurance companies

A life insurance company generally is permitted to deduct the amount of policyholder dividends paid or accrued during the taxable year (sec. 808). In the case of a mutual life insurance company, the amount of the deduction for policyholder dividends is reduced (but not below zero) by the differential earnings amount (sec. 809). The term policyholder dividend includes (1) any amount paid or credited (including as an increase in benefits) if the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management; (2) excess interest; (3) premium adjustments; and (4) experience-rated refunds.

House Bill

The House bill provides that the consolidation of two or more life insurance departments of mutual savings banks into a single life insurance company by requirement of State law is treated as a tax-free reorganization described in section 368(a)(1)(E) (i.e., a recapitalization). Any payments required to be made to policyholders in connection with the consolidation are treated as policyholder dividends deductible by the company under section 808, provided that certain requirements are met. The requirements are: (1) the payments are only with respect to policies in effect immediately before the consolidation; (2) the payments are only with respect to policies that are participating (i.e., on which policyholder dividends are paid) before and after the consolidation; (3) the payments cease with respect to any policy if the policy lapses after the consolidation; (4) the policyholders before the consolidation had no divisible right to the surplus of any life insurance department and had no right to vote; and (5) the approval of the policyholders was not required for the consolidation. No inference is intended as to the tax treatment of (1) consolidation, demutualization or other transactions involving, or (2) payments to policyholders of, any insurer or financial institution other than the life insurance departments of mutual savings banks.

Effective date.—The provision takes effect on December 31, 1991.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

16. Offset of past-due, legally enforceable State tax obligations against Federal overpayments (sec. 963 of the House bill)

Present Law

Overpayments of Federal tax are credited against any liability in respect of an internal revenue tax on the part of the person who made the overpayment. Any overpayment not so credited may be offset against any past-due support payments and past-due legally enforceable debts owed to Federal agencies of the person making the overpayment. Any remaining overpayment is refunded to the person making the overpayment.

House Bill

The House bill provides that an overpayment of Federal tax could be offset by the amount of any past-due, legally enforceable State tax obligation, provided the person making the overpayment has shown on the return establishing the overpayment an address that is within the State seeking the offset. For this purpose, a past-due, legally enforceable State tax obligation is a debt which resulted from a judgement rendered by a court of competent jurisdiction, or a determination after an administrative hearing, which determined an amount of State tax to be due and which is no longer subject to judicial review, as well as from an assessment the time for which redetermination has expired that has not been delinquent for more than 10 years. A State tax obligation includes any local tax administered by the chief tax administration agency of the State.

The offset for a past-due, legally enforceable State tax obligation of a State resident will apply after the offsets provided in present law for internal revenue tax liabilities, past-due support, and past-due, legally enforceable obligations owed a Federal agency.

The Secretary of the Treasury is authorized to issue regulations establishing procedures for the implementation of this proposal, including regulations prescribing the time and manner in which States may submit notices of past-due, legally enforceable State tax obligations. The Secretary of the Treasury may require States to pay a fee to reimburse the Secretary for the cost of applying the offset procedure.

Effective date.—The provision is effective for refunds payable after December 31, 1998.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

17. Modify limits on depreciation of luxury automobiles for certain clean-burning fuel and electric vehicles (sec. 964 of the House bill)

Present Law

The amount the taxpayer may claim as a depreciation deduction for any passenger automobile is limited to: $2,560 for the first taxable year in the recovery period; $4,100 for the second taxable year in the recovery period; $2,450 for the third taxable year in the recovery period; and $1,475 for each succeeding taxable year in the recovery period. Each of the dollar limitations is indexed for inflation after October 1987 by automobile component of the Consumer Price Index. Consequently, the limitations applicable for 1997 are $3,160, $5,000, $3,050, and $1,775.

House Bill

The House bill modifies the present-law limitation on depreciation in the case of qualified clean-burning fuel vehicles and certain electric vehicles. With respect to qualified clean-burning fuel vehicles, those that are modified to permit such vehicle to be propelled by a clean burning fuel, the bill generally modifies present-law by applying the current limitation to that portion of the vehicles cost not represented by the installed qualified clean-burning fuel property. The taxpayer may claim an amount otherwise allowable as a depreciation deduction on the installed qualified clean-burning fuel, without regard to the present-law limitation. Generally, this has the same effect as only subjecting the cost of the vehicle before modification to the present-law limitations.

In the case of a passenger vehicle designed to be propelled primarily by electricity and built by an original equipment manufacturer, the base-year limitation amounts of $2,560 for the first taxable year in the recovery period, $4,100 for the second taxable year in the recovery period, $2,450 for the third taxable year in the recovery period, and $1,475 for each succeeding taxable year in the recovery period are tripled to $7,680, $12,300, $7,350, and $4,425, respectively, and then adjusted for inflation after October 1987 by the automobile component of the Consumer Price Index.

Effective date.—The provision is effective for property placed in service on or after the date of enactment and before January 1, 2005.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification to the effective date that provides that the provision is effective for property placed in service after the date of enactment and before January 1, 2005.

18. Survivor benefits of public safety officers killed in the line of duty (sec. 965 of the House bill and sec. 784 of the Senate amendment)

Present Law

Survivors of military service personnel (such as those killed in combat) are generally entitled to survivor benefits (38 U.S.C. sec. 1310). These survivor benefits are generally exempt from income taxation (38 U.S.C. sec. 5301). "Survivor" means the surviving spouse or surviving dependent child of the military service personnel.

Survivor annuity benefits paid under a governmental retirement plan to a survivor of a law enforcement officer killed in the line of duty are generally includible in income except to the extent the benefits are a return of after-tax employee contributions. Survivor benefits paid under a government plan only to survivors of officers who died as a result of injuries sustained in the line of duty are in the nature of workers" compensation and are generally excludable from income.

House Bill

The House bill generally provides that an amount paid as a survivor annuity on account of the death of a law enforcement officer who is killed in the line of duty is excludable from income to the extent the survivor annuity is attributable to the officer's service as a law enforcement officer. The survivor annuity must be provided under a governmental plan to the surviving spouse (or former spouse) of the law enforcement officer or to a child of the officer.

Effective date.—The provision applies to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after that date.

Senate Amendment

The Senate amendment is the same as the House bill except that the provision applies to public safety officers killed in the line of duty. Public safety officers include law enforcement officers, firefighters, rescue squad or ambulance crew.

Conference Agreement

The conference agreement follows the Senate amendment. The conference agreement clarifies that the provision does not apply with respect to the death of a public safety officer if it is determined by the appropriate supervising authority that (1) the death was caused by the intentional misconduct of the officer or by the officers intention to bring about the death, (2) the officer was voluntarily intoxicated at the time of death, (3) the officer was performing his or her duties in a grossly negligent manner at the time of death, or (4) the actions of the individual to whom payment is to be made were a substantial contributing factor to the death of the officer.

19. Temporary suspension of income limitations on percentage depletion for production from marginal wells (sec. 966 of the House bill and sec. 772 of the Senate amendment)

Present Law

The Code permits taxpayers to recover their investments in oil and gas wells through depletion deductions. In the case of certain properties, the deductions may be determined using the percentage depletion method. Certain limitations apply in calculating percentage depletion deductions. One limitation is a restriction that these deductions may not exceed 65 percent of the taxpayer's taxable income. Another limitation is a restriction that the amount deducted may not exceed 100 percent of the net income from that property in any year.

Specific percentage depletion rules apply to oil and gas production from "marginal" properties. Marginal production is defined as domestic crude oil and natural gas production from stripper well property or from property from which substantially all of the production during the calendar year is heavy oil. Stripper well property is property from which the average daily production is 15 barrel equivalents or less, determined by dividing the average daily production of domestic crude oil and domestic natural gas from producing wells on the property for the calendar year by the number of wells.

House Bill

The 65-percent-of-net-income limitation is suspended for domestic oil and gas production from marginal properties during taxable years beginning after December 31, 1997, and before January 1, 2000.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The 100-percent-of-net-income property limitation with respect to oil and gas produced from marginal properties does not apply for any taxable year beginning in a calendar year in which the annual average wellhead price for crude oil (within the meaning of section 29(d)(2)(C)) is below $14 per barrel.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Conference Agreement

The 100-percent-of-net-income property limitation is suspended for domestic oil and gas production from marginal properties during taxable years beginning after December 31, 1997, and before January 1, 2000.

Effective date.—The provision is effective on the date of enactment.

20. Extend production credit for electricity produced from wind and "closed loop" biomass (sec. 771 of the Senate amendment)

Present Law

An income tax credit is allowed for the production of electricity from either qualified wind energy or qualified "closed-loop" biomass facilities. The credit is equal to 1.5 cents (plus adjustments for inflation since 1992) per kilowatt hour of electricity produced from these qualified sources during the 10-year period after the facility is placed in service.

The credit applies to electricity produced by qualified wind or closed-loop biomass facilities placed in service before July 1, 1999. In order to claim the credit, a taxpayer must own the facility and sell the electricity produced by the facility to an unrelated party.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the income tax credit for electricity produced from wind and closed-loop biomass for two years. Thus, the credit is available for qualifying electricity produced from facilities placed in service before July 1, 2001. As under present law, the credit is allowable for a period of 10 years after the facility is placed in service.

Effective date.—The provision is effective as of the date of enactment.

Conference Agreement

The conference agreement does not include the provision in the Senate amendment.

21. Modification of advance refunding rules for certain tax-exempt bonds issued by the Virgin Islands (sec. 957 of the House bill)

Present Law

Advance refundings

Generally, a governmental bond originally issued after December 31, 1985, may be advance refunded one time. An advance refunding is any refunding where all of the refunded bonds are not redeemed within 90 days after the refunding bonds are issued.

Virgin Island bonds

Under present law, the Virgin Islands is required to secure its bonds with a priority

first lien claim on specified revenue streams rather than being permitted to issue multiple bond issues secured on a parity basis by a common pool of revenues. Under a proposed non-tax law change, the priority lien requirement would be repealed.

House Bill

Under the House bill, one additional advance refunding would be allowed for governmental bonds issued by the Virgin Islands that were advance refunded before June 9, 1997, if the Virgin Islands debt provisions are changed to repeal the current priority first lien requirement.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

22. Qualified small-issue bonds (sec. 770 of the Senate amendment)

Present Law

Interest on certain small issues of private activity bonds issued by State or local governments ("qualified small-issue bonds") is excluded from gross income if certain conditions are met. First, at least 95 percent of the bond proceeds must be used to finance manufacturing facilities or certain agricultural land or equipment. Second, the bond issue must have an aggregate face amount of $1 million or less, or alternatively, the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, must not exceed $10 million. (The maximum face amount of bonds would not be increased over present-law amounts.)

Issuance of qualified small-issue bonds, like most other private activity bonds, is subject to annual State volume limitations and to other rules.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the maximum capital expenditure limit under present law from $10 million to $20 million. The maximum amount of bonds is not increased over present-law amounts.

Effective date.—The provision is effective for bonds issued after December 31, 1997.

Conference Agreement

The conference agreement does not include the Senate amendment.

23. Treatment of bonds issued by the Federal Home Loan Bank Board under the Federal guarantee rules (sec. 774 of the Senate amendment)

Present Law

Generally, interest on bonds which are Federally guaranteed do not qualify for tax-exemption for Federal income tax purposes. Certain exceptions are provided including otherwise qualifying bonds guaranteed by the Federal Housing Administration, the Veterans" Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, bonds guaranteed by the Federal Home Loan Bank Board are not treated as Federally guaranteed for purposes of the Federal guarantee prohibition generally applicable to tax-exempt bonds.

Effective date.—The provision is effective for bonds issued after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

24. Current refundings of certain bonds issued by Indian tribal governments (sec. 789 of the Senate amendment)

Present Law

Indian tribal governments are permitted to issue tax-exempt bonds for essential government functions. Since 1987, this term has been defined to include only those activities that traditionally are carried out as governmental functions by State governments.

Before 1987, some Indian tribes issued tax-exempt bonds to acquire existing businesses as investments. Under present law, tax-exempt bonds may not be issued for this purpose, and outstanding pre-1987 bonds issued for such acquisitions may not be refunded.

House Bill

No provision.

Senate Amendment

The Senate amendment allows pre-1987 tax-exempt bonds issued by Indian tribal governments for business acquisitions to be refunded if:

(1) the refunded bonds are redeemed within 90 days after the refunding bonds are issued;

(2) the outstanding principal amount of the bonds is not increased; and

(3) the maturity date of the bonds is not extended.

Effective date.—The provision applies to bonds issued after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

25. Purchasing of receivables by tax-exempt hospital cooperative service organizations (sec. 773 of the Senate amendment)

Present Law

Section 501(e) provides that an organization organized on a cooperative basis by tax-exempt hospitals will itself be tax-exempt if the organization is operated solely to perform, on a centralized basis, one or more of certain enumerated services for its members. These services are: data processing, purchasing (including the purchase of insurance on a group basis), warehousing, billing and collection , food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel services. An organization does not qualify under section 501(e) if it performs services other than the enumerated services. (Treas. reg. sec. 1.501(e)(-1(c)).

House Bill

No provision.

Senate Amendment

The Senate amendment clarifies that, for purposes of section 501(e), billing and collection services include the purchase of patron accounts receivable on a recourse basis. Thus, hospital cooperative service organizations are permitted to advance cash on the basis of member accounts receivable, provided that each member hospital retains the risk of non-payment with respect to its accounts receivable.

Effective date.—The provision is effective for taxable years beginning after December 31, 1996. No inference is intended with respect to taxable years prior to the effective date.

Conference Agreement

The conference agreement follows the Senate amendment.

26. Charitable contribution deduction for certain expenses incurred in support of Native Alaskan subsistence whaling (sec. 776 of the Senate amendment)

Present Law

In computing taxable income, individuals who do not elect the standard deduction may claim itemized deductions, including a deduction (subject to certain limitations) for charitable contributions or gifts made during the taxable year to a qualified charitable organization or governmental entity (sec. 170). Individuals who elect the standard deduction may not claim a deduction for charitable contributions made during the taxable year.

No charitable contribution deduction is allowed for a contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization, contributions to which are deductible, may constitute a deductible contribution (Treas. Reg. sec. 1.170A-1(g)). Specifically, section 170(j) provides that no charitable contribution deduction is allowed for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

House Bill

No provision.

Senate Amendment

The Senate amendment allows individuals to claim a deduction under section 170 not exceeding $7,500 per taxable year for certain expenses incurred in carrying out sanctioned whaling activities. The deduction is available only to an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities. The deduction is available for reasonable and necessary expenses paid by the taxpayer during the taxable year for (1) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities, (2) the supplying of food for the crew and other provisions for carrying out such activities, and (3) storage and distribution of the catch from such activities.

For purposes of the provision, the term "sanctioned whaling activities" means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission. No inference is intended regarding the deductibility of any whaling expenses incurred in a taxable year ending before the date of enactment.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

27. Designation of additional empowerment zones; modification of empowerment zone and enterprise community criteria (sec. 777 of the Senate amendment)

Present Law

In general

Pursuant to the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), the Secretaries of the Department of Housing and Urban Development (HUD) and the Department of Agriculture designated a total of

nine empowerment zones and 95 enterprise communities on December 21, 1994. As required by law, six empowerment zones are located in urban areas (with aggregate population for the six designated urban empowerment zones limited to 750,000) and three empowerment zones are located in rural areas.[52] Of the enterprise communities, 65 are located in urban areas and 30 are located in rural areas (sec. 1391). Designated empowerment zones and enterprise communities were required to satisfy certain eligibility criteria, including specified poverty rates and population and geographic size limitations (sec. 1392).

The following tax incentives are available for certain businesses located in empowerment zones: (1) A 20-percent wage credit for the first $15,000 of wages paid to a zone resident who works in the zone; (2) an additional $20,000 of section 179 expensing for "qualified zone property" placed in service by an "enterprise zone business" (accordingly, certain businesses operating in empowerment zones are allowed up to $38,000 of expensing for 1997); and (3) special tax-exempt financing for certain zone facilities (described in more detail below).

The 95 enterprise communities are eligible for the special tax-exempt financing benefits but not the other tax incentives available in the nine empowerment zones. In addition to these tax incentives, OBRA 1993 provided that Federal grants would be made to designated empowerment zones and enterprise communities.

The tax incentives for empowerment zones and enterprise communities generally will be available during the period that the designation remains in effect, i.e., a 10-year period.

Definition of "qualified zone property"

Present-law section 1397C defines "qualified zone property" as depreciable tangible property (including buildings), provided that: (1) The property is acquired by the taxpayer (from an unrelated party) after the zone or community designation took effect; (2) the original use of the property in the zone or community commences with the taxpayer; and (3) substantially all of the use of the property is in the zone or community in the active conduct of a trade or business by the taxpayer in the zone or community. In the case of property which is substantially renovated by the taxpayer, however, the property need not be acquired by the taxpayer after zone or community designation or originally used by the taxpayer within the zone or community if, during any 24-month period after zone or community designation, the additions to the taxpayer's basis in the property exceed 100 percent of the taxpayer's basis in the property at the beginning of the period, or $5,000 (whichever is greater).

Definition of "enterprise zone business"

Present-law section 1397B defines the term "enterprise zone business" as a corporation or partnership (or proprietorship) if for the taxable year: (1) The sole trade or business of the corporation or partnership is the active conduct of a qualified business within an empowerment zone or enterprise community; (2) at least 80 percent of the total gross income is derived from the active conduct of a "qualified business" within a zone or community; (3) substantially all of the business's tangible property is used within a zone or community; (4) substantially all of the business's intangible property is used in, and exclusively related to, the active conduct of such business; (5) substantially all of the services performed by employees are performed within a zone or community; (6) at least 35 percent of the employees are residents of the zone or community; and (7) no more than five percent of the average of the aggregate unadjusted bases of the property owned by the business is attributable to (a) certain financial property, or (b) collectibles not held primarily for sale to customers in the ordinary course of an active trade or business.

A "qualified business" is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license.[53] In addition, the leasing of real property that is located within the empowerment zone or community to others is treated as a qualified business only if (1) the leased property is not residential property, and (2) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses. The rental of tangible personal property to others is not a qualified business unless substantially all of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone or enterprise community.

Tax-exempt financing rules

Tax-exempt private activity bonds may be issued to finance certain facilities in empowerment zones and enterprise communities. These bonds, along with most private activity bonds, are subject to an annual private activity bond State volume cap equal to $50 per resident of each State, or (if greater) $150 million per State.

Qualified enterprise zone facility bonds are bonds 95 percent or more of the net proceeds of which are used to finance (1) "qualified zone property" (as defined above) the principal user of which is an "enterprise zone business" (also defined above[54]), or (2) functionally related and subordinate land located in the empowerment zone or enterprise community. These bonds may only be issued while an empowerment zone or enterprise community designation is in effect.

The aggregate face amount of all qualified enterprise zone bonds for each qualified enterprise zone business may not exceed $3 million per zone or community. In addition, total qualified enterprise zone bond financing for each principal user of these bonds may not exceed $20 million for all zones and communities.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies the present-law empowerment zone and enterprise community designation criteria under section 1392 so that, in the event that additional empowerment zones or enterprise communities are authorized to be designated in the future, any zones or communities designated in the States of Alaska or Hawaii will not be subject to the general size limitations under section 1392(a)(3), nor will such zones or communities be subject to the general poverty-rate criteria under section 1392(a)(4). Instead, nominated areas in either State will be eligible for designation as an empowerment zone or enterprise community if, for each census tract or block group within such area, at least 20 percent of the families have incomes which are 50 percent or less of the State-wide median family income. Such zones and communities will be subject to the population limitations under present-law section 1392(a)(1).

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment. In addition, the conference agreement provides for the designation of 20 additional empowerment zones pursuant to slightly expanded eligibility criteria, and includes certain modifications to the definition of an enterprise zone business and the tax-exempt financing rules.

Two additional empowerment zones with same tax incentives as previously designated empowerment zones

Under the conference agreement, the Secretary of HUD is authorized to designate two additional empowerment zones located in urban areas (thereby increasing to eight the total number of empowerment zones located in urban areas) with respect to which generally apply the same tax incentives (i.e., the wage credit, additional expensing, and special tax-exempt financing) as are available within the empowerment zones authorized by the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). The wage credit available in the two new urban empowerment zones is modified slightly to provide that the percentage of wages taken into account for purposes of determining the wage credit is 20 percent for 2000–2004, 15 percent for 2005, 10 percent for 2006, and 5 percent for 2007. No wage credit is available in the two new urban empowerment zones after 2007.

The two additional empowerment zones are subject to the same eligibility criteria under present-law section 1392 that applies to the original six urban empowerment zones. In order to permit designation of these two additional empowerment zones, the conference agreement increases the present-law 750,000 aggregate population cap applicable to empowerment zones located in urban areas to a cap of 1,000,000 aggregate population for the eight urban empowerment zones.

The two empowerment zones must be designated within 180 days after the date of enactment. However, the designations will not take effect before January 1, 2000, and generally will remain in effect for 10 years.

Designation of additional empowerment zones

The conference agreement authorizes the Secretaries of HUD and Agriculture to designate an additional 20 empowerment zones (no more than 15 in urban areas and no more than five in rural areas).[55] With respect to these additional empowerment zones, the present-law eligibility criteria are expanded slightly. First, the square mileage limitations of present law (i.e., 20 square miles for urban areas and 1,000 for rural areas) are expanded to allow the empowerment zones to include an additional 2,000 acres. This additional acreage, which could be developed for

[52] The six designated urban empowerment zones are located in New York City, Chicago, Atlanta, Detroit, Baltimore, and Philadelphia-Camden (New Jersey). The three designated rural empowerment zones are located in Kentucky Highlands (Clinton, Jackson, and Wayne counties, Kentucky), Mid-Delta Mississippi (Bolivar, Holmes, Humphreys, Leflore counties, Mississippi), and Rio Grande Valley Texas (Cameron, Hidalgo, Starr, and Willacy counties, Texas).

[53] Also, a qualified business does not include certain facilities described in section 144(c)(6)(B)(e.g., massage parlor, hot tub facility, or liquor store) or certain large farms.

[54] For purposes of the tax-exempt financing rules, an "enterprise zone business" also includes a business located in a zone or community which would qualify as an enterprise zone business if it were separately incorporated.

[55] Under the conference agreement, areas located within Indian reservations are eligible for designation as empowerment zones.

commercial or industrial purposes, is not subject to the poverty rate criteria and could be divided among up to three noncontiguous parcels. In addition, the present-law requirement that at least half of the nominated area consist of census tracts with poverty rates of 35 percent or more does not apply. Thus, under present-law section 1392(a)(4), at least 90 percent of the census tracts within a nominated area must have a poverty rate of 25 percent or more, and the remaining census tracts must have a poverty rate of 20 percent or more.[56] For this purpose, census tracts with populations under 2,000 are treated as satisfying the 25-percent poverty rate criteria if (1) at least 75 percent of the tract is zoned for commercial or industrial use and (2) the tract is contiguous to one or more other tracts that actually have a poverty rate of 25 percent or more.

Within the 20 additional empowerment zones, qualified "enterprise zone businesses" are eligible to receive up to $20,000 of additional section 179 expensing[57] and to utilize special tax-exempt financing benefits. The "brownfields" tax incentive provided under the conference agreement also is available within all designated empowerment zones. Businesses within the 20 additional empowerment zones are *not*, however, eligible to receive the present-law wage credit available within the 11 other designated empowerment zones (i.e., the wage credit would be available only in the nine present-law zones and two new urban empowerment zones designated under the conference agreement).

The 20 additional empowerment zones are required to be designated before 1999, and the designations generally will remain in effect for 10 years.

Modification of definition of enterprise zone business

The conference agreement modifies the present-law requirement of section 1397B that an entity may qualify as an "enterprise zone business" only if (in addition to the other present-law criteria) at least 80 percent of the total gross income of such entity is derived from the active conduct of a qualified business within an empowerment zone or enterprise community. The conference agreement liberalizes this present-law requirement by reducing the percentage threshold so that an entity could qualify as an enterprise zone business if at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within an empowerment zone or enterprise community (assuming that the other criteria of section 1397B are satisfied).

In addition, section 1397B is modified so that rather than requiring that "substantially all" tangible and intangible property (and employee services) of an enterprise zone business be used (and performed) within a designated zone or community, a "substantial portion" of tangible and intangible property (and employee services) of an enterprise zone business would be required to be used (and performed) within a designated zone or community. Moreover, the conference agreement further amends the section 1397B rule governing intangible assets so that a substantial portion of an entity's intangible property must be used in the active conduct of a qualified business within a zone or community, but there is no need (as under present law) to determine whether the use of such assets is "exclusively related to" such business. However, the present-law rule of section 1397B(d)(4) continues to apply, such that a "qualified business" would not include any trade or business consisting predominantly of the development or holding or intangibles for sale or license. The conference agreement also clarifies that an enterprise zone business that leases to others commercial property within a zone or community may rely on a lessee's certification that the lessee is an enterprise zone business. Finally, the conference agreement provides that the rental to others of tangible personal property shall be treated as a qualified business if and only if at least 50 percent of the rental of such property is by enterprise zone businesses or by residents of a zone or community (rather than the present-law requirement that "substantially all" tangible personal property rentals of an enterprise zone business satisfy this test).

This modified "enterprise zone business" definition applies to all previously designated empowerment zones and enterprise communities, the two urban empowerment zones designated under the conference agreement, as well as to the 20 additional empowerment zones authorized to be designated pursuant to the conference agreement.[58]

Tax-exempt financing rules

Exceptions to volume cap

The conference agreement allows "new empowerment zone facility bonds" to be issued for qualified enterprise zone businesses in the 20 additional empowerment zones. These bonds are not subject to the State private activity bond volume caps or the special limits on issue size applicable to qualified enterprise zone facility bonds under present law. The maximum amount of these bonds that can be issued is limited to $60 million per rural zone, $130 million per urban zone with a population of less than 100,000, and $230 million per urban zone with a population of 100,000 or more.

Changes to certain rules applicable to both empowerment zone facility bonds and qualified enterprise community facility bonds

Qualified enterprise zone businesses located in newly designated empowerment zones, as well as those located in previously designated empowerment zones and enterprise communities, would be eligible for special tax-exempt bond financing under present-law rules, subject to the modifications described below (and the exception to the volume cap described above for newly designated empowerment zones).

The conference agreement waives until the end of a "startup period" the requirement that 95 percent or more of the proceeds of bond issue be used by a qualified enterprise zone business. With respect to each property, the startup period ends at the beginning of the first taxable year beginning more than two years after the later of (1) the date of the bond issue financing such property, or (2) the date the property was placed in service (but in no event more than three years after the date of bond issuance). This waiver is only available if, at the beginning of the startup period, there is a reasonable expectation that the use by a qualified enterprise zone business would be satisfied at the end of the startup period and the business makes bona fide efforts to satisfy the enterprise zone business definition.

The conference agreement also waives the requirements of an enterprise zone business (other than the requirement that at least 35 percent of the business' employees be residents of the zone or community) for all years after a prescribed testing period equal to first three taxable years after the startup period.

Finally, the conference agreement relaxes the rehabilitation requirement for financing existing property with qualified enterprise zone facility bonds. In the case of property which is substantially renovated by the taxpayer, the property need not be acquired by the taxpayer after zone or community designation or originally used by the taxpayer within the zone if, during any 24-month period after zone or community designation, the additions to the taxpayer's basis in the property exceeded 15 percent of the taxpayer's basis at the beginning of the period, or $5,000 (whichever is greater).

Effective date

The two additional urban empowerment zones (within which generally are available the same tax incentives as are available in the empowerment zones designated pursuant to OBRA 1993) must be designated within 180 days after enactment, but the designation will not take effect before January 1, 2000. The 20 additional empowerment zones (within which the wage credit is not available) are to be designated after enactment but prior to January 1, 1999. For purposes of the additional section 179 expensing available within empowerment zones, the modifications to the definition of "enterprise zone business" are effective for taxable years beginning on or after the date of enactment.

The changes to the tax-exempt financing rules are effective for qualified enterprise zone facility bonds and the new empowerment zone facility bonds issued after the date of enactment.

28. Conducting of certain games of chance not treated as unrelated trade or business (sec. 783 of the Senate amendment)

Present Law

Although generally exempt from Federal income tax, tax-exempt organizations are subject to the unrelated business income tax (UBIT) on income derived from a trade or business regularly carried on that is not substantially related to the performance of the organization's tax-exempt functions (secs. 511-514).[59] Certain income, however, is exempted from the UBIT (such as interest, dividends, royalties, and certain rents), unless derived from debt-financed property (sec. 512(b)). Other exemptions from the UBIT are provided for activities in which substantially all the work is performed by volunteers and for income from the sale of donated goods (sec. 513(a)).

A specific exemption from the UBIT is provided for certain bingo games[60] conducted by

[56] In lieu of the poverty criteria, outmigration may be taken into account in designating one rural empowerment zone.

[57] However, the additional section 179 expensing is not available within the additional 2,000 acres allowed to be included under the conference agreement within an empowerment zone.

[58] In addition, the modifications to the enterprise zone business definition will apply for purposes of defining a "D.C. Zone business" under certain provisions of the conference agreement that provide certain tax incentives for the District of Columbia.

[59] The UBIT applies not only to private, tax-exempt entities but also to colleges and universities that are agencies or instrumentalities of (or are owned or operated by) a State or local government or Indian tribal government (secs. 511(a)(2)(B) and 7871(a)(5)). In the case of such a college or university, the "substantially related" test is applied by determining whether the trade or business activity at issue is substantially related to the exercise or performance of any purpose or function described in section 501(c)(3) (see sec. 513(a)).

[60] For purposes of this exemption, the term "bingo game" is defined as any game of bingo of a type in

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tax-exempt organizations, provided that the conducting of the bingo games is not an activity ordinarily carried out on a commercial basis and the conducting of which does not violate any State or local law (sec. 513(f)).[61] In addition, a specific exemption from the UBIT is provided for qualified public entertainment activities (meaning entertainment or recreation activities of a kind traditionally conducted at fairs or expositions promoting agricultural and educational purposes) conducted by an organization described in section 501(c)(3), (c)(4), or (c)(5) which regularly conducts an agricultural and educational fair or exposition as one of its substantial exempt purposes (sec. 513(d)).[62]

In *South End Italian Independent Club, Inc. v. Commissioner*, 87 T.C. 168 (1986), *acq.* 1987-2 C.B. 1, the Tax Court held that gambling profits of a social club described in section 501(c)(7) that were required by State law to be used for charitable purposes were fully deductible under section 162 in computing the UBIT liability of the social club. The effect of this decision was to exempt gambling income of that social club from UBIT. The IRS has indicated that, until further guidance is available with respect to this issue, the issue of the deductibility of amounts required under State law to be used for charitable or other so-called "lawful" purposes should be resolved consistent with the *South End* case, regardless of whether the gaming proceeds are donated to other charitable organizations or spent internally on the organization's own charitable activities.[63]

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the UBIT will not apply to income from a "qualified game of chance," meaning any game of chance (other than a bingo game exempt under present-law sec. 513(f)) conducted by a tax-exempt organization if (1) such organization is licensed pursuant to State law to conduct such game, (2) only organizations which are organized as nonprofit corporations or are exempt from Federal income tax under section 501(a) may be so licensed to conduct such game within the State, and (3) the conduct of such game does not violate State or local law.

No inference is intended regarding the treatment for purposes of the UBIT of games of chance conducted by tax-exempt organizations prior to the date of enactment.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

29. Exclusion from income of certain severance payments (sec. 788(a) of the Senate amendment)

Present Law

Severance payments are includible in income.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, certain severance payments are excludable from income. The provision applies to payments of up to $2,000 received by an individual who was separated from service in connection with a reduction in the work force of the employer and who does not attain employment within 6 months of the separation from service at a compensation level that is at least 95 percent of the compensation the individual was receiving before the separation from service. The exclusion does not apply if the total separation payments received by the individual exceed $125,000.

Effective date.—The provision applies to taxable years beginning after December 31, 1997, and before July 1, 2002.

Conference Agreement

The conference agreement does not include the Senate amendment.

30. Special rule for thrift institutions that became large banks (sec. 790 of the Senate amendment)

Present Law

A provision of the Small Business Job Protection Act of 1996 repealed the percentage-of-taxable-income method of determining bad debt deductions of thrift institutions for taxable years beginning after 1995. A large bank (i.e., one with assets in excess of $500 million as of the end of its 1995 taxable year) that was required to change its method of accounting by reason of the provision generally is required to recapture its post-1987 bad debt reserve over a 6-year period. The amount of recapture for a small bank generally is reduced to the extent the bank's reserve for bad debts determined under the experience method applicable to such institutions exceeded its pre-1988 reserve.

House Bill

No provision.

Senate Amendment

The Senate amendment allows a thrift institution that first became a large bank in its first taxable year beginning after 1994 to be treated as a small bank for purposes of the Small Business Job Protection Act provision. In addition, such institutions may apply the required change in accounting method on a cut-off basis.

Effective date.—The provision is effective as if included in the Small Business Job Protection Act of 1996.

Conference Agreement

The conference agreement does not include the Senate amendment.

31. Income averaging for farmers (sec. 792 of the Senate amendment)

Present Law

The ability for an individual taxpayer to reduce his or her tax liability by averaging his or her income over a number of years was repealed by the Tax Reform Act of 1986.

House Bill

No provision.

Senate Amendment

An individual taxpayer is allowed to elect to compute his or her current year tax liability by averaging, over the prior three-year period, all or a portion of his or her taxable income from the trade of business of farming.

Effective date.—The provision is effective for taxable years beginning after the date of enactment and before January 1, 2001.

Conference Agreement

The conference agreement includes the Senate amendment with modifications. The conference agreement clarifies that the provision operates such that an electing eligible taxpayer (1) designates all or a portion of his or her taxable income from the trade or business of farming from the current year as "elected farm income;" (2) allocates one-third of such "elected farm income" to each of the prior three taxable years; and (3) determines his or her current year section 1 tax liability by determining the sum of (a) his or her current year section 1 liability without the elected farm income allocated to the three prior taxable years plus (b) the increases in the section 1 tax for each of the three prior taxable years by taking into account the allocable share of the elected farm income for such years. If a taxpayer elects the operation the provision for a taxable year, the allocation of elected farm income among taxable years pursuant to the election shall apply for purposes of any election in a subsequent taxable year.

The provision does not apply for employment tax purposes, or to an estate or a trust. Further, the provision does not apply for purposes of the alternative minimum tax under section 55. Finally, the provision does not require the recalculation of the tax liability of any other taxpayer, including a minor child required to use the tax rates of his or her parents under section 1(g).

The election shall be made in the manner prescribed by the Secretary of the Treasury and, except as provided by the Secretary, shall be irrevocable. In addition, the Secretary of the Treasury shall prescribe such regulations as are necessary to carry out the purposes of the provision, including regulations regarding the order and manner in which items of income, gain, deduction, loss, and credits (and any limitations thereon) are to be taken into account for purposes of the provision and the application of the provision to any short taxable year. It is expected that such regulations will deny the multiple application of items that carryover from one taxable year to the next (e.g., net operating loss or tax credit carryovers).

The provision applies to taxable years beginning after December 31, 1997, and before January 1, 2001.

32. Intercity Passenger Rail Fund; Elective carryback of existing net operating losses of the National Railroad Passenger Corporation (Amtrak) (sec. 702 of the Senate amendment)

Present Law

In addition to current transportation-related trust fund fuels excise taxes, there is a permanent 4.3-cents-per-gallon General Fund excise tax on transportation fuels.

Generally, net operating losses may be carried back to the three taxable years preceding the year of loss (10 taxable years preceding the year of loss in certain circumstances).

House Bill

No provision.

Senate Amendment

The Senate amendment dedicates net revenues from 0.5 cent per gallon of the 4.3-cents-

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which usually (1) the wagers are placed, (2) the winners are determined, and (3) the distribution of prizes or other property is made in the presence of all persons placing wagers in such game (sec. 513(f)(2)). See *Julius M. Israel Lodge of B'nai B'rith v. Comm'r*, No. 96-60087 (Fifth Cir., October 25, 1996) (holding that "instant bingo" game did not fall within sec. 513(f) exemption, because each player's participation in the game is wholly independent of any other's and requires only that the player remove a pull-tab to determine whether he or she has a winning card).

[61] In 1978, at the same time that Congress enacted section 513(f), section 527 was modified to provide that bingo income of political organizations is to be treated as "exempt function income" and, thus, not subject to Federal income tax if such income is used for certain political purposes (sec. 527(c)(3)(D)).

[62] In addition, section 311 of the Deficit Reduction Act of 1984 (as modified by the Tax Reform Act of 1986) provides a special, off-Code exemption from the UBIT for games of chance conducted by nonprofit organizations in the State of North Dakota.

[63] See IRS, *Exempt Organizations: Technical Instruction Program for FY 1996* ('Training 4277-048 (7-95)) at page 96.

per gallon transportation motor fuels excise tax to a new Intercity Passenger Rail Fund ("Rail Fund") to finance capital improvements of National Railroad Passenger Corporation (Amtrak) and certain transportation activities in States not receiving Amtrak service. Dedicated revenues are those from fuels taxes imposed from October 1, 1997 through April 15, 2001.

The Senate amendment also expands the purposes for which non-Amtrak States may use Rail Fund monies to include: (1) local transit needs such as transportation for the elderly and handicapped; (2) rail/highway crossing safety projects (generally financed through the Highway Trust Fund); (3) certain capital expenditures of smaller freight railroads; and (4) certain rural airport capital expenditures.

Amounts received from the Rail Fund are not included in income. No tax deduction or addition to basis is allowed by the recipient with respect to expenditure of the amount.

Rail Fund spending is subject to appropriation, and is provided for under provisions of the Fiscal Year 1998 Budget Resolution.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the approach of the Senate amendment with modifications. The conference agreement provides elective procedures that allows Amtrak to consider the tax attributes of its predecessors, those railroads that were relieved of their responsibility to provide intercity rail passenger service as a result of the Rail Passenger Service Act of 1970, in the use of its net operating losses. The benefit allowable under these procedures is limited to the least of: (1) 35 percent of Amtrak's existing qualified carryovers, (2) the net tax liability for the carryback period, or (3) $2,323,000,000. One half of the amount so calculated will be treated as a payment of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for each of the first two taxable years ending after the date of enactment.

The existing qualified carryovers are the net operating loss carryovers that are available under section 172(b) in Amtrak's first taxable year ending after September 30, 1997. The net tax liability for the carryback period is the aggregate of the net tax liability of Amtrak's railroad predecessors for all taxable years beginning before January 1, 1971, for which there is a net Federal tax liability. Amtrak's railroad predecessors are those railroads that were relieved of their responsibility to provide intercity rail passenger service as a result of the Rail Passenger Service Act of 1970, and their predecessors. In the case of a railroad predecessor who joined in the filing of a consolidated tax return, the net tax liability of the predecessor will be the net tax liability of the consolidated group.

The net operating losses of Amtrak are required to be reduced by an amount equal to the amount obtained by Amtrak under this provision, divided by 0.35. The Secretary of the Treasury is to adjust, as he deems appropriate, the tax account of each predecessor railroad for the carryback period to reflect the utilization of the net operating losses. The amount of the adjustment is equal to the amount of the benefit and is to be taken into consideration on the tax accounts of the predecessor railroads on a first-in, first-out basis, starting with balances for the earliest year for which any predecessor railroad has a net tax liability. No additional refund to any taxpayer other than Amtrak is to be allowed as a result of these adjustments.

The availability of the elective procedures is conditioned on Amtrak (1) agreeing to make payments of one percent (1%) of the amount it receives to each of the non-Amtrak States to offset certain transportation related expenditures and (2) using the balance for certain qualified expenses. Non-Amtrak States are those States that are not receiving Amtrak service at any time during the period beginning on the date of enactment and ending on the date of payment.

No deduction is allowed with respect to any qualified expense whose payment is attributable to the proceeds made available as a result of this provision. The basis of any property must be reduced by the portion of its cost that is attributable to such proceeds. An item of cost or expense is attributable to such proceeds if it is (1) paid from the proceeds of the refund or (2) to the extent the principal and interest of any borrowings are paid from the proceeds of the refund, from the proceeds of such borrowings.

Amtrak's earnings and profits will be increased by the amount of the refund. However, the conferees expect that this amount will not be included in adjusted current earnings for alternative minimum tax purposes, consistent with Treas. Reg. sec. 1.56(g)-1(c)(4)(ii).

Effective date.—The provision is effective on the date of enactment. However, no refund shall be made as a result of this provision earlier than the date of enactment of Federal legislation which authorizes reforms of Amtrak. No interest shall accrue with respect to the payment of any refund until 45 days after the later of (1) the enactment of such reform legislation, or (2) the filing by Amtrak of a Federal income tax return which includes the election to use the procedures described in this provision.

X. REVENUE-INCREASE PROVISIONS

A. Financial Products

1. Require recognition of gain on certain appreciated financial positions in personal property (sec. 1001(a) of the House bill and sec. 801(a) of the Senate amendment)

Present Law

In general, gain or loss is taken into account for tax purposes when realized. Gain or loss generally is realized with respect to a capital asset at the time the asset is sold, exchanged, or otherwise disposed of. Special rules under the Code can defer or accelerate recognition in certain circumstances. Transactions designed to reduce or eliminate risk of loss, such as a "short sale against the box," or an "equity swap," generally do not cause realization.

House Bill

The House bill requires recognition of gain (but not loss) upon a constructive sale of any "appreciated financial position" in stock, a partnership interest or debt other than certain "straight" debt instruments (as defined in sec. 1361(c)(5)(B)). A constructive sale occurs when the taxpayer enters into one of the following transactions with respect to the same or substantially identical property: (1) a short sale, (2) an offsetting notional principal contract, or (3) a futures or forward contact. For a taxpayer who has one of these transactions, a constructive sale occurs when it acquires the related long position. Other transactions will be treated as constructive sales to the extent provided in Treasury regulations.

The House bill provides an exception for transactions that are closed before the end of the 30th day after the close of the taxable year. This exception does not apply to transactions closed during the 90-day period ending on such day unless, for the 60 days after closing, (1) the taxpayer holds the appreciated financial position and (2) at no time is the taxpayer's risk of loss reduced by holding certain other positions.

Effective date.—The constructive sale provision is effective for constructive sales entered into after June 8, 1997. In the case of a decedent dying after June 8, 1997, if (1) a constructive sale occurred before such date, (2) the transaction remains open for not less than two years, and (3) the transaction is not closed in a taxable transaction within 30 days after the date of enactment, all positions comprising the constructive sale will be treated as property constituting rights to receive income in respect of a decedent under section 691. A special rule is also provided for transactions entered into before June 8, 1997, that in some circumstances prevents such transactions from resulting in constructive sales after the effective date.

Senate Amendment

The Senate amendment is the same as the House bill with two modifications. Under the Senate amendment, the types of debt instruments excluded from the definition of "appreciated financial position" are instruments that are not convertible and the interest on which is either fixed, payable at certain variable rates or based on certain interest payments on a pool of mortgages. In addition, the Senate amendment provides an exception for transactions closed during the 90-day period ending on the 30th day after the close of the taxable year that are reestablished during such period, so long as the normal requirements for positions closed within such 90-day period are met by the reestablished position.

Conference Agreement

The conference agreement follows the Senate amendment with the following modifications.

A trust instrument that is actively traded is generally treated as stock for purposes of determining whether the instrument is an appreciated financial position. The conference agreement provides that a trust instrument will not be treated as stock if substantially all (by value) of the property held by the trust is debt that qualifies for the exception to the definition of appreciated financial position for certain debt instruments. In addition, the conference agreement clarifies that only debt instruments that entitle the holder to receive an unconditional principal amount qualify for the exception.

The conference agreement modifies the exception to constructive sale treatment for transactions that are closed in the 90-day period ending with the 30th day after the close of the taxable year by applying similar requirements to all transactions closed prior to such day. Under the conference agreement, the exception is available only if, for the 60 days after closing a transaction, (1) the taxpayer holds the appreciated financial position and (2) at no time is the taxpayer's risk of loss reduced by holding certain other positions. If a transaction that is closed is reestablished in a substantially similar position, the exception applies provided that the reestablished position is closed prior to the end of the 30th day after the close of the taxable year and the above two requirements are met after such closing.

The conferees also wish to clarify some aspects of the application of the provision. The conferees do not intend that an agreement that is not a contract for purposes of applicable contract law will be treated as a forward contract. Thus, contingencies to which

the contract is subject will generally be taken into account.

The conferees intend that the constructive sale provision generally will apply to transactions that are identified hedging or straddle transactions under other Code provisions (secs. 1092(a)(2), (b)(2) and (e), 1221 and 1256(e)). Where either position in such an identified transaction is an appreciated financial position and a constructive sale of such position results from the other position, the conferees intend that the constructive sale will be treated as having occurred immediately before the identified transaction. The constructive sale will not, however, prevent qualification of the transaction as an identified hedging or straddle transaction. Where, after the establishment of such an identified transaction, there is a constructive sale of either position in the transaction, gain will generally be recognized and accounted for under the relevant hedging or straddle provision. However, the conferees intend that future Treasury regulations may except certain transactions from the constructive sale provision where the gain recognized would be deferred under an identified hedging or straddle provision (e.g. Treas. reg. sec. 1.446-4(b)).

The conferees wish to clarify certain other aspects of the Treasury's regulatory authority under the provision. The conferees urge that the Treasury issue prompt guidance, including safe harbors, with respect to common transactions entered into by taxpayers.

The legislative history to both the House bill and the Senate amendment describe "collar" transactions and recommend that Treasury regulations provide standards for determining which collar transactions result in constructive sales. The conferees expect that these Treasury regulations with respect to collars will be applied prospectively, except in cases to prevent abuse.

The legislative history states that, under the regulations to be issued by the Treasury, either a taxpayer's appreciated financial position or an offsetting transaction may in certain circumstances be considered on a disaggregated basis for purposes of the constructive sale determination. The conferees wish to clarify that this authority is intended to be used only where such disaggregated treatment reflects the economic reality of the transaction and is administratively feasible. For example, one transaction for which disaggregated treatment might be appropriate is an equity swap that references a small group of stocks, where the transaction is entered into by a taxpayer owning only one of the stocks.[1]

Effective date.—The conference agreement modifies the special rule for decedents dying after June 8, 1997, to require that a position be open at some time during the three-year period ending on the decedent's death. Thus, no amount will be treated as income in respect of a decedent under the rule unless this requirement is met, as well as the requirements that the transaction remains open for not less than two years and that the transaction is not closed within 30 days after the date of enactment. Finally, the conference agreement modifies the special rule to provide that gain with respect to a position that accrues after the transaction is closed will not be included in income in respect of a decedent.

[1] A standard similar to that of Treas. reg. sec. 1.246-5 would be appropriate for determining whether the relationship between the stock held and the group of stocks shorted is sufficient for constructive sale purposes.

2. Election of mark-to-market for securities traders and for traders and dealers in commodities (sec. 1001(b) of the House bill and sec. 801(b) of the Senate amendment)

Present Law

A dealer in securities must compute its income pursuant to the mark-to-market method of accounting. Mark-to-market treatment does not apply to traders in securities or dealers in other property.

House Bill

The House bill allows securities traders and commodities traders and dealers to elect mark-to-market accounting similar to that currently required for securities dealers. All securities held by an electing taxpayer in connection with a trade or business as a securities trader, and all commodities held by an electing taxpayer in connection with a trade or business as a commodities dealer or trader, are subject to mark-to-market treatment. Property not held in connection with its trade or business is not subject to the election provided that it is identified by the taxpayer under rules similar to the present law rules for securities dealers. Gain or loss recognized by an electing taxpayer under the provision is ordinary gain or loss.

Under the House bill, commodities for purposes of the provision would include only commodities of a kind customarily dealt in on an organized commodities exchange.

Effective date.—The election applies to taxable years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and Senate amendment with the following modifications.

The conference agreement clarifies that if a securities trader elects application of the provision, all securities held in connection with its trade or business will generally be subject to mark-to-market accounting. An exception is provided for securities that have no connection with activities as a trader and that are identified on the day acquired (or at such other times as provided in Treasury regulations). The conferees do not intend that an electing taxpayer can mark-to-market loans made to customers or receivables or debt instruments acquired from customers that are not received or acquired in connection with a trade or business as a securities trader. Because the conferees are concerned about issues of taxpayer selectivity, the conferees intend that an electing taxpayer must be able to demonstrate by clear and convincing evidence that a security bears no relation to activities as a trader in order to be identified as not subject to the mark-to-market regime. Any security that hedges another security that is held in connection with the taxpayer's trade or business as a trader will be treated as so held. Any position that is properly subject to the mark-to-market regime will not be taken into account for purposes of the constructive sale rules of section 1259. Similar rules apply to commodities traders.

The conference agreement expands the definition of a commodity for purposes of the provision to include any commodity that is actively traded (within the meaning of section 1092(d)(1)), any option, forward contract, futures contract, short position, notional principal contract or derivative instrument that references such a commodity, and any other evidence of an interest in such a commodity. Also included are positions that hedge the listed items and that are identified by the taxpayer under rules similar to the rules for securities.

The conferees anticipate that Treasury regulations applying section 475(b)(4), which prevents a dealer from treating certain notional principal contracts and other derivative financial instruments as held for investment, will in the case of a commodities trader or dealer apply only to contracts and instruments referenced to commodities.

Effective date.—The conferees wish to clarify that the special rule with respect to the section 481 adjustment applies only to taxpayers making the election for the taxable year which includes the date of enactment. Any elections made thereafter will be governed by rules and procedures established by the Secretary of the Treasury.

3. Limitation on exception for investment companies under section 351 (sec. 1002 of the House bill and sec. 802 of the Senate amendment)

Present Law

Gain or loss is recognized upon a contribution by a shareholder to a corporation that is an investment company. Gain, but not loss, is recognized upon a contribution by a partner to a partnership that would be treated as an investment company. Under Treasury regulations, a contribution of property is treated as made to an investment company only if (1) the contribution results, directly or indirectly, in a diversification of the transferor's interest and (2) the transferee is (a) a regulated investment company ("RIC"), (b) a real estate investment trust ("REIT") or (c) a corporation more than 80 percent of the assets of which by value (excluding cash and non- convertible debt instruments) are readily marketable stocks or securities or interests in RICs or REITs that are held for investment

House Bill

The House bill modifies the definition of an investment company by requiring that the following assets also be taken into account for purposes of the 80-percent test: money, financial instruments, foreign currency, and interests in RICs, REITs, common trust funds, publicly-traded partnerships and precious metals. The House bill provides an exception for precious metals that are produced, used or held in an active trade or business by a partnership. The House bill also provides "look through" rules for certain entities that hold the above-listed items.

Effective date.—The provision is effective for transfers after June 8, 1997, in taxable years ending after such date, with an exception for transfers pursuant to certain binding written contracts in effect on that date.

Senate Amendment

The Senate amendment follows the House bill, but clarifies that equity interests in non-corporate entities will be taken into account for purposes of the investment company determination only if (1) the entity is a REIT, publicly-traded partnership or common trust fund, (2) the interest is convertible into or exchangeable for one of the other listed assets or (3) the entity holds listed assets and is subject to the "look-through" rules. The Senate amendment also clarifies that the exception for precious metals used or held in an active trade or business applies to both corporations and partnerships. The Senate amendment deletes the exception for

precious metals that are produced by a partnership. The Senate amendment also provides the Treasury with regulatory authority to remove items from the list in appropriate circumstances.

Conference Agreement

The conference agreement is the same as the Senate amendment.

4. Disallowance of interest on indebtedness allocable to tax-exempt obligations (sec. 1003 of the House bill)

Present Law

In general

Present law disallows a deduction for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is not subject to tax (tax-exempt obligations) (sec. 265). This rule applies to tax-exempt obligations held by individual and corporate taxpayers. The rule also applies to certain cases in which a taxpayer incurs or continues indebtedness and a related person acquires or holds tax-exempt obligations.[2]

Application to non-financial corporations

General guidelines.—In Rev. Proc. 72-18, 1972-1 C.B. 740, the IRS provided guidelines for application of the disallowance provision to individuals, dealers in tax-exempt obligations, other business enterprises, and banks in certain situations. Under Rev. Proc. 72-18, a deduction is disallowed only when indebtedness is incurred or continued for the purpose of purchasing or carrying tax-exempt obligations.

This purpose may be established either by direct or circumstantial evidence. Direct evidence of a purpose to purchase tax-exempt obligations exists when the proceeds of indebtedness are directly traceable to the purchase of tax-exempt obligations or when such obligations are used as collateral for indebtedness. In the absence of direct evidence, a deduction is disallowed only if the totality of facts and circumstances establishes a sufficiently direct relationship between the borrowing and the investment in tax-exempt obligations.

Two-percent de minimis exception.—In the case of an individual, interest on indebtedness generally is not disallowed if during the taxable year the average adjusted basis of the tax-exempt obligations does not exceed 2 percent of the average adjusted basis of the individual's portfolio investments and trade or business assets. In the case of a corporation other than a financial institution or a dealer in tax-exempt obligations, interest on indebtedness generally is not disallowed if during the taxable year the average adjusted basis of the tax-exempt obligations does not exceed 2 percent of the average adjusted basis of all assets held in the active conduct of the trade or business. These safe harbors are inapplicable to financial institutions and dealers in tax-exempt obligations.

Interest on installment sales to State and local governments.—If a taxpayer sells property to a State or local government in exchange for an installment obligation, interest on the obligation may be exempt from tax. Present law has been interpreted to not disallow interest on a taxpayer's indebtedness if the taxpayer acquires nonsalable tax-exempt obligations in the ordinary course of business in payment for services performed for, or goods supplied to, State or local governments.[3]

Application to financial corporations and dealers in tax-exempt obligations

In the case of a financial institution, the allocation of the interest expense of the financial institution (which is not otherwise allocable to tax-exempt obligations) is based on the ratio of the average adjusted basis of the tax-exempt obligations acquired after August 7, 1987, to the average adjusted basis of all assets of the taxpayer (sec. 265). In the case of an obligation of an issuer which reasonably anticipates to issue not more than $10 million of tax-exempt obligations (other than certain private activity bonds) within a calendar year (the "small issuer exception"), only 20 percent of the interest allocable to such tax-exempt obligations is disallowed (sec. 291(a)(3)). A similar pro rata rule applies to dealers in tax-exempt obligations, but there is no small issuer exception, and the 20-percent disallowance rule does not apply (Rev. Proc. 72-18).

Treatment of insurance companies

Present law provides that a life insurance company's deduction for additions to reserves is reduced by a portion of the company's income that is not subject to tax (generally, tax-exempt interest and deductible intercorporate dividends) (secs. 807 and 812). The portion by which the life insurance company's reserve deduction is reduced is related to its earnings rate. Similarly, in the case of property and casualty insurance companies, the deduction for losses incurred is reduced by a percentage (15 percent) of (1) the insurer's tax-exempt interest and (2) the deductible portion of dividends received (with special rules for dividends from affiliates) (sec. 832(b)(5)(B)). If the amount of this reduction exceeds the amount otherwise deductible as losses incurred, the excess is includible in the property and casualty insurer's income.

House Bill

General rule

The House bill extends to all corporations (other than insurance companies) the rule that applies to financial institutions that disallows interest deductions of a taxpayer (that are not otherwise disallowed as allocable under present law to tax-exempt obligations) in the same proportion as the average basis of its tax-exempt obligations bears to the average basis of all of the taxpayer's assets. However, the House bill does not extend the small-issuer exception to taxpayers which are not financial institutions.

Exceptions

The House bill does not apply to nonsalable tax-exempt debt acquired by a corporation in the ordinary course of business in payment for goods or services sold to a State or local government. In addition, the House bill provides a de minimis exception under which the disallowance rule does not apply to corporations, other than financial institutions and dealers in tax-exempt obligations, if the average adjusted basis of tax-exempt obligations acquired after August 7, 1986, is less than the lesser of $1 million or 2 percent of the basis of all of the corporation's assets. Under the House bill, insurance companies are not subject to the pro rata rule but would continue to be subject to present law.

Holdings by related persons

The House bill applies the interest disallowance provision to all related persons that are members of the same consolidated group as if all the members of the group were a single taxpayer. The consolidated group rule is to be applied without regard to any member that is an insurance company. In the case of affiliated corporations that are not members of the same consolidated group, tracing rules apply as if all of the related persons are a single entity.

In the case of a corporation (other than a financial institution) that is a partner in a partnership, the corporate partners are treated as holding their allocable shares of all of the assets of the partnership.

The provision is not intended to affect the application of section 265 to related parties under present law.

Effective date.—The provision is effective for taxable years beginning after the date of enactment with respect to obligations acquired after June 8, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision of the House bill.

5. Gains and losses from certain terminations with respect to property (sec. 1004 of the House bill and sec. 803 of the Senate amendment)

Present Law

Extinguishment treated as sale or exchange.—The definition of capital gains and losses in section 1222 requires that there be a "sale or exchange" of a capital asset. Court decisions interpreted this requirement to mean that when a disposition is not a sale or exchange of a capital asset, for example, a lapse, cancellation, or abandonment, the disposition produces ordinary income or loss,[4] Under a special provision, gains and losses attributable to the cancellation, lapse, expiration, or other termination of a right or obligation with respect to certain personal property are treated as gains or losses from the sale of a capital asset (sec. 1234A). Personal property subject to this rule is (1) personal property (other than stock that is not part of straddle or of a corporation that is not formed or availed of to take positions which offset positions in personal property of its shareholders) of a type which is actively traded and which is, or would be on acquisition, a capital asset in the hands of the taxpayer and (2) a "section 1256 contract"[5] which is capital asset in the hands of the taxpayer. Section 1234A does not apply to the retirement of a debt instrument.

Character of gain on retirement of debt obligations.—Amounts received on the retirement of any debt instrument are treated as amounts received in exchange therefor (sec. 1271(a)(1)). In addition, gain on the sale or exchange of a debt instrument with OID[6] generally is treated as ordinary income to the

[2] Code section 7701(f) (as enacted in the Deficit Reduction Act of 1984 (sec. 53(c) of P.L. 98-369)) provides that the Treasury Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of any income tax rules which deal with linking of borrowing to investment or diminish risk through the use of related persons, pass-through entities, or other intermediaries.

[3] *R.B. George Machinery Co.*, 26 B.T.A. 594 (1932) acq. C.B. XI-2, 4; Rev. Proc. 72-18, as modified by Rev. Proc. 87-53, 1987-2 C.B. 669.

[4] See *Fairbanks* v. *U.S.*, 306 U.S. 436 (1039); *Comm'r* v. *Pittston Co.*, 252 F. 2d 344 (2nd Cir.), cert. denied, 357 U.S. 919 (1958).

[5] A "section 1256 contract" means (1) any regulated futures contract, (2) foreign currency contract, (3) nonequity option, or (4) dealer equity option.

[6] The issuer of a debt instrument with OID generally accrues and deducts the discount, as interest, over the life of the obligation even though the amount of such interest is not paid until the debt matures. The holder of such a debt instrument also generally includes the OID in income as it accrues as interest. The mandatory inclusion of OID in income does not apply, among other exceptions, to

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extent of its OID if there was an intention at the time of its issuance to call the debt instrument before maturity (sec. 1271(a)(2)). These rules do not apply to (1) debt issued by a natural person or (2) debt issued before July 2, 1982, by a noncorporate or nongovernment issuer.

House Bill

Extension of relinquishment rule to all types of property.—The House bill extends the rule which treats gain or loss from the cancellation, lapse, expiration, or other termination of a right or obligation which is (or on acquisition would be) a capital asset in the hands of the taxpayer to all types of property.

Character of gain on retirement of debt obligations issued by natural persons.—The House bill repeals the provision that exempts debt obligations issued by natural persons from the rule which treats gain realized on retirement of the debt as exchanges. Thus, under the House bill, gain or loss on the retirement of such debt will be capital gain or loss if the debt is a capital asset. The House bill retains the present-law exceptions for debt issued before July 2, 1982, by noncorporations or nongovernments.

Effective date.—The extension of the extinguishment rule applies to property acquired or positions established 30 days after the date of enactment. The repeal of the exception to the character of gain on retirement of debt instruments issued by natural persons or obligations issued before July 2, 1982, applies to debt issued or purchased after June 8, 1997.

Senate Amendment

The Senate amendment is the same as the House bill, except for the effective date.

Effective date.—The extension of the extinguishment rule applies to property acquired or positions established 30 days after the date of enactment. The repeal of the exception to the character of gain on retirement of debt instruments issued by natural persons or obligations issued before July 2, 1982, applies to debt issued or purchased (within the meaning of section 1272(d)(1)) after June 8, 1997. Thus, the repeal of the exception to the character of gain on retirement of debt instruments issued by natural persons or obligations issued before July 2, 1982, does not apply to transfers after June 8, 1997, where the basis of the debt instrument to the transferee is determined in whole or in part by reference to the adjusted basis of that instrument in the hands of the transferor (i.e., the basis to the transferee is a carryover basis). However, the repeal of the except to the character of gain on retirement of debt instruments issued by natural person applies to any debt instruments issued after June 8, 1997.

Conference Agreement

The conference agreement generally follows the Senate amendment.

In addition, the conference agreement provides that if a taxpayer enters into a short sale of property and such property becomes substantially worthless, the taxpayer shall recognize gain as if the short sale were closed when the property becomes substantially worthless. The conference agreement also extends the statute of limitations with respect to such gain recognition to the earlier of: (1) three years after the Treasury Secretary is notified that the position has become substantially worthless; or (2) six years after the date of filing of the income tax return for the taxable year during which the position became substantially worthless. To the extent provided in Treasury regulations, similar gain recognition rules shall apply to any option with respect to property, any offsetting notional principal contract with respect to property, any futures or forward contract to deliver property, or with respect to any similar transaction or position that becomes substantially worthless. The provision applies to property that becomes substantially worthless after the date of enactment of the Act. No inference is intended as to the proper treatment of these or similar transactions or positions under present law.

6. Determination of original issue discount where pooled debt obligations subject to acceleration (sec. 1005 of the House bill)

Present Law

Inclusion of interest income, in general

A taxpayer generally must include in gross income the amount of interest received or accrued within the taxable year on indebtedness held by the taxpayer. If the principal amount of an indebtedness may be paid without interest by a specified date (as is the case with certain credit card balances), under present law, the holder of the indebtedness is not required to accrue interest until after the specified date has passed.

Original issue discount

The holder of a debt instrument with original issue discount ("OID") generally accrues and incudes in gross income, as interest, the OID over the life of the obligation, even though the amount of the interest may not be received until the maturity of the instrument.

Special rules for determining the amount of OID allocated to a period apply to certain instruments that may be subject to prepayment. First, if a borrower can reduce the yield on a debt by exercising a prepayment option, the OID rules assume that the borrower will prepay the debt. In addition, in the case of (1) any regular interest in a REMIC, (2) qualified mortgages held by a REMIC, or (3) any other debt instrument if payments under the instrument may be accelerated by reason of prepayments of other obligations securing the instrument, the daily portions of the OID on such debt instruments are determined by taking into account an assumption regarding the prepayment of principal for such instruments.

House Bill

The bill applies the special OID rule applicable to any regular interest in a REMIC, qualified mortgages held by a REMIC, or certain other debt instruments to any pool of debt instruments the yield on which may be reduced by reason of prepayments. Thus, under the bill, if a taxpayer holds a pool of credit card receivables that require interest to be paid if the borrowers do not pay their accounts by a specified date, the taxpayer would be required to accrue interest or OID on such pool based upon a reasonable assumption regarding the timing of the payments of the accounts in the pool. In addition, the Secretary of the Treasury is authorized to provide appropriate exemptions from the provision, including exemptions for taxpayers that hold a limited amount of debt instruments, such as small retailers.

Effective date.—The provision is effective for taxable years beginning after the date of enactment. If a taxpayer is required to change its method of accounting under the bill, such change would be treated as initiated by the taxpayer with the consent of the Secretary of the Treasury and any section 481 adjustment would be included in income ratably over a four-year period. It is understood that some taxpayers presently use a method of accounting similar to the method required to be used under the bill and have asked the Secretary of the Treasury for permission to change to a different method for pre-effective date years. So as not to require taxpayers to change methods of accounting multiple times, it is expected that the Secretary would not grant these pending requests.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill, with modifications. The conference agreement applies to any pool of debt instruments the yield on which may be affected by reason of prepayments. In addition, the conferees wish to clarify that it is within the discretion of the Secretary of the Treasury to grant changes of methods of accounting that are pending for pre-effective date years.

7. Deny interest deduction on certain debt instruments (sec. 1006 of the House bill)

Present Law

Whether an instrument qualifies for tax purposes as debt or equity is determined under all the facts and circumstances based on principles developed in case law. If an instrument qualifies as equity, the issuer generally does not receive a deduction for dividends paid and the holder generally includes such dividends in income (although corporate holders generally may obtain a dividends-received deduction of at least 70 percent of the amount of the dividend). If an instrument qualifies as debt, the issuer may receive a deduction for accrued interest and the holder generally includes interest in income, subject to certain limitations.

Original issue discount ("OID") on a debt instrument is the excess of the stated redemption price at maturity over the issue price of the instrument. An issuer of a debt instrument with OID generally accrues and deducts the discount as interest over the life of the instrument even though interest may not be paid until the instrument matures. The holder of such a debt instrument also generally includes the OID in income on an accrual basis.

House Bill

Under the House bill, no deduction is allowed for interest or OID on an instrument issued by a corporation (or issued by a partnership to the extent of its corporate partners) that is payable in stock of the issuer or a related party (within the meaning of sections 267(b) and 707(b)), including an instrument a substantial portion of which is mandatorily convertible or convertible at the issuer's option into stock of the issuer or a related party. In addition, an instrument is to be treated as payable in stock if a substantial portion of the principal or interest is required to be determined, or may be determined at the option of the issuer or related party, by reference to the value of stock of the issuer or related party. An instrument also is treated as payable in stock if it is part of an arrangement designed to result in such payment of the instrument with or by reference to such stock, such as in the case of certain issuances of a forward contract in connection with the issuance of debt, nonrecourse debt that is secured principally by such stock, or certain debt instruments that are convertible at the holder's

debt obligations issued by natural persons before March 2, 1984, and loans of less than $10,000 between natural persons if such loan is not made in the ordinary course of business of the lender (secs. 1272(a)(2)(D) and (E)).

option when it is substantially certain that the right will be exercised. For example, it is not expected that the provision will affect debt with a conversion feature where the conversion price is significantly higher than the market price of the stock on the issue date of the debt. The House bill does not affect the treatment of a holder of an instrument.

The House bill is not intended to affect the characterization of instruments as debt or equity under present law; and no inference is intended as to the treatment of any instrument under present law.

Effective date.—The provision is effective for instruments issued after June 8, 1997, but will not apply to such instruments (1) issued pursuant to a written agreement which was binding on such date and at all times thereafter, (2) described in a ruling request submitted to the Internal Revenue Service on or before such date, or (3) described in a public announcement or filing with the Securities and Exchange Commission on or before such date.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. The conference agreement clarifies that for purposes of the provision, principal or interest shall be treated as required to be paid in, converted to, or determined with reference to the value of equity if it may be so required at the option of the holder or a related party and there is a substantial certainty that the option will be exercised.

B. Corporate Organizations and Reorganizations

1. Require gain recognition for certain extraordinary dividends (sec. 1011 of the House bill and sec. 811 of the Senate amendment)

Present Law

A corporate shareholder generally can deduct at least 70 percent of a dividend received from another corporation. This dividends received deduction is 80 percent if the corporate shareholder owns at least 20 percent of the distributing corporation and generally 100 percent if the shareholder owns at least 80 percent of the distributing corporation.

Section 1059 of the Code requires a corporate shareholder that receives an "extraordinary dividend" to reduce the basis of the stock with respect to which the dividend was received by the nontaxed portion of the dividend. Whether a dividend is "extraordinary" is determined, among other things, by reference to the size of the dividend in relation to the adjusted basis of the shareholder's stock. Also, a dividend resulting from a non pro rata redemption or a partial liquidation is an extraordinary dividend. If the reduction in basis of stock exceeds the basis in the stock with respect to which an extraordinary dividend is received, the excess is taxed as gain on the sale or disposition of such stock, but not until that time (sec. 1059(a)(2)). The reduction in basis for this purpose occurs immediately before any sale or disposition of the stock (sec. 1059(d)(1)(A)). The Treasury Department has general regulatory authority to carry out the purposes of the section.

Except as provided in regulations, the extraordinary dividend provisions do not apply to result in a double reduction in basis in the case of distributions between members of an affiliated group filing consolidated returns, where the dividend is eliminated or excluded under the consolidated return regulations. Double inclusion of earnings and profits (i.e., from both the dividend and from gain on the disposition of stock with a reduced basis) also should generally be prevented.[7] Treasury regulations provide for application of the provision when a corporation is a partner in a partnership that receives a distribution.[8]

In general, a distribution in redemption of stock is treated as a dividend, rather than as a sale of the stock, if it is essentially equivalent to a dividend (sec. 302). A redemption of the stock of a shareholder generally is essentially equivalent to a dividend if it does not result in a meaningful reduction in the shareholder's proportionate interest in the distributing corporation. Section 302(b) also contains several specific tests (e.g., a substantial reduction computation and a termination test) to identify redemptions that are not essentially equivalent to dividends. The determination whether a redemption is essentially equivalent to a dividend includes reference to the constructive ownership rules of section 318, including the option attribution rules of section 318(a)(4). The rules relating to treatment of cash or other property received in a reorganization contain a similar reference (sec. 356(a)(2)).

House Bill

Under the House bill, except as provided in regulations, a corporate shareholder recognizes gain immediately with respect to any redemption treated as a dividend (in whole or in part) when the nontaxed portion of the dividend exceeds the basis of the shares surrendered, if the redemption is treated as a dividend due to options being counted as stock ownership.[9]

In addition, the House bill requires immediate gain recognition whenever the basis of stock with respect to which any extraordinary dividend was received is reduced below zero. The reduction in basis of stock would be treated as occurring at the beginning of the ex-dividend date of the extraordinary dividend to which the reduction relates.

Reorganizations or other exchanges involving amounts that are treated as dividends under section 356 of the Code are treated as redemptions for purposes of applying the rules relating to redemptions under section 1059(e). For example, if a recapitalization or other transaction that involves a dividend under section 356 has the effect of a non pro rata redemption or is treated as a dividend due to options being counted as stock, the rules of section 1059 apply. Redemptions of shares, or other extraordinary dividends on shares, held by a partnership will be subject to section 1059 to the extent there are corporate partners (e.g., appropriate adjustments to the basis of the shares held by the partnership and to the basis of the corporate partner's partnership interest will be required).

Under continuing section 1059(g) of present law, the Treasury Department is authorized to issue regulations where necessary to carry out the purposes and prevent the avoidance of the provision.

Effective date.—The provision generally is effective for distributions after May 3, 1995, unless made pursuant to the terms of a written binding contract in effect on May 3, 1995 and at all times thereafter before such distribution, or a tender offer outstanding on May 3, 1995.[10] However, in applying the new gain recognition rules to any distribution that is not a partial liquidation, a non pro rata redemption, or a redemption that is treated as a dividend by reason of options, September 13, 1995 is substituted for May 3, 1995 in applying the transition rules.

No inference is intended regarding the tax treatment under present law of any transaction within the scope of the provision, including transactions utilizing options.

In addition, no inference is intended regarding the rules under present law (or in any case where the treatment is not specified in the provision) for determining the shares of stock with respect to which a dividend is received or that experience a basis reduction.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Require gain recognition on certain distributions of controlled corporation stock (sec. 1012 of the House bill and sec. 812 of the Senate amendment)

Present Law

A corporation generally is required to recognize gain on the distribution of property (including stock of a subsidiary) as if such property had been sold for its fair market value. The shareholders generally treat the receipt of property as a taxable event as well. Section 355 of the Internal Revenue Code provides an exception to this rule for certain "spin-off" type distributions of stock of a controlled corporation, provided that various requirements are met, including certain restrictions relating to acquisitions and dispositions of stock of the distributing corporation ("distributing") or the controlled corporation ("controlled") prior and subsequent to a distribution.

In cases where the form of the transaction involves a contribution of assets to the particular controlled corporation that is distributed in connection with the distribution, there are specific Code requirements that distributing corporation's shareholders own "control" of the distributed corporation immediately after the distribution. Control is defined for this purpose as 80 percent of the voting power of all classes of stock entitled to vote and 80 percent of each other class of stock. (secs. 368(a)(1)(D), 368(c), and 351(a) and (c)). In addition, it is a requirement for qualification of any section 355 distribution that the distributing corporation distribute control of the controlled corporation (defined by reference to the same 80-percent test).[11] Present law has the effect of imposing more restrictive requirements on certain

[7] See H. Rept. 99-841, II-166, 99th Cong. 2d Sess. (September 18, 1986).

[8] See Treas. reg. sec. 1.701-2(f), Example (2).

[9] Thus, for example, where a portion of such a distribution would not have been treated as a dividend due to insufficient earnings and profits, the rule applies to the portion treated as a dividend.

[10] Thus, for example, in the case of a distribution prior to the effective date, the provisions of present law would continue to apply, including the provisions of present-law sections 1059(a) and 1059(d)(1), requiring reduction in basis immediately before any sale or disposition of the stock, and requiring recognition of gain at the time of such sale or disposition.

[11] If a controlled corporation is acquired after a distribution, an issue may arise whether the acquisition can be viewed under step-transaction concepts as having occurred before the distribution, with the result that the distributing corporation would not be viewed as having distributed the necessary 80 percent control. The Internal Revenue Service has indicated that it will not rule on requests for section 355

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types of acquisitions or other transfers following a distribution if the company involved is the controlled corporation rather than the distributing corporation.

After a spin-off transaction, the amount of a stockholder's basis in the stock of the distributing corporation is generally allocated between the stock of distributing and controlled received by that shareholder, in proportion to their relative fair market values. (sec. 358(c); see Treas. reg. sec. 1.358–2). In the case of an affiliated group of corporations filing a consolidated return, this basis allocation rule generally eliminates any excess loss account in the stock of a controlled corporation that is distributed within the group, and its basis is generally determined with reference to the basis of the distributing corporation.[12]

The treatment of basis of the distributing and controlled corporations in a section 355 distribution differs from a distribution of stock that is not a qualified section 355 spin-off. In a non-qualified distribution within an affiliated group of corporations filing a consolidated return, not only is gain generally recognized (though deferred) on the excess of value over basis at the distributing corporation level, the basis of the distributing corporation's stock is increased by any gain recognized in the distribution (when that gain is taken into account under the relevant regulations), and reduced by the fair market value of the distribution if the distribution is within an affiliated group filing a consolidated return. The basis of the stock of the distributed corporation within the group is a fair market value basis. In the case of a distribution between members of an affiliated group that is not filing a consolidated return, the distribution causes a reduction of basis of the distributing corporation only to the extent it exceeds the earnings and profits of the distributing corporation or it is an extraordinary dividend.

House Bill

The House bill adopts additional restrictions under section 355 on acquisitions and dispositions of the stock of the distributing or controlled corporation.

Under the House bill, if, pursuant to a plan or arrangement in existence on the date of distribution, either the controlled or distributing corporation is acquired, gain is recognized by the other corporation as of the date of the distribution.

In the case of an acquisition of a controlled corporation, the amount of gain recognized by the distributing corporation is the amount of gain that the distributing corporation would have recognized had stock of the controlled corporation been sold for fair market value on the date of distribution. In the case of an acquisition of the distributing corporation, the amount of gain recognized by the controlled corporation is the amount of net gain that the distributing corporation would have recognized had it sold its assets for fair market value immediately after the distribution. This gain is treated as long-term capital gain. No adjustment to the basis of the stock or assets of either corporation is allowed by reason of the recognition of the gain.

Whether a corporation is acquired is determined under rules similar to those of present law section 355(d), except that acquisitions would not be restricted to "purchase" transactions. Thus, an acquisition occurs if one or more persons acquire 50 percent or more of the vote or value of the stock of the controlled or distributing corporation pursuant to a plan or arrangement. For example, assume a corporation ("P") distributes the stock of its wholly owned subsidiary ("S") to its shareholders. If, pursuant to a plan or arrangement, 50 percent or more of the vote or value of either P or S is acquired by one or more persons, the bill proposal requires gain recognition by the corporation not acquired. Except as provided in Treasury regulations, if the assets of the distributing or controlled corporation are acquired by a successor in a merger or other transaction under section 368(a)(1)(A), (C) or (D) of the Code, the shareholders (immediately before the acquisition) of the corporation acquiring such assets are treated as acquiring stock in the corporation from which the assets were acquired. Under Treasury regulations, other asset transfers also could be subject to this rule. However, in any transaction, stock received directly or indirectly by former shareholders of distributing or controlled, in a successor or new controlling corporation of either, is not be treated as acquired stock if it is attributable to such shareholders' stock in distributing or controlled that was not acquired as part of a plan or arrangement to acquire 50 percent or more of such successor or other corporation.

Acquisitions occurring within the four-year period beginning two years before the date of distribution are presumed to have occurred pursuant to a plan or arrangement. Taxpayers can avoid gain recognition by showing that an acquisition occurring during this four-year period was unrelated to the distribution.

The House bill does not apply to distributions that would otherwise be subject to section 355(d) of present law, which imposes corporate level tax on certain disqualified distributions.

The House bill does not apply to a distribution pursuant to a title 11 or similar case.

The Treasury Department is authorized to prescribe regulations as necessary to carry out the purposes of the proposal, including regulations to provide for the application of the proposal in the case of multiple transactions.

Except as provided in regulations, in the case of distributions of stock within an affiliated group of corporations filing a consolidated return, section 355 does not apply to any distribution of the stock of one member of the group to another member. In the case of such a distribution of stock, the Secretary of the Treasury is to provide appropriate rules for the treatment of the distribution, including rules governing adjustments to the adjusted basis of the stock and the earnings and profits of the members of the group.

The House bill also modifies certain rules for determining control immediately after a distribution in the case of certain divisive transactions in which a controlled corporation is distributed and the transaction meets the requirements of section 355. In such cases, under section 351 and modified section 368(a)(2)(H) with respect to certain reorganizations under section 368(a)(1)(D), those shareholders receiving stock in the distributed corporation are treated as in control of the distributed corporation immediately after the distribution if they hold stock representing a 50 percent or greater interest in the vote and value of stock of the distributed corporation.

The House bill does not change the present-law requirement under section 355 that the distributing corporation must distribute 80 percent of the voting power and 80 percent of each other class of stock of the controlled corporation. It is expected that this requirement will be applied by the Internal Revenue Service taking account of the provisions of the proposal regarding plans that permit certain types of planned restructuring of the distributing corporation following the distribution, and to treat similar restructurings of the controlled corporation in a similar manner. Thus, the 80-percent control requirement is expected to be administered in a manner that would prevent the tax-free spin-off of a less-than-80-percent controlled subsidiary, but would not generally impose additional restrictions on post-distribution restructurings of the controlled corporation if such restrictions would not apply to the distributing corporation.

Effective date.—The provision is generally effective for distributions after April 16, 1997. However, the part of the provision that provides a 50-percent control requirement immediately after certain section 351 and 368(a)(1)(D) distributions governed by section 355 is effective for transfers after the date of enactment.

No part of the provision will apply to a distribution (or transfer, as the case may be) after April 16, 1997, if such distribution or transfer is: (1) made pursuant to a written agreement which was binding on such date and at all times thereafter; (2) described in a ruling request submitted to the Internal Revenue Service on or before such date; or (3) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission ("SEC") required solely by reason of the distribution. Any written agreement, ruling request, or public announcement is not within the scope of these transition provisions unless it identifies the unrelated acquiror of the distributing corporation or of any controlled corporation, whichever is applicable.

Senate Amendment

The Senate amendment generally follows the House bill with a number of modifications.

The Senate amendment modifies the House bill denial of section 355 treatment to certain distributions within an affiliated group of corporations. Under the Senate amendment, except as provided in Treasury regulations, in the case of distributions of stock within an affiliated group of corporations (as defined in section 1504(a), and whether or not filing a consolidated return), section 355 does not apply to any distribution of the stock of one member of the group to another member if the distribution is part of a transaction that results in an acquisition that would be taxable to either the distributing or the controlled corporation under the provision.

In addition, in the case of any distribution of stock of one member of an affiliated group

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treatment in cases in which there have been negotiations, agreements, or arrangements with respect to transactions or events which, if consummated before the distribution, would result in the distribution of stock or securities of a corporation which is not "controlled" by the distributing corporation. Rev. Proc. 96–39, 1996–33 I.R.B. 11; see also Rev. Rul. 96–30, 1996–1 C.B. 36; Rev. Rul. 70–225, 1970–1 C.B. 80.

[12] Excess loss accounts in consolidation generally are created when a subsidiary corporation makes a distribution (or has a loss that is used by other members of the group) that exceeds the parent's basis in the stock of the subsidiary. In general, such excess loss accounts in consolidation are permitted to be deferred rather than causing immediate taxable gain. Nevertheless, they are recaptured when a subsidiary leaves the group or in certain other situations. However, such excess loss accounts are not recaptured in certain cases where there is an internal spin-off prior to the subsidiary leaving the group. See, Treas. reg. sec. 1.1502–19(g). In addition, an excess loss account may not be created at all in certain cases that are similar economically to a distribution that would reduce the stock basis of the distributing subsidiary corporation, if the distribution from the subsidiary is structured to meet the form of a section 355 distribution.

of corporations to another member, the Secretary of the Treasury is authorized under section 358(c) to provide adjustments to the basis of any stock in a corporation which is a member of such group, to reflect appropriately the proper treatment of such distribution. As one example, the Secretary of the Treasury may consider providing rules that require a carryover basis within the group for the stock of the distributed corporation (including a carryover of an excess loss account, if any, in a consolidated return) and that also provide a reduction in the basis of the stock of the distributing corporation to reflect the change in the value and basis of the distributing corporation's assets. The Treasury Department may determine that the aggregate stock basis of distributing and controlled after the distribution may be adjusted to an amount that is less than the aggregate basis of the stock of the distributing corporation before the distribution, to prevent inappropriate potential for artificial losses or diminishment of gain on disposition of any of the corporations involved in the spin off.

The Senate amendment modifies the House bill rules for determining control immediately after a distribution in the case of certain divisive transactions in which a controlled corporation is distributed and the transaction meets the requirements of section 355. In such cases, under section 351 and modified section 368(a)(2)(H) with respect to certain reorganizations under section 368(a)(1)(D), those shareholders receiving stock in the distributed corporation are treated as in control of the distributed corporation immediately after the distribution if they hold stock representing a greater than 50 percent interest (rather than a 50-percent or greater interest, as under the House bill) in the vote and value of stock of the distributed corporation.

Effective date.—The provision is generally effective for distributions after April 16, 1997. However, the part of the amendment providing a greater-than-50-percent control requirement immediately after certain section 351 and 368(a)(1)(D) distributions governed by section 355 is effective for transfers after the date of enactment.

The provision will not apply to a distribution after April 16, 1997 that is part of an acquisition that would otherwise cause gain recognition to the distributing or controlled corporation under the bill, if such acquisition is: (1) made pursuant to a written agreement which was binding on April 16, 1997 and at all times thereafter; (2) described in a ruling request submitted to the Internal Revenue Service on or before such date; or (3) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission ("SEC") required solely by reason of the distribution or acquisition. Any written agreement, ruling request, or public announcement or SEC filing is not within the scope of these transition provisions unless it identifies the acquiror of the distributing corporation or of any controlled corporation, whichever is applicable.

The part of the provision that provides a greater-than-50-percent control provision for certain transfers after the date of enactment will not apply if such transfer meets the requirements of (1), (2), or (3) of the preceding paragraph.

Conference Agreement

The conference agreement follows the Senate amendment with additional modifications.

Amount and timing of gain recognition under section 355(e)

Under the conference agreement, in the case of an acquisition of either the distributing corporation or the controlled corporation, the amount of gain recognized is the amount that the distributing corporation would have recognized had the stock of the controlled corporation been sold for fair market value on the date of the distribution. Such gain is recognized immediately before the distribution. As under the House bill and Senate amendment, no adjustment to the basis of the stock or assets of either corporation is allowed by reason of the recognition of the gain.[13]

Acquisitions resulting in gain recognition

Under the conference agreement, as under the House bill and Senate amendment, the gain recognition provisions of section 355(e) apply when one or more persons acquire 50 percent or more of the voting power or value of the stock of either the distributing corporation or the controlled corporation, pursuant to a plan or series of related transactions.

The conference agreement provides certain additions and clarifications to identify cases that do not cause gain recognition under the provisions of section 355(e).

Single affiliated group

Under the conference agreement, a plan (or series of related transactions) is not one that will cause gain recognition if, immediately after the completion of such plan or transactions, the distributing corporation and all controlled corporations are members of a single affiliated group of corporations (as defined in section 1504 without regard to subsection (b) thereof).

Example 1: P corporation is a member of an affiliated group of corporations that includes subsidiary corporation S and subsidiary corporation S1. P owns all the stock of S. S owns all the stock of S1. P corporation is merged into unrelated X corporation in a transaction in which the former shareholders of X corporation will own 50 percent or more of the vote or value of the stock of surviving X corporation after the merger. As part of the plan of merger, S1 will be distributed by S to X, in a transaction that otherwise qualifies under section 355. After this distribution, S, S1, and X will remain members of a single affiliated group of corporations under section 1504 (without regard to whether any of the corporations is a foreign corporation, an insurance company, a tax exempt organization, or an electing section 936 company). Even though there has been an acquisition of P, S, and S1 by X, and a distribution of S1 by S that is part of a plan or series of related transactions, the plan is not treated as one that requires gain recognition on the distribution of S1 to X. This is because the distributing corporation S and the controlled corporation S1 remain within a single affiliated group after the distribution (even though the P group has changed ownership).

Continuing direct or indirect ownership

The conference agreement clarifies that an acquisition does not require gain recognition if the same persons own 50 percent or more of both corporations, directly or indirectly (rather than merely indirectly, as in the House bill and Senate amendment), before and after the acquisition and distribution, provided the stock owned before the acquisition was not acquired as part of a plan (or series of related transactions) to acquire a 50-percent or greater interest in either distributing or controlled.

Example 2: Individual A owns all the stock of P corporation. P owns all the stock of a subsidiary corporation, S. Subsidiary S is distributed to individual A in a transaction that otherwise qualifies under section 355. As part of a plan, P then merges with corporation X, also owned entirely by individual A. There is not an acquisition that requires gain recognition under the provision, because individual A owns directly or indirectly 100 percent of all the stock of both X, the successor to P, and S before and after the transaction.[14] The same result would occur if P were contributed to a holding company, all the stock of which is owned by A.

The conference agreement, following the House bill and Senate amendment, continues to provide that except as provided in Treasury regulations, certain other acquisitions are not taken into account. For example, under section 355(e)(3)(A), the following other types of acquisitions of stock are not subject to the provision, provided that the stock owned before the acquisition was not acquired pursuant to a plan or series of related transactions to acquire a 50-percent or greater ownership interest in either distributing or controlled:

First, the acquisition of stock in the controlled corporation by the distributing corporation (as one example, in the case of a drop-down of property by the distributing corporation to the corporation to be distributed in exchange for the stock of the controlled corporation);

Second, the acquisition by a person of stock in any controlled corporation by reason of holding stock or securities in the distributing corporation (as one example, the receipt by a distributing corporation shareholder of controlled corporation stock in a distribution—including a split-off distribution in which a shareholder that did not own 50 percent of the stock of distributing owns 50 percent or more of the stock of controlled); and

Third, the acquisition by a person of stock in any successor corporation of the distributing corporation or any controlled corporation by reason of holding stock or securities in such distributing or controlled corporation (for example, the receipt by former shareholders of distributing of 50 percent or more of the stock of a successor corporation in a merger of distributing).

As under the House bill and Senate amendment, a public offering of sufficient size can result in an acquisition that causes gain recognition under the provision.

Attribution

The conference agreement also modifies the attribution rule for determining when an acquisition has occurred. Rather than apply section 355(d)(8)(A), which attributes stock owned by a corporation to a corporate shareholder only if that shareholder owns 10 percent of the corporation, the conference agreement provides that, except as provided in regulations, section 318(a)(2)(C) applies

[13] There is no intention to limit the otherwise applicable Treasury regulatory authority under section 336(e) of the Code. There is also no intention to limit the otherwise applicable provisions of section 1367 with respect to the effect on shareholder stock basis of gain recognized by an S corporation under this provision.

[14] The example assumes that A did not acquire his or her stock in P as part of a plan or series of related transactions that results in the direct or indirect ownership of 50 percent or more of S or P separately by A. If A's stock in P was acquired as part of such a plan, the transaction would be one requiring gain recognition on the spin-off of S.

without regard to the amount of stock ownership of the corporation.

Example 3: Assume the facts are the same as in the immediately preceding example except that corporations P and X are each owned by the same 20 individual 5-percent shareholders (rather than wholly by individual A). The transaction described in the previous example, in which S is spun off by P to P's shareholders and P is acquired by X, would not cause gain recognition, because the same shareholders would own directly or indirectly 50 percent or more of the stock of each corporation both before and after the transaction.

Section 355(f)

The conference agreement follows the Senate amendment in providing that, except as provided in Treasury regulations, section 355 (or so much of section 356 as relates to section 355) shall not apply to the distribution of stock from one member of an affiliated group of corporations (as defined in section 1504(a)) to another member of such group (an "intragroup spin-off") if such distribution is part of a plan (or series of related transactions) described in subsection (e)(2)(A)(ii), pursuant to which one or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.

Example 4: P corporation owns all the stock of subsidiary corporation S. S owns all the stock of subsidiary corporation T. S distributes the stock of T corporation to P as part of a plan or series of related transactions in which P then distributes S to its shareholders and then P is merged into unrelated X corporation. After the merger, former shareholders of X corporation own 50 percent or more of the voting power or value of the stock of the merged corporation. Because the distribution of T by S is part of a plan or series of related transactions in which S is distributed by P outside the P affiliated group and P is then acquired under section 355(e), section 355 in its entirety does not apply to the intragroup spin-off of T to P, under section 355(f). Also, the distribution of S by P is subject to section 355(e).

The conference agreement clarifies that, in determining whether an acquisition described in subsection (e)(2)(A)(ii) occurs, all the provisions of new subsection 355(e) are applied. For example, an intragroup spin-off in connection with an overall transaction that does not cause gain recognition under section 355(e) because it is described in section 355(e)(2)(C), or because of section 355(e)(3), is not subject to the rule of section 355(f).

The Treasury Department has regulatory authority to vary the result that the intragroup distribution under section 355(f) does not qualify for section 355 treatment. In this connection, the Treasury Department could by regulation eliminate some or all of the gain recognition required under section 355(f) in connection with the issuance of regulations that would cause appropriate basis results with respect to the stock of S and T in the above example so that concerns regarding present law section 355 basis rules (described below in connection with section 358(c)) would be eliminated.[15]

Treasury regulatory authority under section 358(c)

As under the Senate amendment, the conference agreement provides that in the case of any distribution of stock of one member of an affiliated group of corporations to another member under section 355 ("intragroup spin-off"), the Secretary of the Treasury is authorized under section 358(c) to provide adjustments to the basis of any stock in a corporation which is a member of such group, to reflect appropriately the proper treatment of such distribution. It is understood that the approach of any such regulations applied to intragroup spin-offs that do not involve an acquisition may also be applied under the Treasury regulatory authority to modify the rule of section 355(f) as may be appropriate.

The conferees believe that the concerns relating to basis adjustments in the case of intragroup spin offs are essentially similar, whether or not an acquisition is currently intended as part of a plan or series of related transactions. The concerns include the following. First, under present law consolidated return regulations, it is possible that an excess loss account of a lower tier subsidiary may be eliminated. This creates the potential for the subsidiary to leave the group without recapture of the excess loss account, even though the group has benefitted from the losses or distributions in excess of basis that led to the existence of the excess loss account.

Second, under present law, a shareholder's stock basis in its stock of the distributing corporation is allocated after a spin-off between the stock of the distributing and controlled corporations, in proportion to the relative fair market values of the stock of those companies. If a disproportionate amount of asset basis (as compared to value) is in one of the companies (including but not limited to a shift of value and basis through a borrowing by one company and contribution of the borrowed cash to the other), present law rules under section 358(c) can produce an increase in stock basis relative to asset basis in one corporation, and a corresponding decrease in stock basis relative to asset basis in the other company. Because the spin-off has occurred within the corporate group, the group can continue to benefit from high inside asset basis either for purposes of sale or depreciation, while also choosing to benefit from the disproportionately high stock basis in the other corporation. If, for example, both corporations were sold at a later date, a prior distribution can result in a significant decrease in the amount of gain recognized than would have occurred if the two corporations had been sold together without a prior spin off (or separately, without a prior spin-off).

Example 5: P owns all the stock of S1 and S1 owns all the stock of S2. P's basis in the stock of S1 is 50; the inside asset basis of S1's assets is 50; and the total value of S1's stock and assets (including the value of S2) is 150. S1's basis in the stock of S2 is 0; the inside basis of S2's assets is 0; and the value of S2's stock and assets is 100. If S1 were sold, holding S2, the total gain would be 100. S1 distributes S2 to P in a section 355 transaction. After this spin-off, under present law, P's basis in the stock of S1 is approximately 17 (50/150 times the total 50 stock basis in S1 prior to the spin-off) and the inside asset basis of S1 is 50. P's basis in the stock of S2 is 33 (100/150 times the total 50 stock basis in S1 prior to the spin-off) and the inside asset basis of S2 is 0. After a period of time, S2 can be sold for its value of 100, with a gain of 67 rather than 100. Also, since S1 remains in the corporate group, the full 50 inside asset basis can continue to be used. S1's assets could be sold for 50 with no gain or loss. Thus, S1 and S2 can be sold later at a total gain of 67, rather than the total gain of 100 that would have occurred had they been sold without the spin-off.

As one variation on the foregoing concern, taxpayers have attempted to utilize spin-offs to extract significant amounts of asset value and basis, (including but not limited to transactions in which one corporation decreases its value by incurring debt, and increases the asset basis and value of the other corporation by contributing the proceeds of the debt to the other corporation) without creation of an excess loss account or triggering of gain, even when the extraction is in excess of the basis in the distributing corporation's stock.

The Treasury Department may promulgate any regulations necessary to address these concerns and other collateral issues. As one example, the Treasury Department may consider providing rules that require a carryover basis within the group (or stock basis conforming to asset basis as appropriate) for the distributed corporation (including a carryover of an excess loss account, if any, in a consolidated return). Similarly, the Treasury Department may provide a reduction in the basis of the stock of the distributing corporation to reflect the change in the value and basis of the distributing corporation's assets. The Treasury Department may determine that the aggregate stock basis of distributing and controlled after the distribution may be adjusted to an amount that is less than the aggregate basis of the stock of the distributing corporation before the distribution, to prevent inappropriate potential for artificial losses or diminishment of gain on disposition of any of the corporations involved in the spin-off. The Treasury Department may provide separate regulations for corporations in affiliated groups filing a consolidated return and for affiliated groups not filing a consolidated return, as appropriate to each situation.

Effective date

The conferees wish to clarify certain aspects of the effective date and transitional relief under the provision.

First, the conference agreement clarifies that an acquisition of stock that occurs on or before April 16, 1997 will not cause gain recognition under the provision, even if there is a distribution after that date that is part of a plan or series of related transactions that would otherwise be subject to the provision.

Second, any contract that is in fact binding under State law as of April 16, 1997, even though not written, is eligible for transition relief. It would be expected, in such a case, that some form of contemporaneous written evidence of such contract would be in existence. As one example, if under State law acceptance of the terms and conditions of a contract by a corporate board of directors creates a binding contract with an acquiror, then such contract, and the terms and conditions presented to the board, could satisfy the requirement for binding contract transitional relief under the conference agreement. If there was such an offer and acceptance on or before April 16, 1997 and a ruling request filed on or before April 16, 1997, with respect to a proposed spin-off and acquisition, which identifies the acquiror as one of a list of prospective acquirors, then the transaction may be eligible for relief under the transition rules.

Finally, with respect to the Treasury Department regulatory authority under section 358(c) as applied to intragroup spin-off transactions that are not part of a plan or series of related transactions under new section

[15] Examples of approaches that the Treasury Department may consider are discussed in connection with section 358(c), *infra*.)

355(f), the conferees expect that any Treasury regulations will be applied prospectively, except in cases to prevent abuse.

3. Reform tax treatment of certain corporate stock transfers (sec. 1013 of the House bill and sec. 813 of the Senate amendment)

Present Law

Under section 304, if one corporation purchases stock of a related corporation, the transaction generally is recharacterized as a redemption. In determining whether a transaction so recharacterized is treated as a sale or a dividend, reference is made to the changes in the selling corporation's ownership of stock in the issuing corporation (applying the constructive ownership rules of section 318(a) with modifications under section 304(c)). Sales proceeds received by a corporate transferor that are characterized as a dividend may qualify for the dividends received deduction under section 243, and such dividend may bring with it foreign tax credits under section 902. Section 304 does not apply to transfers of stock between members of a consolidated group.

Section 1059 applies to "extraordinary dividends," including certain redemption transactions treated as dividends qualifying for the dividends received deduction. If a redemption results in an extraordinary dividend, section 1059 generally requires the shareholder to reduce its basis in the stock of the redeeming corporation by the nontaxed portion of such dividend.

House Bill

Under the House bill, to the extent that a section 304 transaction is treated as a distribution under section 301, the transferor and the acquiring corporation are treated as if (1) the transferor had transferred the stock involved in the transaction to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and (2) the acquiring corporation had then redeemed the stock it is treated as having issued. Thus, the acquiring corporation is treated for all purposes as having redeemed the stock it is treated as having issued to the transferor. In addition, the bill amends section 1059 so that, if the section 304 transaction is treated as a dividend to which the dividends received deduction applies, the dividend is treated as an extraordinary dividend in which only the basis of the transferred shares would be taken into account under section 1059.

Under the House bill, a special rule applies to section 304 transactions involving acquisitions by foreign corporations. The bill limits the earnings and profits of the acquiring foreign corporation that are taken into account in applying section 304. The earnings and profits of the acquiring foreign corporation to be taken into account will not exceed the portion of such earnings and profits that (1) is attributable to stock of such acquiring corporation held by a corporation or individual who is the transferor (or a person related thereto) and who is a U.S. shareholder (within the meaning of sec, 951(b)) of such corporation, and (2) was accumulated during periods in which such stock was owned by such person while such acquiring corporation was a controlled foreign corporation. For purposes of this rule, except as otherwise provided by the Secretary of the Treasury, the rules of section 1248(d) (relating to certain exclusions from earnings and profits) would apply. The Secretary of the Treasury is to prescribe regulations as appropriate, including regulations determining the earnings and profits that are attributable to particular stock of the acquiring corporation.

No inference is intended as to the treatment of any transaction under present law.

Effective date.—The provision is effective for distributions or acquisitions after June 8, 1997 except that the provision will not apply to any such distribution or acquisition (1) made pursuant to a written agreement which was binding on such date and at all times thereafter, (2) described in a ruling request submitted to the Internal Revenue Service on or before such date, or (3) described in a public announcement or filing with the Securities and Exchange Commission on or before such date.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House Bill and the Senate amendment.

4. Modify holding period for dividends-received deduction (sec. 1014 of the House bill and sec. 814 of the Senate amendment)

Present Law

If an instrument issued by a U.S. corporation is classified for tax purposes as stock, a corporate holder of the instrument generally is entitled to a dividends received deduction for dividends received on that instrument. This deduction is 70 percent of dividends received if the recipient owns less than 20 percent (by vote and value) of stock of the payor. If the recipient owns more than 20 percent of the stock the deduction is increased to 80 percent. If the recipient owns more than 80 percent of the payor's stock, the deduction is further increased to 100 percent for qualifying dividends.

The dividends-received deduction is allowed to a corporate shareholder only if the shareholder satisfies a 46-day holding period for the dividend-paying stock (or a 91-day period for certain dividends on preferred stock). The 46- or 91-day holding period generally does not include any time in which the shareholder is protected from the risk of loss otherwise inherent in the ownership of an equity interest. The holding period must be satisfied only once, rather than with respect to each dividend received.

House Bill

The House bill provides that a taxpayer is not entitled to a dividends-received deduction if the taxpayer's holding period for the dividend-paying stock is not satisfied over a period immediately before or immediately after the taxpayer becomes entitled to receive the dividend.

Effective date.—The provision is effective for dividends paid or accrued after the 30th day after the date of the enactment.

Senate Amendment

The Senate amendment is the same as the House bill except for the effective date.

Effective date.— The Senate amendment is generally effective for dividends paid or accrued after the 30th day after the date of enactment. However, the provision will not apply to dividends received within two years of the date of enactment if: (1) the dividend is paid with respect to stock held on June 8, 1997, and all times thereafter until the dividend is received; (2) the stock is continuously subject to a position described in section 246(c)(4) on June 8, 1997, and all times thereafter until the dividend is received; and (3) such stock and related position is identified by the taxpayer within 30 days after enactment of this Act. A stock will not be considered to be continuously subject to a position if such position is sold, closed or otherwise terminated and is reestablished.

Conference Agreement

The conference agreement follows the Senate amendment.

C. Other Corporate Provisions

1. Registration of confidential corporate tax shelters and substantial understatement penalty (sec. 1021 of the House bill and sec. 821 of the Senate amendment)

Present Law

Tax shelter registration

An organizer of a tax shelter is required to register the shelter with the Internal Revenue Service (IRS) (sec. 6111). If the principal organizer does not do so, the duty may fall upon any other participant in the organization of the shelter or any person participating in its sale or management. The shelter's identification number must be furnished to each investor who purchases or acquires an interest in the shelter. Failure to furnish this number to the tax shelter investors will subject the organizer to a $100 penalty for each such failure (sec. 6707(b)).

A penalty may be imposed against an organizer who fails without reasonable cause to timely register the shelter or who provides false or incomplete information with respect to it. The penalty is the greater of one percent of the aggregate amount invested in the shelter or $500. Any person claiming any tax benefit with respect to a shelter must report its registration number on her return. Failure to do so without reasonable cause will subject that person to a $250 penalty (sec. 6707(b)(2)).

A person who organizes or sells an interest in a tax shelter subject to the registration rule or in any other potentially abusive plan or arrangement must maintain a list of the investors (sec. 6112). A $50 penalty may be assessed for each name omitted from the list. The maximum penalty per year is $100,000 (sec. 6708).

For this purpose, a tax shelter is defined as any investment that meets two requirements. First, the investment must be (1) required to be registered under a Federal or state law regulating securities, (2) sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or state agency regulating the offering or sale of securities, or (3) a substantial investment. Second, it must be reasonable to infer that the ratio of deductions and 350 percent of credits to investment for any investor (i.e., the tax shelter ratio) may be greater than two to one as of the close of any of the first five years ending after the date on which the investment is offered for sale. An investment that meets these requirements will be considered a tax shelter regardless of whether it is marketed or customarily designated as a tax shelter (sec. 6111(c)(1)).

Accuracy-related penalty

The accuracy-related penalty, which is imposed at a rate of 20 percent, applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement.

The substantial understatement penalty applies in the following manner. If the correct income tax liability of a taxpayer for a taxable year exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 ($10,000 in the case of most corporations), then a substantial understatement exists and a penalty may be

imposed equal to 20 percent of the underpayment of tax attributable to the understatement. In determining whether a substantial understatement exists, the amount of the understatement is reduced by any portion attributable to an item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the return or on a statement attached to the return and there was a reasonable basis for the tax treatment of the item. Special rules apply to tax shelters.

With respect to tax shelter items of noncorporate taxpayers, the penalty may be avoided only if the taxpayer establishes that, in addition to having substantial authority for his position, he reasonably believed that the treatment claimed was more likely than not the proper treatment of the item. This reduction in the penalty is unavailable to corporate tax shelters. The reduction in the understatement for items disclosed on the return is inapplicable to both corporate and non-corporate tax shelters. For this purpose, a tax shelter is a partnership or other entity, plan, or arrangement the principal purpose of which is the avoidance or evasion of Federal income tax.

The Secretary may waive the penalty with respect to any item if the taxpayer establishes reasonable cause for his treatment of the item and that he acted in good faith.

House Bill

Tax shelter registration

The House bill requires a promoter of a corporate tax shelter to register the shelter with the Secretary. Registration is required not later than the next business day after the day when the tax shelter is first offered to potential users. If the promoter is not a U.S. person, or if a required registration is not otherwise made, then any U.S. participant is required to register the shelter. An exception to this special rule provides that registration would not be required if the U.S. participant notifies the promoter in writing not later than 90 days after discussions began that the U.S. participant will not participate in the shelter and the U.S. person does not in fact participate in the shelter.

A corporate tax shelter is any investment, plan, arrangement or transaction (1) a significant purpose of the structure of which is tax avoidance or evasion by a corporate participant, (2) that is offered to any potential participant under conditions of confidentiality, and (3) for which the tax shelter promoters may receive total fees in excess of $100,000.

A transaction is offered under conditions of confidentiality if: (1) an offeree (or any person acting on its behalf) has an understanding or agreement with or for the benefit of any promoter to restrict or limit its disclosure of the transaction or any significant tax features of the transaction; or (2) the promoter claims, knows or has reason to know (or the promoter causes another person to claim or otherwise knows or has reason to know that a party other than the potential offeree claims) that the transaction (or one or more aspects of its structure) is proprietary to the promoter or any party other than the offeree, or is otherwise protected from disclosure or use. The promoter includes specified related parties.

Registration will require the submission of information identifying and describing the tax shelter and the tax benefits of the tax shelter, as well as such other information as the Treasury Department may require.

Tax shelter promoters are required to maintain lists of those who have signed confidentiality agreements, or otherwise have been subjected to nondisclosure requirements, with respect to particular tax shelters. In addition, promoters must retain lists of those paying fees with respect to plans or arrangements that have previously been registered (even though the particular party may not have been subject to confidentiality restrictions).

All registrations will be treated as taxpayer information under the provisions of section 6103 and will therefore not be subject to any public disclosure.

The penalty for failing to timely register a corporate tax shelter is the greater of $10,000 or 50 percent of the fees payable to any promoter with respect to offerings prior to the date of late registration (i.e., this part of the penalty does not apply to fee payments with respect to offerings after late registration). A similar penalty is applicable to actual participants in any corporate tax shelter who were required to register the tax shelter but did not. With respect to participants, however, the 50-percent penalty is based only on fees paid by that participant. Intentional disregard of the requirement to register by either a promoter or a participant increases the 50-percent penalty to 75 percent of the applicable fees.

Substantial understatement penalty

The House bill makes two modifications to the substantial understatement penalty. The first modification affects the reduction in the amount of the understatement which is attributable to an item if there is a reasonable basis for the treatment of the item. The House bill provides that in no event would a corporation have a reasonable basis for its tax treatment of an item attributable to a multi-party financing transaction if such treatment does not clearly reflect the income of the corporation. No inference is intended that such a multi-party financing transaction could not also be a tax shelter as defined under the modification described below or under present law.

The second modification affects the special tax shelter rules, which define a tax shelter as an entity the principal purpose of which is the avoidance or evasion of Federal income tax. The House bill instead provides that a significant purpose (rather than the principal purpose) of the entity must be the avoidance or evasion of Federal income tax for the entity to be considered a tax shelter. This modification conforms the definition of tax shelter for purposes of the substantial understatement penalty to the definition of tax shelter for purposes of these new confidential corporate tax shelter registration requirements.

Treasury report

The House bill also directs the Treasury Department, in consultation with the Department of Justice, to issue a report to the tax-writing committees on the following tax shelter issues: (1) a description of enforcement efforts under section 7408 of the Code (relating to actions to enjoin promoters of abusive tax shelters) with respect to corporate tax shelters and the lawyers, accountants, and others who provide opinions (whether or not directly addressed to the taxpayer) regarding aspects of corporate tax shelters; (2) an evaluation of whether the penalties regarding corporate tax shelters are generally sufficient; and (3) an evaluation of whether confidential tax shelter registration should be extended to transactions where the investor (or potential investor) is not a corporation. The report is due one year after the date of enactment.

Effective date

The tax shelter registration provision applies to any tax shelter offered to potential participants after the date the Treasury Department issues guidance with respect to the filing requirements. The modifications to the substantial understatement penalty apply to items with respect to transactions entered into after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Treat certain preferred stock as "boot" (sec. 1022 of the House bill and sec. 822 of the Senate amendment)

Present Law

In reorganization transactions within the meaning of section 368 and certain other restructurings, no gain or loss is recognized except to the extent "other property" (often called "boot") is received, that is, property other than certain stock, including preferred stock. Thus, preferred stock can be received tax-free in a reorganization. Upon the receipt of "other property," gain but not loss can be recognized. A special rule permits debt securities to be received tax-free, but only to the extent debt securities of no lesser principal amount are surrendered in the exchange. Other than this debt-for-debt rule, similar rules generally apply to transactions under section 351.

House Bill

The House bill amends the relevant provisions (secs. 351, 354, 355, 356 and 1036) to treat certain preferred stock as "other property" (i.e., "boot") subject to certain exceptions. Thus, when a taxpayer exchanges property for this preferred stock in a transaction that qualifies under either section 351, 355, 368, or 1036, gain but not loss is recognized.

The House bill applies to preferred stock (i.e., stock that is limited and preferred as to dividends and does not participate, including through a conversion privilege, in corporate growth to any significant extent), where (1) the holder has the right to require the issuer or a related person (within the meaning of secs. 267(b) and 707(b)) to redeem or purchase the stock, (2) the issuer or a related person is required to redeem or purchase the stock, (3) the issuer (or a related person) has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or (4) the dividend rate on the stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices, regardless of whether such varying rate is provided as an express term of the stock (for example, in the case of an adjustable rate stock) or as a practical result of other aspects of the stock (for example, in the case of auction rate stock). For this purpose, the rules of (1), (2), and (3) apply if the right or obligation may be exercised within 20 years of the date the instrument is issued and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase. In addition, if neither the stock surrendered nor the stock received in the exchange is stock of a corporation any class of stock of which (or of a related corporation) is publicly traded, a right or obligation is disregarded if it may be exercised only upon the death, disability, or mental incompetency of the holder. Also, a right or obligation is disregarded in the case

of stock transferred in connection with the performance of services if it may be exercised only upon the holder's separation from service.

The following exchanges are excluded from this gain recognition: (1) certain exchanges of preferred stock for comparable preferred stock of the same or lesser value; (2) an exchange of preferred stock for common stock; (3) certain exchanges of debt securities for preferred stock of the same or lesser value; and (4) exchanges of stock in certain recapitalization of family-owned corporations. For this purpose, a family-owned corporation is defined as any corporation if at least 50 percent of the total voting power and value of the stock of such corporation is owned by members of the same family for five years preceding the recapitalization. In addition, a recapitalization does not qualify for the exception if the same family does not own 50 percent of the total voting power and value of the stock throughout the three-year period following the recapitalization. Members of the same family are defined by reference to the definition in section 447(e). Thus, a family includes children, parents, brothers, sisters, and spouses, with a limited attribution for directly and indirectly owned stock of the corporation. Shares held by a family member are treated as not held by a family member to the extent a non-family member had a right, option or agreement to acquire the shares (directly or indirectly, for example, through redemptions by the issuer), or with respect to shares as to which a family member has reduced its risk of loss with respect to the share, for example, through an equity swap. Even though the provision excepts certain family recapitalizations, the special valuation rules of section 2701 for estate and gift tax consequences continue to apply.

An exchange of nonqualified preferred stock for nonqualified preferred stock in an acquiring corporation may qualify for tax-free treatment under section 354, but not section 351. In cases in which both sections 354 and 351 may apply to a transaction, section 354 generally will apply for purposes of this proposal. Thus, in that situation, the exchange would be tax free.

The Treasury Secretary has regulatory authority to (1) apply installment sale-type rules to preferred stock that is subject to this proposal in appropriate cases and (2) prescribe treatment of preferred stock subject to this provision under other provisions of the Code (e.g., secs. 304, 306, 318, and 368(c)). Until regulations are issued, preferred stock that is subject to the proposal shall continue to be treated as stock under other provisions of the Code.

Effective date.—The provision is effective for transactions after June 8, 1997, but will not apply to such transactions (1) made pursuant to a written agreement which was binding on such date and at all times thereafter, (2) described in a ruling request submitted to the Internal Revenue Service on or before such date, or (3) described in a public announcement or filing with the Securities and Exchange Commission on or before such date.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with certain clarifications.

The conference agreement clarifies that nonqualified preferred stock is treated as "boot" under section 351(b). The transferor receiving such stock thus is not treated as receiving nonrecognition treatment under section 351(a). However, the nonqualified preferred stock continues to be treated as stock received by a transferor for purposes of qualification of a transaction under section 351(a), unless and until regulations may provide otherwise.

Thus, for example, if A contributes appreciated property to new corporation X for all the common stock (representing 90 percent of the value and all the voting power) of X stock and B contributes cash for nonqualified preferred stock representing 10 percent of the value of X stock, B has received "boot," but the preferred stock is still treated as stock for purposes of sections 351(a) and 368(c), unless and until Treasury Regulations are issued requiring a different result. Thus, the transaction qualifies for non-recognition under section 351. If B had received other stock in addition to nonqualified preferred stock, B would be required to recognize gain only to the extent of the fair market value of the nonqualified preferred stock B receives.

The conference agreement also clarifies the treatment of certain conversion or exchange rights, by deleting any statutory reference to the existence of a "conversion privilege." The conferees wish to clarify that in no event will a conversion privilege into stock of the issuer automatically be considered to constitute participation in corporate growth to any significant extent. The conferees also wish to clarify that stock that is convertible or exchangeable into stock of a corporation other than the issuer (including, for example, stock of a parent corporation or other related corporation) is not considered to be stock that participates in corporate growth to any significant extent for purposes of the provision.

D. Administrative Provisions

1. Reporting of certain payments made to attorneys (sec. 1031 of the House bill)

Present Law

Information reporting is required by persons engaged in a trade or business and making payments in the course of that trade or business of "rent, salaries, wages, . . . or other fixed or determinable gains, profits, and income" (Code sec. 6041(a)). Treas. reg. sec. 1.6041-1(d)(2) provides that attorney's fees are required to be reported if they are paid by a person in a trade or business in the course of a trade or business. Reporting is required to be done on Form 1099-Misc. If, on the other hand, the payment is a gross amount and it is not known what portion is the attorney's fee, no reporting is required on any portion of the payment.

House Bill

The House bill requires gross proceeds reporting on all payments to attorneys made by a trade or business in the course of that trade or business. It is anticipated that gross proceeds reporting would be required on Form 1099-B (currently used by brokers to report gross proceeds). The only exception to this new reporting requirement would be for any payments reported on either Form 1099-Misc under section 6041 (reports of payment of income) or on Form W-2 under section 6051 (payments of wages).

In addition, the present exception in the regulations exempting from reporting any payments made to corporations will not apply to payments made to attorneys. Treasury regulation section 1.6041-3(c) exempts payments to corporations generally (although payments to most corporations providing medical services must be reported). Reporting will be required under both Code sections 6041 and 6045 (as proposed) for payments to corporations that provide legal services. The exception of Treasury regulation section 1.6041-3(g) exempting from reporting payments of salaries or profits paid or distributed by a partnership to the individual partners would continue to apply to both sections (since these amounts are required to be reported on Form K-1).

First, the provision applies to payments made to attorneys regardless of whether the attorney is the exclusive payee. Second, payments to law firms are payments to attorneys, and therefore are subject to this reporting provision. Third, attorneys are required to promptly supply their TINs to persons required to file these information reports, pursuant to section 6109. Failure to do so could result in the attorney being subject to penalty under section 6723 and the payments being subject to backup withholding under section 3406. Fourth, the IRS should administer this provision so that there is no overlap between reporting under section 6041 and reporting under section 6045. For example, if two payments are simultaneously made to an attorney, one of which represents the attorney's fee and the second of which represents the settlement with the attorney's client, the first payment would be reported under section 6041 and the second payment would not be reported under either section 6041 or section 6045, since it is known that the entire payment represents the settlement with the client (and therefore no portion of it represents income to the attorney).

Effective date.—The provision is effective for payments made after December 31, 1997. Consequently, the first information reports will be filed with the IRS (and copies will be provided to recipients of the payments) in 1999, with respect to payments made in 1998.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

2. Information reporting on persons receiving contract payments from certain Federal agencies (sec. 1032 of the House bill and sec. 831 of the Senate amendment)

Present Law

A service recipient (i.e., a person for whom services are performed) engaged in a trade or business who makes payments of remuneration in the course of that trade or business to any person for services performed must file with the IRS an information return reporting such payments (and the name, address, and taxpayer identification number of the recipient) if the remuneration paid to the person during the calendar year is $600 or more (sec. 6041A(a)). A similar statement must also be furnished to the person to whom such payments were made (sec. 6041A(e)). Treasury regulations explicitly exempt from this reporting requirement payments made to a corporation (Treas. reg. sec. 1.6041A-1(d)(2)).

The head of each Federal executive agency must file an information return indicating the name, address, and taxpayer identification number (TIN) of each person (including corporations) with which the agency enters into a contract (sec. 6050M). The Secretary of the Treasury has the authority to require that the returns be in such form and be made at such time as is necessary to make the returns useful as a source of information for collection purposes. The Secretary is given

the authority both to establish minimum amounts for which no reporting is necessary as well as to extend the reporting requirements to Federal license grantors and subcontractors of Federal contracts. Treasury regulations provide that no reporting is required if the contract is for $25,000 or less (Treas. reg. sec. 1.6050M–1(c)(1)(i)).

House Bill

The House bill requires reporting of all payments of $600 or more made by a Federal executive agency to any person (including a corporation) for services. In addition, the provision requires that a copy of the information return be sent by the Federal agency to the recipient of the payment. An exception is provided for certain classified or confidential contracts.

Effective date.—The provision is effective for returns the due date for which (without regard to extensions) is more than 90 days after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Disclosure of tax return information for administration of certain veterans programs (sec. 1033 of the House bill and sec. 832 of the Senate amendment)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service ("IRS") to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Among the disclosures permitted under the Code is disclosure to the Department of Veterans Affairs ("DVA") of self-employment tax information and certain tax information supplied to the Internal Revenue Service and Social Security Administration by third parties. Disclosure is permitted to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension, health care, and other programs (sec. 6103(l)(7)(D)(viii)). The income tax returns filed by the veterans themselves are not disclosed to DVA.

The DVA is required to comply with the safeguards currently contained in the Code and in section 1137(c) of the Social Security Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.

The DVA disclosure provision is scheduled to expire after September 30, 1998.

House Bill

The House bill permanently extends the DVA disclosure provision.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement extends the DVA disclosure provision through September 30, 2003.

4. Establish IRS continuous levy and improve debt collection (secs. 1034, 1035, and 1036 of the House bill and secs. 834, 835, and 836 of the Senate amendment)

A. Continuous levy

Present Law

If any person is liable for any internal revenue tax and does not pay it within 10 days after notice and demand[16] by the IRS, the IRS may then collect the tax by levy upon all property and rights to property belonging to the person,[17] unless there is an explicit statutory restriction on doing so. A levy is the seizure of the person's property or rights to property. Property that is not cash is sold pursuant to statutory requirements.[18]

In general, a levy does not apply to property acquired after the date of the levy,[19] regardless of whether the property is held by the taxpayer or by a third party (such as a bank) on behalf of a taxpayer. Successive seizures may be necessary if the initial seizure is insufficient to satisfy the liability.[20] The only exception to this rule is for salary and wages.[21] A levy on salary and wages is continuous from the date it is first made until the date it is fully paid or becomes unenforceable.

A minimum exemption is provided for salary and wages.[22] It is computed on a weekly basis by adding the value of the standard deduction plus the aggregate value of personal exemptions to which the taxpayer is entitled, divided by 52.[23] For a family of four for taxable year 1996, the weekly minimum exemption is $325.[24]

House Bill

The House bill amends the Code to provide that a continuous levy is also applicable to non-means tested recurring Federal payments. This is defined as a Federal payment for which eligibility is not based on the income and/or assets of a payee. For example, Social Security payments, which are subject to levy under present law, would become subject to continuous levy.

In addition, the House bill provides that this levy would attach up to 15 percent of any specified payment due the taxpayer. This rule explicitly replaces the other specifically enumerated exemptions from levy in the Code. A continuous levy of up to 15 percent would also apply to unemployment benefits and means-tested public assistance.

The House bill also permits the disclosure of otherwise confidential tax return information to the Treasury Department's Financial Management Service only for the purpose of, and to the extent necessary in, implementing these levy provisions.

Effective date.—The provision is effective for levies issued after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

B. Modifications of levy exemptions

Present Law

The Code exempts from levy workmen's compensation payments[25] and annuity or pension payments under the Railroad Retirement Act and benefits under the Railroad Unemployment Insurance Act,[26] unemployment benefits[27] and means-tested public assistance.[28]

House Bill

The House bill provides that the following property is not exempt from continuous levy if the Secretary of the Treasury (or his delegate) approves the levy of such property:

(1) workmen's compensation payments;

(2) annuity or pension payments under the Railroad Retirement Act and benefits under the Railroad Unemployment Insurance Act;

(3) unemployment benefits; and

(4) means-tested public assistance.

Effective date.—The provision applies to levies issued after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except that it does not apply to annuity or pension payments under the Railroad Retirement Act and benefits under the Railroad Unemployment Insurance Act.

Conference Agreement

The conference agreement follows the House bill.

5. Consistency rule for beneficiaries of trusts and estates (sec. 1037 of the House bill and sec. 833 of the Senate amendment)

Present Law

An S corporation is required to file a return for the taxable year and is required to furnish to its shareholders a copy of certain information shown on such return. The shareholder is required to file its return in a manner that is consistent with the information received from the S corporation, unless the shareholder files with the Secretary of the Treasury a notification of inconsistent treatment (sec. 6037(c)). Similar rules apply in the case of partnerships and their partners (sec. 6222).

The fiduciary of an estate or trust that is required to file a return for any taxable year is required to furnish to beneficiaries certain information shown on such return (generally via a Schedule K–1) (sec. 6034A). In addition, a U.S. person that is treated as the owner of any portion of a foreign trust is required to ensure that the trust files a return for the taxable year and furnishes certain required information to each U.S. person who is treated as an owner of a portion of the trust or who receives any distribution from the trust (sec. 6048(b)). However, rules comparable to the consistency rules that apply to S corporation shareholders and partners in partnerships are not specified in the case of beneficiaries of estates and trusts.

House Bill

Under the House bill, a beneficiary of an estate or trust is required to file its return in a manner that is consistent with the information received from the estate or trust, unless the beneficiary files with its return a notification of inconsistent treatment identifying the inconsistency.

Effective date.—The provision is effective for returns filed after date of enactment.

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[16] Notice and demand is the notice given to a person liable for tax stating that the tax has been assessed and demanding that payment be made. The notice and demand must be mailed to the person's last known address or left at the person's dwelling or usual place of business (Code sec. 6303).

[17] Code sec. 6331.

[18] Code secs. 6335–6343.

[19] Code sec. 6331(b).

[20] Code sec. 6331(c).

[21] Code sec. 6331(e).

[22] Code sec. 6334(a)(9).

[23] Code sec. 6334(d).

[24] Standard deduction of $6,700 plus four personal exemptions at $2,550 each equals $16,900, which when divided by 52 equals $325.

[25] Code sec. 6334(a)(7).

[26] Code sec. 6334(a)(6).

[27] Sec. 6334(a)(4).

[28] Sec. 6334(a)(11).

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

E. Excise Tax Provisions

1. Extension and modification of Airport and Airway Trust Fund excise taxes (sec. 1041 of the House bill and sec. 841 of the Senate amendment)

Present Law

In general.—Excise taxes imposed on commercial air transportation of passengers (10 percent of fare) and cargo (6.25 percent of shipping charge) and on noncommercial aviation fuels (15 cents per gallon on aviation gasoline and 17.5 cents per gallon on jet fuel) are transferred to the Airport and Airway Trust Fund to finance a portion of the cost of programs administered by the Federal Aviation Administration. The Airport and Airway Trust Fund excise taxes are scheduled to expire after September 30, 1997.

Commercial passenger tax.—Domestic passenger transportation is taxed at 10 percent of the fare. There is no special tax rate for flight segments to or from small, rural airports. Application of the 10-percent tax to transportation sold through credit card frequent flyer award and similar arrangements is unclear.

Passengers traveling on domestic flights that connect to or from international flights are not subject to tax. International departures are taxed at $6 per passenger; no tax is imposed on international arrivals.

Travel between the 48 contiguous States and Alaska or Hawaii (and between those two States) is taxed at 10 percent of the fare attributable to U.S.-territorial miles plus a $6 per passenger international departure tax.

Passengers are liable for the tax; air carrier liability is only for collection and remittance to the government. Air carriers deposit collected taxes semimonthly, generally no later than the 10th day of the second semimonthly period after the transportation is deemed sold.

Advertising.—Airlines are required to advertise their fares either tax-inclusive or, if separately stated, to state the pre-tax fare, tax, and total in equal sized type.

General Fund fuels tax.—In addition to the Airport and Airway Trust fuel taxes, aviation fuels used in both commercial and noncommercial aviation are subject to a 4.3-cents-per-gallon excise tax. Revenues from this tax are retained in the General Fund.

House Bill

Extension.—Subject to the modifications described below, the House bill extends the present-law Airport and Airway Trust Fund excise taxes for 10 years, through September 30, 2007.

Commercial passenger tax modifications.—Domestic passenger transportation is taxed at 7.5 percent of the fare *plus* $2 per flight segment. (A flight segment is a flight involving one take-off). The $2 rate increases to $3 in four equal annual increments (1999–2002), and is indexed to the consumer price index ("CPI") thereafter. The House bill specifies that payments for the right to award frequent flyer-type points and similar price reductions through credit card and other arrangements are subject to the 7.5-percent tax rate.

The House bill retains the present-law exemption for passengers traveling on domestic flights that connect to or from international flights. Both international departures and arrivals are taxed at $15.50 per passenger. The $15.50-per-passenger rate is indexed to the CPI after 1998.

Travel between the 48 contiguous States and Alaska or Hawaii (or between those States) is taxed at 7.5 percent of the fare attributable to U.S. territorial miles, plus $2 per flight segment, plus the $15.50 per passenger rate international departure tax.

The House bill imposes secondary liability for tax on air carriers. The House bill also provides two special delays in deposits: (1) taxes otherwise due in the period August 15–September 30, 1997, are due October 10, 1997; and (2) taxes otherwise due in the period July 1–September 30, 1998, are due October 13, 1998.

Advertising.—The House bill requires airlines to state separately pre-tax fare and tax, with tax being stated in print at least 50 percent the size of print in which fare is stated.

Transfer of General Fund fuels tax revenues.—The House bill transfers revenues from the 4.3-cents-per-gallon fuels tax to the Airport and Airway Trust Fund for taxes received in the Treasury on or after October 1, 1997.

Effective date.—The provisions apply generally to transportation beginning after September 30, 1997, with special rules for (1) prepayments between related parties under credit card and similar arrangements after June 11, 1997, that are related to rights to transportation to be awarded or otherwise distributed after September 30, 1997, and (2) tickets sold after date of enactment and before October 1, 1997 for transportation beginning after September 30, 1997.

Senate Amendment

Extension.—Subject to the modifications described below, the Senate amendment extends the present-law Airport and Airway excise taxes for 10 years, the same period as in the House bill.

Commercial passenger tax modifications.—Domestic passenger transportation is taxed at 10 percent (the same rate as under present law). The Senate amendment also includes a 7.5-percent rate for flight segments to or from airports that enplaned no more than 100,000 passengers in the second preceding calendar year and that either (1) are at least 75 miles from a airport that had more than 100,000 passenger enplanements in that year, or (2) qualify for essential air service subsidies as of the date of the amendment's enactment. The Senate amendment specifies that payments for frequent-flyer-type awards or similar price reductions through credit card and other arrangements are subject to the 10-percent tax.

The Senate amendment taxes passengers traveling on domestic flights that connect to or from international flights the same as other domestic passengers (i.e., at 10 percent of fare, or 7.5 percent for certain rural airport flight segments, for the domestic flight). Both international departures and arrivals are taxed at $8 per passenger. Unlike under the comparable House bill provision, the $8 per passenger rate is not indexed.

Travel between the 48 contiguous States and Alaska or Hawaii (or between those two States) is taxed the same as under present law.

The Senate amendment is the same as the House bill on liability for tax. The Senate amendment provides two special delays in deposits: (1) taxes otherwise due in the period August 15–September 30, 1997, are due October 10, 1997; and (2) taxes otherwise due in the period July 1–September 30, 2001, are due October 10, 2001.

Advertising.—No provision.

Transfer of General Fund fuels tax.—No provision.

Effective date.—The Senate amendment is the same as the House bill, except the credit card prepayment rule applies to payments after June 16, 1997.

Conference Agreement

Extension.—The conference agreement follows the House bill and the Senate amendment (i.e., extends the present-law Airport and Airway Trust Fund excise taxes for 10 years, subject to the modifications described below).

Commercial passenger tax modifications.—The conference agreement follows the House bill's domestic passenger tax structure with the following modifications to the rates:

October 1, 1997–September 30, 1998.	9 percent of the fare, plus $1 per domestic flight segment.
October 1, 1998–September 30, 1999.	8 percent of the fare, plus $2 per domestic flight segment.
September 30, 1999–December 31, 1999.	7.5 percent of the fare, plus $2.25 per domestic flight segment.

After December 31, 1999, the *ad valorem* rate will remain at 7.5 percent. The domestic flight segment component of the tax will increase to $2.50 (January 1, 2000–December 31, 2000), to $2.75 (January 1, 2001–December 31, 2001), and to $3 (January 1, 2002–December 31, 2002). Beginning on January 1, 2003, the $3 rate will be indexed to the CPI as under the House bill.[29]

The conference agreement follows the Senate amendment on the treatment of certain domestic flight segments to and from qualified rural airports, with a modification. Under the conference agreement, the tax rate on these flight segments will be 7.5 percent of fare, with no flight segment rate being imposed on eligible flight segments.

The conference agreement follows the House bill and the Senate amendment provisions extending the tax on international departures and expanding that tax to include international arrivals, with a modification setting the tax rate on both international departures and arrivals at $12 per passenger (indexed to the CPI beginning on January 1, 1999, as under the House bill). The conferees believe this increased tax level is consistent with the user tax principles of the Airport and Airway Trust Fund taxes which include the recovery from international passengers of a greater percentage of the costs those passengers impose on FAA-programs than are collected by the present-law international departure tax, so that purely domestic passengers and the General Fund will not be required to subsidize the costs imposed by international travelers to the extent occurring under present law.

The conference agreement does not include the provision of the Senate amendment extending tax to domestic flights that connect to or from international flights. Rather, those flights will continue to be tax-free when the flights constitute segments of uninterrupted international transportation (i.e., the scheduled interval at any intermediate stop does not exceed 12 hours). If an

[29] Similar to a provision of the House bill, the conference agreement includes a rule of administrative convenience that there is no change in the number of segment taxes imposed if a passenger's route between two locations is changed (with a resulting change in the number of domestic segments) if there is no change in the fare charged (including no imposition of any additional administrative or other fee associated with the route change).

intermediate stop exceeds 12 hours, subsequent domestic segments are taxed as domestic transportation.

The conference agreement follows the Senate amendment provision retaining the $6 per passenger rate applicable to the international airspace component of flights between the 48 contiguous States and Alaska or Hawaii (or to flights between Alaska and Hawaii).[30] For example, a passenger traveling from Los Angeles to Honolulu in December 1997 would be taxed at 9 percent of the fare applicable to U.S. territorial miles plus $1 per flight segment plus $6. As with the general $12 international arrival and departure rate, this $6-per-passenger rate will be indexed to the CPI beginning on January 1, 1999.

The conference agreement follows the House bill and Senate amendment provisions clarifying that the air passenger excise tax applies to payments to air carriers (and related parties) for the right to award air travel benefits. The tax rate is 7.5 percent. Examples of such taxable payments include (1) payments for frequent flyer miles (including other rights to air transportation) purchased by credit card companies, telephone companies, rental car companies, television networks, restaurants and hotels, air carriers and related parties, and other businesses, and (2) amounts received by air carriers (or related parties) pursuant to joint venture credit card or other marketing arrangements. The conference agreement includes an exception to this general rule in the case of payments for air transportation rights between corporations that are members of a 100 percent commonly owned controlled group (e.g., transportation purchased from an air carrier by a 100 percent commonly owned corporation operating a frequent flyer award program for the air carrier).

The conferees are aware that consumers accrue mileage awards from numerous sources, including actual air travel as well as programs giving rise to taxable payments under this provision of the conference agreement. Once awarded to consumers, these miles are commingled in the consumer's account such that any miles used for a specific purpose may not be traceable to the source which gave rise to them. The conference agreement authorizes the Treasury Department to develop regulations excluding from the tax base a portion of otherwise taxable payments, if any, with respect to awarded frequent flyer miles if the Treasury determines that a portion properly can be allocated (traced) to miles which are used by consumers for purposes other than air transportation. Miles that are unused should not be treated as used for purposes other than air transportation. As part of any rulemaking process it undertakes, the Treasury is authorized to review airline frequent flyer programs and other information from all available sources, including industry and third-party data, in determining whether mileage awards can be adequately traced to support tax-base allocations based on the ultimate use of the awards. The conferees intend that an adjustment to the tax base will be prescribed only if the Treasury finds a consistent pattern of non-air transportation usage by consumers at levels indicating that significant mileage awarded pursuant to payments taxable under this provision is being used for purposes other than air transportation. In making any such adjustment, the Treasury Department should treat mileage used for non-air transportation purposes as coming first from mileage awarded to consumers from actual air travel (and other sources not subject to tax under this provision).

The conference agreement follows the House bill and the Senate amendment provisions extending secondary liability for the passenger taxes to air carriers.

The conference agreement includes the provision of the House bill changing certain commercial air passenger excise tax deposit dates for taxes otherwise due after August 14, 1997, and before October 1, 1997, to October 10, 1997. Additionally, the conference agreement provides that deposits of commercial air passenger taxes that otherwise would be required after August 14, 1998, and before October 1, 1998, will be due on October 5, 1998. Deposits of the commercial air cargo and aviation fuels taxes that otherwise would be required to be made after July 31, 1998, and before October 1, 1998, will be due on October 5, 1998.

Advertising.—The conference agreement does not include the House bill provision changing the rules governing airline fare advertising.

Transfer of General Fund fuels tax revenues.—The conference agreement includes the House bill provision transferring gross receipts from the 4.3-cents-per-gallon general fund tax on aviation fuels to the Airport and Airway Trust Fund.

Effective date.—The conference agreement follows the House bill.

2. Extend diesel fuel excise tax rules to kerosene (sec. 1042 of the House bill)

Present Law

Diesel fuel is taxed at 24.3 cents per gallon when the fuel is removed from a registered terminal storage facility *unless* the fuel is dyed and is destined for a nontaxable use.

Kerosene is taxed at the wholesale level if it is sold as an aviation fuel. If kerosene is blended with diesel fuel, tax is due from the blender unless the kerosene, and the diesel fuel with which it is blended, are dyed and destined for a nontaxable use.

House Bill

The diesel fuel tax rules are extended to kerosene, with the following modifications:

(1) Undyed kerosene can be removed from terminals without tax by registered aviation wholesalers;

(2) Undyed kerosene can be removed from terminals by pipeline without tax for use as an industrial feedstock (and other than by pipeline as permitted in Treasury Department rules for such a use); and

(3) Expedited refunds to ultimate vendors are allowed for tax-paid kerosene sold for use in space heaters.

Effective date.—July 1, 1998.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with modifications. First, registration as a terminal facility eligible to handle non-tax-paid diesel fuel and kerosene is conditional on the facility offering its customers dyeing for nontaxable sales of diesel fuel and kerosene. Second, the minimum amount for vendor refunds of tax paid on kerosene is reduced from $200 to $100. Third, the Treasury Department is given regulatory authority to allow tax-free sales of kerosene to wholesale dealers that (a) satisfy such registration and other compliance measures as Treasury may prescribe and (b) sell kerosene exclusively to retailers eligible for refunds with respect to undyed kerosene sold by them for a nontaxable use.

3. Reinstate Leaking Underground Storage Tank Trust Fund excise tax (sec. 1043 of the House bill and sec. 842 of the Senate amendment)

Present Law

Before January 1, 1996, a 0.1-cent-per-gallon excise tax was imposed on gasoline, diesel fuel, special motor fuels, aviation fuels, and inland waterway fuels. Revenues were transferred to a Leaking Underground Storage Tank Trust Fund to finance cleanup of damage from leaking underground storage tanks.

House Bill

The House bill reinstates the tax for approximately five years, from the date of enactment through September 30, 2002.

Effective date.—Date of enactment.

Senate Amendment

The Senate amendment reinstates the tax for 10 years, from October 1, 1997, through September 30, 2007.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the House bill and Senate amendment with a modification to the reinstatement period. The modified period is October 1, 1997, through March 31, 2005.

4. Application of communications excise tax to prepaid telephone cards (sec. 1044 of the House bill and sec. 843 of the Senate amendment)

Present Law

A 3-percent excise tax is imposed on amounts paid for local and toll (long-distance) telephone service and teletypewriter exchange service. The tax is collected by the provider of the service from the consumer (business and personal service).

House Bill

Under the House bill, any amounts paid to communications service providers (in cash or in kind) for the right to award or otherwise distribute free or reduced-rate long-distance telephone service are treated as amounts paid for taxable communication services, subject to the 3-percent ad valorem tax rate. Examples of such taxable amounts include (1) prepaid telephone cards offered through service stations, convenience stores and other businesses to their customers and others and (2) amounts received by communication service providers pursuant to joint venture credit card or other marketing arrangements. The Treasury Department is authorized specifically to disregard accounting allocations or other arrangements which have the effect of reducing artificially the base to which the 3-percent tax is applied. No inference is intended from this provision as to the proper treatment of these payments under present law.

Effective date.—The provision is effective for amounts paid on or after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with technical modifications. The conference agreement clarifies that any amounts paid to communications service providers (in cash or in kind) for the right to award or otherwise distribute free or reduced-rate telephone service (i.e., local or toll telephone

[30] In contrast, transportation between Alaska or Hawaii and foreign countries (including U.S. possessions) is taxed exclusively as international travel, subject to the $12 per passenger arrival and departure tax.

service) are treated as amounts paid for taxable communication services, subject to the 3-percent ad valorem tax rate.

The conference agreement also clarifies that the base to which the communications tax applies in the case of prepaid telephone cards and similar arrangements is the retail value of the service provided by the use of the card or arrangement. The conferees understand that prepaid telephone cards are offered to the public in two forms. The first type of prepaid telephone card can be called a "dollar value card." In this case, the final customer purchases a card or account which allows him to utilize $X worth of telephone service provided by an underlying telecommunications carrier. In this case, following the House bill and the Senate amendment, the conference agreement provides that the 3-percent communications excise tax apply to the value X at the time the prepaid telephone card is sold by a telecommunications carrier to a person who is not a telecommunications carrier.

The second type of prepaid telephone card can be called a "unit card" or a "minute card." In this case the final customer purchases a card or account which allows him to use Y number of units or minutes of telephone service provided by an underlying telecommunications carrier. The conferees intend that the tax applicable to such cards be based on the retail value of the telephone service offered to a consumer and the conference agreement grants the Treasury Department regulatory authority to determine the appropriate retail value. Presently, the Federal Communications Commission generally requires telecommunications carriers to file a tariff listing the prices of their various service offerings including the price of units or minutes offered via prepaid telephone cards. In this case, following the House bill and the Senate amendment, the conference agreement provides that the 3-percent communications excise tax will apply to Y (the number of units or minutes) multiplied by the tariffed price of those units or minutes at the time the prepaid telephone card is sold by a telecommunications carrier to a person who is not a telecommunications carrier. The conferees recognize that such a tariffed value may not in all cases correspond to the over-the-counter price that a final customer may pay for the card. However, the conferees believe that looking to the tariffed price, at present, is the best way to achieve neutral treatment of "dollar cards" and "unit" or "minute cards." The conferees understand that not all prepaid telephone cards may have an underlying tariff that applies to that particular card. In such cases, the conferees intend that tariffs for comparable telephone service be applied if applicable. The conferees believe that tariffs should continue to be filed for service offered via prepaid telephone cards, but if, in the future, tariff filings are not generally filed the conference agreement authorizes the Treasury Department to determine the appropriate retail value of the units or minutes of service offered on such cards.

The conferees understand that sometimes a communications service provider may require certain customers to prepay for their service as assurance that payment is made by the customer for services to be provided. The conferees do not consider such arrangements to constitute payment for communications services for the purposes of this provision if the customer is entitled to a full refund, in cash, for the value of any unused service. The conferees consider such arrangements to be deposits to assure payment of service to be provided in the future.

No inference is intended from this provision as to the proper treatment of payments received by communications service providers for prepaid telephone cards and amounts received by communication service providers pursuant to joint venture credit card or other marketing arrangements under present law.

Effective date.—The conference agreement modifies the effective date so that the provision is effective for cards sold on or after the first day of the month which commences more than 60 days after the date of enactment.

5. Modify treatment of tires under the heavy highway vehicle retail excise tax (sec. 1402 of the House bill and sec. 845 of the Senate amendment)

Present Law

A 12-percent retail excise tax is imposed on certain heavy highway trucks and trailers, and on highway tractors. A separate manufacturers' excise tax is imposed on tires weighing more than 40 pounds. This tire tax is imposed as a fixed dollar amount which varies based on the weight of the tire. Because tires are taxed separately, the value of tires installed on a highway vehicle is excluded from the 12-percent excise tax on heavy highway vehicles. The determination of value is factual and has given rise to numerous tax audit challenges.

House Bill

The current exclusion of the value of tires installed on a taxable highway vehicle is repealed. Instead, a credit for the amount of manufacturers' excise tax actually paid on the tires is allowed.

Effective date.—The provision is effective after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

6. Increase tobacco excise taxes (sec. 846 of the Senate amendment)

Present Law

The following excise taxes are imposed on tobacco products:

Cigarettes—
- Small cigarettes—24 cents/pack of 20
- Large cigarettes—$25.20/1000

Cigars—
- Large cigars—12.75% of mfgr. price, up to $30/1000
- Small cigars—$1.125/1000

Cigarette papers—$0.0075/50 papers
Cigarette tubes—$0.15/50 tubes
Chewing tobacco—$0.12/lb.
Snuff—$0.36/lb.
Pipe tobacco—$0.675/lb.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the small cigarette tax rate by 20 cents per pack of 20 (i.e., to 44 cents per pack), and increases the tax rates on other tobacco products proportionately. The Senate amendment also extends the tax to "roll-your-own" cigarette tobacco at $0.66/lb., and includes compliance provisions for untaxed cigarettes destined for export.

Floor stocks taxes are imposed on cigarettes and other currently taxed tobacco products held for sale on October 1, 1997 (including articles held in foreign trade zones).

Effective date.—October 1, 1997.

Conference Agreement

The conference agreement on H.R. 2014 does not include the Senate amendment. However, the conference agreement on H.R. 2015 follows the Senate amendment, with modifications. First, the tax rate on small cigarettes is increased by $5 per thousand (10 cents per pack of 20 cigarettes) and the tax rates on other currently taxed tobacco products are increased proportionately beginning on January 1, 2000. On January 1, 2002, the small cigarette tax rate is increased by an additional $2.50 per thousand (5 cents per pack) with the tax rates on other currently taxed tobacco products also being increased proportionately at that time. Thus, the aggregate tax increase on small cigarettes is 15 cents per pack of 20 cigarettes. The conference agreement imposes tax on "roll-your-own" tobacco at the same rate as pipe tobacco.

The conference agreement includes a technical amendment to H.R. 2015, which provides that an amount equal to the increase in tobacco excise taxes included in H.R. 2015 will be credited against total payments made by parties pursuant to future Federal legislation implementing the proposed tobacco industry settlement agreement of June 20, 1997.

Effective date.—The conference agreement on H.R. 2015 is effective on the date of enactment for tobacco products removed after December 31, 1999, and December 31, 2001, respectively. Appropriate floor stocks taxes are imposed on January 1, 2000, and on January 1, 2002.

F. Provisions Relating to Tax-Exempt Organizations

1. Extend UBIT rules to second-tier subsidiaries and amend control test (sec. 1051 of the House bill and sec. 851 of the Senate amendment)

Present Law

In general, interest, rents, royalties and annuities are excluded from unrelated taxable business income (UBTI) of tax-exempt organizations. However, section 512(b)(13) treats otherwise excluded rent, royalty, annuity, and interest income as UBTI if such income is received from a taxable or tax-exempt subsidiary that is 80 percent controlled by the parent tax-exempt organization.[31] In the case of a stock subsidiary, the 80 percent control test is met if the parent organization owns 80 percent or more of the voting stock and all other classes of stock of the subsidiary.[32] In the case of a non-stock subsidiary, the applicable Treasury regulations look to factors such as the representation of the parent corporation on the board of directors of the nonstock subsidiary, or the power of the parent corporation to appoint or remove the board of directors of the subsidiary.[33]

The control test under section 512(b)(13) does not, however, incorporate any indirect ownership rules.[34] Consequently, rents, royalties, annuities and interest derived from

[31] For this purpose, a "controlled organization" is defined under section 368(c). Under present law, rent, royalty, annuity, and interest payments are treated as UBTI when received by the parent organization based on the percentage of the subsidiary's income that is UBTI (either in the hands of the subsidiary if the subsidiary is tax-exempt, or in the hands of the parent organization if the subsidiary is taxable).

[32] Treas. reg. sec. 1.512(b)-1(l)(4)(I)(a).

[33] Treas. reg. sec. 1.512(b)-1(l)(4)(I)(b).

[34] See PLR 9338003 (June 16, 1993) (holding that because no indirect ownership rules are applicable

Continued

second-tier subsidiaries generally do not constitute UBTI to the tax-exempt parent organization.[35]

House Bill

The House bill modifies the test for determining control for purposes of section 512(b)(13). Under the House bill, "control" means (in the case of a stock corporation) ownership by vote or value of more than 50 percent of the stock. In the case of a partnership or other entity, control means ownership of more than 50 percent of the profits, capital or beneficial interests.

In addition, the House bill applies the constructive ownership rules of section 318 for purposes of section 512(b)(13). Thus, a parent exempt organization is deemed to control any subsidiary in which it holds more than 50 percent of the voting power or value, directly (as in the case of a first-tier subsidiary) or indirectly (as in the case of a second-tier subsidiary).

The House bill also makes technical modifications to the method provided in section 512(b)(13) for determining how much of an interest, rent, annuity, or royalty payment made by a controlled entity to a tax-exempt organization is includible in the latter organization's UBTI. Such payments are subject to the unrelated business income tax to the extent the payment reduces the net unrelated income (or increases any net unrelated loss) of the controlled entity.

Effective date.—The modification of the control test to one based on vote or value, the application of the constructive ownership rules of section 318, and the technical modifications to the flow-through method apply to taxable years beginning after the date of enactment. The reduction of the ownership threshold for purposes of the control test from 80 percent to more than 50 percent applies to taxable years beginning after December 31, 1998.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except that the effective date is modified to provide temporary transition relief for certain payments. The provision does not apply to payments made during the first two taxable years beginning on or after the date of enactment if such payments are made pursuant to a binding written contract in effect as of June 8, 1997, and at all times thereafter before such payment. In addition, the conference agreement does not include the delayed application of the reduction of the ownership threshold for purposes of the control test from 80 percent to more than 50 percent.

2. Limitation on increase in basis of property resulting from sale by tax-exempt entity to related person (sec. 1052 of the House bill and sec. 852 of the Senate amendment)

Present law

If a tax-exempt entity transfers assets to a controlled taxable entity in a transaction that is treated as a sale, the transferee taxable entity obtains a fair market value basis in the assets. Because the transferor is tax-exempt, no gain is recognized on the transfer except to the extent of certain unrelated business taxable income, if any.

Other provisions of the Code deny certain tax benefits when a transferor and transferee are related parties. For example, losses on sales between related parties are not recognized (sec. 267). As another example, ordinary income treatment, rather than capital gain treatment, is required on a sale of depreciable property between related parties.(sec.1239).

House Bill

In the case of a sale or exchange of property directly or indirectly between a tax-exempt entity and a related person, the basis of the related person in the property will not exceed the adjusted basis of such property immediately before the sale in the hands of the tax-exempt entity, increased by the amount of any gain recognized to the tax-exempt entity under the unrelated business taxable income rules of section 511.

A related person means any person having a relationship to the tax-exempt entity described in section 267(b) or 707(b)(1) (generally, certain more-than-50-percent relationships, with specified attribution rules). For purposes of applying section 267(b)(2), such an entity is treated as if it were an individual.

Effective date.—The provision applies to sales or exchanges after June 8, 1997, except that it will not apply to a sale or exchange made pursuant to a written agreement which was binding on such date and at all times thereafter.

Senate Amendment

The Senate amendment is the same as the House bill, except that it is clarified that the term "tax-exempt entity" for purposes of the provision is defined as in section 168(h)(2)(A), without regard to section 168(h)(2)(A)(iii).

Conference Agreement

The conference agreement does not include the House bill provision or the Senate amendment.

3. Reporting and proxy tax requirements for political and lobbying expenditures of certain tax-exempt organizations (sec. 1053 of the House bill)

Present Law

Section 162(e) denies deductions as a trade or business expense for certain lobbying and political expenditures. Section 162(e)(3) provides a flow-through rule to disallow a deduction for a portion of membership dues or similar payments paid to a tax-exempt organization if the organization notifies the member under section 6033(e) that such portion of the membership dues is allocable to political or lobbying activities engaged in by the organization.

Under section 6033(e), tax-exempt organizations (other than charities described in section 501(c)(3)) that engage in lobbying or political campaign activities must disclose the amount of members' dues allocable to lobbying or political campaign expenditures to their members and to the Internal Revenue Service (IRS), except for certain in-house, de minimis expenses[36] If an organization fails to meet the disclosure requirement under section 6033(e), then the organization generally is subject to a so-called "proxy tax" equal to 35 percent of the amount of members' dues allowable to lobbying or political campaign expenditures. However, under section 6033(e)(3), organizations are exempt from the disclosure requirements and proxy tax if they can establish to the satisfaction of the Secretary of the Treasury that substantially all dues or other similar amounts received by the organization are not deductible without regard to whether or not the organization conducts lobbying or political campaign activities. In Rev. Proc. 95–35, the IRS announced that all tax-exempt organizations—other than (1) organizations described in section 501(c)(4) that are not veterans organizations, (2) agricultural and horticultural organizations described in section 501(c)(5), and (3) trade associations and other organizations described in section 501(c)(6)—are deemed automatically to qualify for the section 6033(e)(3) exemption from the general disclosure requirements and proxy tax. Rev. Proc. 95–35 further provides that an organization described in section 501(c)(4) or an agricultural or horticultural organization described in section 501(c)(5) qualified for the section 6033(e)(3) exemption if the organization receives at least 90 percent of its dues from (1) members with annual dues of less than $50 or (2) other tax-exempt organizations. Under Rev. Proc. 95–35, a trade association or other organization described in section 501(c)(6) qualifies for the section 6033(e)(3) exemption if the organization receives at least 90 percent of its dues from other tax-exempt organizations.[37]

House Bill

Section 6033(e)(3) is amended to provide that an exemption from the general disclosure requirements and proxy tax of section 6033(e) is available to a tax-exempt organization if more than 90 percent of the amount of aggregate annual dues (or similar payments) received by the organization are paid by (1) individuals or families whose annual dues (or similar amounts) are less than $100,[38] or (2) tax-exempt entities. For purposes of the provision, all organizations sharing a name, charter, historic affiliation, or similar characteristics and coordinating their activities would be treated as a single entity. As under present law, charities described in section 501(c)(3) are not subject to the section 6033(e) disclosure requirements and proxy tax.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

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under section 512(b)(13), rents paid by a second-tier taxable subsidiary are not UBTI to a tax-exempt parent organization). In contrast, an example of an indirect ownership rule can be found in Code section 318. Section 318(a)(2)(C) provides that if 50 percent or more in value of the stock in a 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 the proportion the value of the person's stock ownership bears to the total value of all stock in the corporation.

[35] See PLR 9542045 (July 28, 1995) (holding that first-tier holding company and second- tier operating subsidiary were organized with bona fide business functions and were not agents of the tax-exempt parent organization; therefore, rents, royalties, and interest received by tax-exempt parent organization from second-tier subsidiary were not UBTI).

[36] Such disclosure is not required, however with respect to political expenditures if tax is imposed on the organization with respect to such expenditures under section 527(f) (see sec. 6033(e)(1)(B)(iii)).

[37] In addition, Rev. Proc. 95-35 provides that any organization may establish that it satisfies the section 6033(e)(3) exemption by (1) maintaining records establishing that 90 percent or more of the annual dues paid to the organization are not deductible without regard to whether or not the organization conducts lobbying or political campaign activities, and (2) notifying the IRS that it is described in section 6033(e)(3) on any Form 990 (i.e., annual information return) that it is required to file. Additionally, an organization may request a private letter ruling that the organization is eligible for the section 6033(e)(3) exemption.

[38] The $100 amount will be indexed for inflation after December 31, 1997 (rounded to the nearest multiple of $5).

4. Repeal grandfather rule with respect to pension business of certain insurers (sec. 1054 of the bill and sec. 853 of the Senate amendment)

Present Law

Present law provides that an organization described in sections 501(c)(3) or (4) of the Code is exempt from tax only if no substantial part of its activities consists of providing commercial-type insurance. When this rule was enacted in 1986, certain treatment (described below) applied to Blue Cross and Blue Shield organizations providing health insurance that (1) were in existence on August 16, 1986; (2) were determined at any time to be tax-exempt under a determination that had not been revoked; and (3) were tax-exempt for the last taxable year beginning before January 1, 1987 (when the present-law rule became effective), provided that no material change occurred in the structure or operations of the organizations after August 16, 1986, and before the close of 1986 or any subsequent taxable year.

The treatment applicable to such organizations, which became taxable organizations under the provision, is as follows. A special deduction applies with respect to health business equal to 25 percent of the claims and expenses incurred during the taxable year less the adjusted surplus at the beginning of the year. An exception is provided for such organizations from the application of the 20-percent reduction in the deduction for increases in unearned premiums that applies generally to property and casualty insurance companies. A fresh start was provided with respect to changes in accounting methods resulting from the change from tax-exempt to taxable status. Thus, no adjustment was made under section 481 on account of an accounting method change. Such an organization was required to compute its ending 1986 loss reserves without artificial changes that would reduce 1987 income. Thus, any reserve weakening after August 16, 1986 was treated as occurring in the organization's first taxable year beginning after December 31, 1986. The basis of such an organization's assets was deemed to be equal to the amount of the assets' fair market value on the first day of the organization's taxable year beginning after December 31, 1986, for purposes of determining gain or loss (but not for determining depreciation or for other purposes).

Grandfather rules were provided in the 1986 Act relating to the provision. It was provided that the provision does not apply to that portion of the business of the Teachers Insurance Annuity Association-College Retirement Equities Fund which is attributable to pension business, nor does the provision apply with respect to that portion of the business of Mutual of America which is attributable to pension business. Pension business means the administration of any plan described in section 401(a) of the Code which includes a trust exempt from tax under section 501(a), and plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b) of the Code, any individual retirement plan described in section 408 of the Code, and any eligible deferred compensation plan to which section 457(a) of the Code applies.

House Bill

The House bill repeals the grandfather rules applicable to that portion of the business of the Teachers Insurance Annuity Association-College Retirement Equities Fund which is attributable to pension business and to that portion of the business of Mutual of America which is attributable to pension business. The Teachers Insurance Annuity Association and College Retirement Equities Fund and Mutual of America are to be treated for Federal tax purposes as life insurance companies.

A fresh start is provided with respect to changes in accounting methods resulting from the change from tax-exempt to taxable status. Thus, no adjustment is made under section 481 on account of an accounting method change. The Teachers Insurance Annuity Association and College Retirement Equities Fund and Mutual of America are required to compute ending 1997 loss reserves without artificial changes that would reduce 1998 income. Thus, any reserve weakening after June 8, 1997, is treated as occurring in the organization's first taxable year beginning after December 31, 1997. The basis of assets of Teachers Insurance Annuity Association and College Retirement Equities Fund and Mutual of America is deemed to be equal to the amount of the assets' fair market value on the first day of the organization's taxable year beginning after December 31, 1997, for purposes of determining gain or loss (but not for determining depreciation or for other purposes).

Effective date.—Taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Senate amendment repeals only the grandfather rule applicable to that portion of the business of Mutual of America which is attributable to pension business.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill.

G. Foreign Provisions

1. Inclusion of income from notional principal contracts and stock lending transactions under subpart F (sec. 1171 of the House bill and sec. 861 of the Senate amendment)

Present Law

Under the subpart F rules, the U.S. 10-percent shareholders of a controlled foreign corporation ("CFC") are subject to U.S. tax currently on certain income earned by the CFC, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, "foreign personal holding company income."

Foreign personal holding company income generally consists of the following: dividends, interest, royalties, rents and annuities; net gains from sales or exchanges of (1) property that gives rise to the foregoing types of income, (2) property that does not give rise to income, and (3) interests in trusts, partnerships, and REMICs; net gains from commodities transactions; net gains from foreign currency transactions; and income that is equivalent to interest. Income from notional principal contracts referenced to commodities, foreign currency, interest rates, or indices thereon is treated as foreign personal holding company income; income from equity swaps or other types of notional principal contracts is not treated as foreign personal holding company income. Income derived from transfers of debt securities (but not equity securities) pursuant to the rules governing securities lending transactions (sec. 1058) is treated as foreign personal holding company income.

Income earned by a CFC that is a regular dealer in the property sold or exchanged generally is excluded from the definition of foreign personal holding company income. However, no exception is available for a CFC that is a regular dealer in financial instruments referenced to commodities.

A U.S. shareholder of a passive foreign investment company ("PFIC") is subject to U.S. tax and an interest charge with respect to certain distributions from the PFIC and gains on dispositions of the stock of the PFIC, unless the shareholder elects to include in income currently for U.S. tax purposes its share of the earnings of the PFIC. A foreign corporation is a PFIC if it satisfies either a passive income test or a passive assets test. For this purpose, passive income is defined by reference to foreign personal holding company income.

House Bill

The House bill treats net income from all types of notional principal contracts as a new category of foreign personal holding company income. However, income, gain, deduction or loss from a notional principal contract entered into to hedge an item of income in another category of foreign personal holding company income is included in that other category.

The House bill treats payments in lieu of dividends derived from equity securities lending transactions pursuant to section 1058 as another new category of foreign personal holding company income.

The House bill provides an exception from foreign personal holding company income for certain income, gain, deduction, or loss from transactions (including hedging transactions) entered into in the ordinary course of a CFC's business as a regular dealer in property, forward contracts, options, notional principal contracts, or similar financial instruments (including instruments referenced to commodities).

These modifications to the definition of foreign personal holding company income apply for purposes of determining a foreign corporation's status as a PFIC.

Effective date.—The provision applies to taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The conferees wish to clarify the treatment of notional principal contracts under the provision. Although net income from notional principal contracts is added as a new category of foreign personal holding company income, amounts with respect to a notional principal contract entered into to hedge an item described in another category of foreign personal holding company income are taken into account under the rules of such other category. In this regard, gains and losses from transactions in inventory property are covered by an exclusion from the category of personal holding company income for net gains from property transactions; income from a notional principal contract entered into to hedge inventory property is taken into account under such category and thus similarly is excluded from foreign personal holding company income.

2. Restrict like-kind exchange rules for certain personal property (sec. 1172 of the House bill and sec. 862 of the Senate amendment)

Present Law

An exchange of property, like a sale, generally is a taxable event. However, no gain or

loss is recognized if property held for productive use in a trade or business or for investment is exchanged for property of a "like-kind" which is to be held for productive use in a trade or business or for investment (sec. 1031). In general, any kind of real estate is treated as of a like-kind with other real property as long as the properties are both located either within or both outside the United States. In addition, certain types of property, such as inventory, stocks and bonds, and partnership interests, are not eligible for nonrecognition treatment under section 1031.

If section 1031 applies to an exchange of properties, the basis of the property received in the exchange is equal to the basis of the property transferred, decreased by any money received by the taxpayer, and further adjusted for any gain or loss recognized on the exchange.

House Bill

The House bill provides that personal property predominantly used within the United States and personal property predominantly used outside the United States are not "like-kind" properties. For this purpose, the use of the property surrendered in the exchange will be determined based upon the use during the 24 months immediately prior to the exchange. Similarly, for section 1031 to apply, property received in the exchange must continue in the same use (i.e., foreign or domestic) for the 24 months immediately after the exchange.

The 24-month period is reduced to such lesser time as the taxpayer held the property, unless such shorter holding period is a result of a transaction (or series of transactions) structured to avoid the purposes of the provision. Property described in section 168(g)(4) (generally, property used both within and without the United States that is eligible for accelerated depreciation as if used in the United States) will be treated as property predominantly used in the United States.

Effective date.—The provision is effective for exchanges after June 8, 1997, unless the exchange is pursuant to a binding contract in effect on such date and all times thereafter. A contract will not fail to be considered to be binding solely because (1) it provides for a sale in lieu of an exchange or (2) either the property to be disposed of as relinquished property or the property to be acquired as replacement property (whichever is applicable) was not identified under the contract before June 9, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Impose holding period requirement for claiming foreign tax credits with respect to dividends (sec. 1173 of the House bill and sec. 863 of the Senate amendment)

Present Law

A U.S. person that receives a dividend from a foreign corporation generally is entitled to a credit for foreign income taxes paid on the dividend, regardless of the shareholder's holding period for the stock. If a regulated investment company ("RIC") elects, U.S. persons that receive dividends from the RIC generally are entitled to an indirect credit for foreign taxes paid by the RIC, regardless of the shareholder's holding period for the RIC stock. A U.S. corporation that receives a dividend from a foreign corporation in which it has a 10-percent or greater voting interest generally is entitled to an indirect credit for foreign taxes paid by the foreign corporation, also regardless of the shareholder's holding period.

House Bill

The House bill disallows the foreign tax credits normally available with respect to a dividend from a corporation or RIC if the shareholder has not held the stock for 16 days in the case of common stock and 46 days in the case of preferred stock. The disallowance applies both to foreign tax credits for foreign withholding taxes that are paid on the dividend where the dividend-paying stock is held for less than these holding periods and to indirect foreign tax credits for taxes paid by a lower-tier foreign corporation or a RIC where any of the required stock in the chain of ownership is held for less than these holding periods. Periods during which a taxpayer is protected from risk of loss generally are not counted toward the holding period requirement. In the case of a bona fide contract to sell stock, a special rule applies for purposes of indirect foreign tax credits. The House bill also provides an exception for foreign active securities dealers.

Effective date.—The provision is effective for dividends paid or accrued more than 30 days after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill with one modification. Under the Senate amendment, the special rule for contracts to sell stock does not apply to indirect foreign tax credits of a RIC shareholder.

Conference Agreement

The conference agreement generally follows the Senate amendment with one modification. The conference agreement grants regulatory authority to the Secretary of the Treasury to treat certain foreign taxes as not subject to the provision. The conferees anticipate that this authority may be used to address internal withholding taxes imposed by a foreign country on persons that do business in the foreign country.

4. Penalties for failure to file disclosure of exemption for income from the international operation of ships or aircraft by foreign persons (sec. 1174 of the House bill)

Present Law

The United States generally imposes a 4-percent tax on the U.S.-source gross transportation income of foreign persons that is not effectively connected with the foreign person's conduct of a U.S. trade or business (sec. 887). Foreign persons generally are subject to U.S. tax at regular graduated rates on net income, including transportation income, that is effectively connected with a U.S. trade or business (secs. 871(b) and 882).

Transportation income is any income derived from, or in connection with, the use (or hiring or leasing for use) of a vessel or aircraft (or a container used in connection therewith) or the performance of services directly related to such use (sec. 863(c)(3)). Income attributable to transportation that begins and ends in the United States is treated as derived from sources in the United States (sec. 863(c)(1)). In the case of transportation that either begins or ends in the United States, generally 50 percent of such income is treated as U.S. source and 50 percent is treated as foreign source (sec. 863(c)(2)). U.S.-source transportation income is treated as effectively connected with a foreign person's conduct of U.S. trade or business only if the foreign person has a fixed place of business in the United States that is involved in the earning of such income and substantially all of such income of the foreign person is attributable to regularly scheduled transportation (sec. 887(b)(4)).

An exemption from U.S. tax is provided for income derived by a nonresident alien individual or foreign corporation from the international operation of a ship or aircraft, provided that the foreign country in which such individual is resident or such corporation is organized grants an equivalent exemption to individual residents of the United States or corporations organized in the United States (secs. 872(b) (1) and (2) and 883(a) (1) and (2)).

Pursuant to guidance published by the Internal Revenue Service, a nonresident alien individual or foreign corporation that is entitled to an exemption from U.S. tax for its income from the international operation of ships or aircraft must file a U.S. income tax return and must attach to such return a statement claiming the exemption (Rev. Proc. 91-12, 1991-1 C.B. 473). If the foreign person is claiming an exemption based on an applicable income tax treaty, the foreign person must disclose that fact as required by the Secretary of the Treasury (sec. 6114). The penalty for failure to make disclosure of a treaty-based position as required under section 6114 is $1,000 for an individual and $10,000 for a corporation (sec. 6712).

House Bill

Under the House bill, a foreign person that claims exemption from U.S. tax for income from the international operation of ships or aircraft, but does not satisfy the filing requirements for claiming such exemption, is subject to the penalty of the denial of such exemption and any deductions or credits otherwise allowable in determining the U.S. tax liability with respect to such income. If a foreign person that has a fixed placed of business in the United States fails to satisfy the filing requirements for claiming an exemption from U.S. tax for its income from the international operation of ships or aircraft, such person is subject to the additional penalty that foreign source income from the international operation of ships or aircraft would be treated as effectively connected with the conduct of a U.S. trade or business, but only to the extent that such income is attributable to such fixed place of business in the United States. Income so treated as effectively connected with a U.S. business is subject to U.S. tax at graduated rates (and is subject to the disallowance of deductions and credits described above). These penalties do not apply in the case of a failure to disclose that is due to reasonable cause. The provision would not apply to the extent the application would be contrary to any treaty obligation of the United States.

The House bill also provides for the provision of information by the U.S. Customs Service to the Secretary of the Treasury regarding foreign-flag ships engaged in shipping to or from the United States.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

5. Limitation on treaty benefits for payments to hybrid entities (sec. 1175 of the House bill and sec. 742 of the Senate amendment)

Present Law

Nonresident alien individuals and foreign corporations (collectively, foreign persons) that are engaged in business in the United States are subject to U.S. tax on the income from such business in the same manner as a U.S. person. In addition, the United States imposes tax on certain types of U.S.-source income, including interest, dividends and royalties, of foreign persons not engaged in business in the United States. Such tax is imposed on a gross basis and is collected through withholding. The statutory rate of this withholding tax is 30 percent. However, most U.S. income tax treaties provide for a reduction in rate, or elimination, of this withholding tax. Treaties generally provide for different applicable withholding tax rates for different types of income. Moreover, the applicable withholding tax rates differ among treaties. The specific withholding tax rates pursuant to a treaty are the result of negotiations between the United States and the treaty partner.

The application of the withholding tax is more complicated in the case of income derived through an entity, such as a limited liability company, that is treated as a partnership for U.S. tax purposes but may be treated as a corporation for purposes of the tax laws of a treaty partner. The Treasury regulations include specific rules that apply in the case of income derived through an entity that is treated as a partnership for U.S. tax purposes. In the case of a payment of an item of U.S. source income to a U.S. partnership, the partnership is required to impose the withholding tax to the extent the item of income is includible in the distributive share of a partner who is a foreign person. Tax-avoidance opportunities may arise in applying the reduced rates of withholding tax provided under a treaty to cases involving income derived through a limited liability company or other hybrid entity (e.g., an entity that is treated as a partnership for U.S. tax purposes but as a corporation for purposes of the treaty partner's tax laws).

Following the passage of the House bill and the Senate amendment, proposed and temporary regulations were issued addressing the application of the reduced rates of withholding tax provided under a treaty in cases involving a hybrid entity. Temp. Treas. reg. sec. 1.894–1T.

House Bill

The House bill limits the availability of a reduced rate of withholding tax pursuant to an income tax treaty in order to prevent tax avoidance. Under the House bill, a foreign person is entitled to a reduced rate of withholding tax under a treaty with a foreign country on an item of income derived through an entity that is a partnership (or is otherwise treated as transparent) for U.S. tax purposes only if such item is treated for purposes of the taxation laws of such foreign country as an item of income of such person. This rule does not apply if the treaty itself contains a provision addressing the applicability of the treaty in the case of income derived through a partnership. Moreover, the rule does not apply if the foreign country imposes tax on an actual distribution of such item of income from such partnership to such person. In this regard, the foreign country will be considered to impose tax on a distribution even though such tax may be reduced or eliminated by reason of deductions or credits otherwise available to the taxpayer.

The House bill addresses a potential tax-avoidance opportunity for Canadian corporations with U.S. subsidiaries that arises because of the interaction between the U.S. tax law, the Canadian tax law, and the income tax treaty between the United States and Canada. Through the use of a U.S. limited liability company, which is treated as a partnership for U.S. tax purposes but as a corporation for Canadian tax purposes, a payment of interest (which is deductible for U.S. tax purposes) may be converted into a dividend (which is excludable for Canadian tax purposes). Accordingly, interest paid by a U.S. subsidiary through a U.S. limited liability company to a Canadian parent corporation would be deducted by the U.S. subsidiary for U.S. tax purposes and would be excluded by the Canadian parent corporation for Canadian tax purposes; the only tax on such interest would be a U.S. withholding tax, which may be imposed at a reduced rate of 10 percent (rather than the full statutory rate of 30 percent) pursuant to the income tax treaty between the United States and Canada. Under the House bill, withholding tax is imposed at the full statutory rate of 30 percent in such case. The provision would not apply if the U.S.-Canadian income tax treaty is amended to include a provision reaching a similar result. In this regard, the United States and Canada recently negotiated a proposed protocol that would amend the provision in the treaty governing cross-border social security payments and this issue could be addressed in the context of that protocol or an additional protocol. Moreover, the provision would not apply if Canada were to impose tax on the Canadian parent on dividends received from the U.S. limited liability company.

It is believed that the provision generally is consistent with U.S. treaty obligations, including the U.S.-Canada treaty. The United States has recognized authority to implement its tax treaties so as to avoid abuses.

Effective date.—The provision is effective upon date of enactment.

Senate Amendment

The Senate amendment provides that the Secretary of the Treasury shall prescribe regulations to determine the extent to which a taxpayer shall be denied benefits under an income tax treaty of the United States with respect to any payment received by, or income attributable to activities of, an entity that is treated as a partnership for U.S. federal income tax purposes (or is otherwise treated as fiscally transparent for such purposes) but is treated as fiscally non-transparent for purposes of the tax laws of the jurisdiction of residence of the taxpayer.

The Senate amendment addresses the potential tax-avoidance opportunity that may arise in applying the reduced rates of withholding tax provided under a treaty to cases involving income derived through a limited liability company or other hybrid entity (e.g., an entity that is treated as a partnership for U.S. tax purposes but as a corporation for purposes of the treaty partner's tax laws). Such a tax-avoidance opportunity may arise, for example, for Canadian corporations with U.S. subsidiaries because of the interaction between the U.S. tax law, the Canadian tax law, and the income tax treaty between the United States and Canada. Through the use of a U.S. limited liability company, which is treated as a partnership for U.S. tax purposes but as a corporation for Canadian tax purposes, a payment of interest (which is deductible for U.S. tax purposes) may be converted into a dividend (which is excludable for Canadian tax purposes). Accordingly, interest paid by a U.S. subsidiary through a U.S. limited liability company to a Canadian parent corporation would be deducted by the U.S. subsidiary for U.S. tax purposes and would be excluded by the Canadian parent corporation for Canadian tax purposes; the only tax on such interest would be a U.S. withholding tax, which may be imposed at a reduced rate of 10 percent (rather than the full statutory rate of 30 percent) pursuant to the income tax treaty between the United States and Canada. It is expected that the regulations will impose withholding tax at the full statutory rate of 30 percent in such case.

Effective date.—The provision is effective upon date of enactment.

Conference Agreement

The conference agreement generally follows the House bill with a modification to provide regulatory authority to address the availability of treaty benefits in situations that involve hybrid entities but that are not covered by the denial of benefits specifically provided by the provision.

Under the conference agreement, a foreign person is not entitled to a reduced rate of withholding tax under a treaty with a foreign country on an item of income derived through an entity that is treated as a partnership (or is otherwise treated as fiscally transparent) for U.S. tax purposes if (i) such item is not treated for purposes of the taxation laws of such foreign country as an item of income of such person, (ii) the foreign country does not impose tax on an actual distribution of such item of income from such entity to such person, and (iii) the treaty itself does not contain a provision addressing the applicability of the treaty in the case of income derived through a partnership or other fiscally transparent entity. In addition, the conference agreement grants the Secretary of the Treasury authority to prescribe regulations to determine, in situations other than the situation specifically described in the statutory provision, the extent to which a taxpayer shall not be entitled to benefits under an income tax treaty of the United States with respect to any payment received by, or income attributable to activities of, an entity that is treated as a partnership for U.S. federal income tax purposes (or is otherwise treated as fiscally transparent for such purposes) but is treated as fiscally non-transparent for purposes of the tax laws of the jurisdiction of residence of the taxpayer.

The conferees note that on June 30, 1997 the Secretary issued proposed and temporary regulations addressing the availability of treaty benefits in cases involving hybrid entities. The conferees believe that these regulations are consistent with the provision in the conference agreement. The conferees also believe that the provision in the conference agreement and the temporary and proposed regulations are consistent with U.S. treaty obligations. Such provision and such regulations represent interpretations of U.S. treaties clarifying those situations involving hybrid entities in which taxpayers are entitled to treaty benefits and those situations in which they are not.

6. Interest on underpayments that are reduced by foreign tax credit carrybacks (sec. 1176 of the House bill and sec. 865 of the Senate amendment)

Present Law

U.S. persons may credit foreign taxes against U.S. tax on foreign source income.

The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S. source income. Separate limitations are applied to specific categories of income. The amount of creditable taxes paid or accrued in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back two years and carried forward five years.

For purposes of the computation of interest on overpayments of tax, if an overpayment for a taxable year results from a foreign tax credit carryback from a subsequent taxable year, the overpayment is deemed not to arise prior to the filing date for the subsequent taxable year in which the foreign taxes were paid or accrued (sec. 6611(g)). Accordingly, interest does not accrue on the overpayment prior to the filing date for the year of the carryback that effectively created such overpayment. In *Fluor Corp.* v. *United States*, 35 Fed. Cl. 520 (1996), the court held that in the case of an underpayment of tax (rather than an overpayment) for a taxable year that is eliminated by a foreign tax credit carryback from a subsequent taxable year, interest does not accrue on the underpayment that is eliminated by the foreign tax credit carryback. The Government has filed an appeal in the *Fluor* case.

House Bill

Under the House bill, if an underpayment for a taxable year is reduced or eliminated by a foreign tax credit carryback from a subsequent taxable year, such carryback does not affect the computation of interest on the underpayment for the period ending with the filing date for such subsequent taxable year in which the foreign taxes were paid or accrued. The House bill also clarifies the application of the interest rules of both section 6601 and section 6611 in the case of a foreign tax credit carryback that is triggered by a net operating loss or net capital loss carryback; in such a case, a deficiency is not considered to have been reduced, and an overpayment is not considered to have been created, until the filing date for the subsequent year in which the loss carryback arose. No inference is intended regarding the computation of interest under present law in the case of a foreign tax credit carryback (including a foreign tax credit carryback that is triggered by a net operating loss or net capital loss carryback).

Effective date.—The provision is effective for foreign taxes actually paid or accrued in taxable years beginning after date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

7. Determination of period of limitations relating to foreign tax credits (sec. 1177 of the House bill and sec. 866 of the Senate amendment)

Present Law

U.S. persons may credit foreign taxes against U.S. tax on foreign source income. The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S. source income. Separate limitations are applied to specific categories of income. The amount of creditable taxes paid or accrued in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back two years and carried forward five years.

For purposes of the period of limitations on filing claims for credit or refund, in the case of a claim relating to an overpayment attributable to foreign tax credits, the limitations period is ten years from the filing date for the taxable year with respect to which the claim is made. The Internal Revenue Service has taken the position that, in the case of a foreign tax credit carryforward, the period of limitations is determined by reference to the year in which the foreign taxes were paid or accrued (and not the year to which the foreign tax credits are carried) (Rev. Rul. 84–125, 1984–2 C.B. 125). However, the court in *Ampex Corp.* v. *United States*, 620 F.2d 853 (1980), held that, in the case of a foreign tax credit carryforward, the period of limitations is determined by reference to the year to which the foreign tax credits are carried (and not the year in which the foreign taxes were paid or accrued).

House Bill

Under the House bill, in the case of a claim relating to an overpayment attributable to foreign tax credits, the limitations period is determined by reference to the year in which the foreign taxes were paid or accrued (and not the year to which the foreign tax credits are carried). No inference is intended regarding the determination of such limitations period under present law.

Effective date.—The provision is effective for foreign taxes paid or accrued in taxable years beginning after date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

8. Treatment of income from certain sales of inventory as U.S. source (sec. 864 of the Senate amendment)

Present Law

U.S. persons are subject to U.S. tax on their worldwide income. A credit against U.S. tax on foreign source income is allowed for foreign taxes. The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S. source income. Specific rules apply in determining whether income is from U.S. or foreign sources. Income from the sale or exchange of inventory property generally is sourced where the sale occurs. In *Liggett Group, Inc.* v. *Commissioner*, 58 T.C.M. 1167 (1990), the court concluded that a sale of inventory property by a U.S. corporation to U.S. customers gave rise to foreign source income because the sale occurred outside the United States.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, income from a sale of inventory property by a U.S. resident to another U.S. resident for use, consumption, or disposition in the United States is treated as U.S. source income, if the sale is not attributable to an office or other fixed place of business maintained by the seller outside the United States.

Effective date.—The provision is effective for taxable years beginning after date of enactment.

Conference Agreement

The conference agreement does not include the provision in the Senate amendment.

9. Modify foreign tax credit carryover rules (sec. 867 of the Senate amendment)

Present Law

U.S. persons may credit foreign taxes against U.S. tax on foreign source income. The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S. source income. Separate foreign tax credit limitations are applied to specific categories of income.

The amount of creditable taxes paid or accrued (or deemed paid) in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back two years and forward five years. The amount carried over may be used as a credit in a carryover year to the extent the taxpayer otherwise has excess foreign tax credit limitation for such year. The separate foreign tax credit limitations apply for purposes of the carryover rules.

House Bill

No provision.

Senate Amendment

The Senate amendment reduces the carryback period for excess foreign tax credits from two years to one year. The amendment also extends the excess foreign tax credit carryforward period from five years to seven years.

Effective date.—The provision applies to foreign tax credits arising in taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement does not include the provision in the Senate amendment.

10. Repeal special exception to foreign tax credit limitation for alternative minimum tax purposes (sec. 868 of the Senate amendment)

Present Law

Present law imposes a minimum tax on a corporation to the extent the taxpayer's minimum tax liability exceeds its regular tax liability. The corporate minimum tax is imposed at a rate of 20 percent on alternative minimum taxable income in excess of a phased-out $40,000 exemption amount.

The combination of the taxpayer's net operating loss carryover and foreign tax credits cannot reduce the taxpayer's alternative minimum tax liability by more than 90 percent of the amount determined without these items.

The Omnibus Budget Reconciliation Act of 1989 ("1989 Act") provided a special exception to the limitation on the use of the foreign tax credit against the tentative minimum tax. In order to qualify for this exception, a corporation must meet four requirements. First, more than 50 percent of both the voting power and value of the stock of the corporation must be owned by U.S. persons who are not members of an affiliated group which includes such corporation. Second, all of the activities of the corporation must be conducted in one foreign country with which the United States has an income tax treaty in effect and such treaty must provide for the exchange of information between such country and the United States. Third, the corporation generally must distribute to its shareholders all current earnings and profits (except for certain amounts utilized for normal maintenance or capital expenditures related to its existing business). Fourth, all of such distributions which are received by U.S. persons must be utilized by such persons in a U.S. trade or business. This exception applies to taxable years beginning after March 31,

1990 (with a proration rule effective for certain taxable years which include March 31, 1990).

House Bill

No provision.

Senate Amendment

The special exception regarding the use of foreign tax credits for purposes of the alternative minimum tax, as provided by the 1989 Act, is repealed. *Effective date.*—The provision is effective for taxable years beginning after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

H. Pension and Employee Benefit Provisions

1. Cashout of certain accrued benefits (sec. 917 of the House bill and sec. 879 of the Senate amendment)

Present Law

Under present law, in the case of an employee whose plan participation terminates, a qualified plan may involuntarily "cash out" the benefit (i.e., pay out the balance to the credit of a plan participant without the participant's consent, and, if applicable, the consent of the participant's spouse) if the present value of the benefit does not exceed $3,500. If a benefit is cashed out under this rule and the participant subsequently returns to employment covered by the plan, then service taken into account in computing benefits payable under the plan after the return need not include service with respect to which benefits were cashed out unless the employee "buys back" the benefit.

Generally, a cash-out distribution from a qualified plan to a plan participant can be rolled over, tax free, to an IRA or to another qualified plan.

House Bill

The House bill increases the limit on involuntary cash outs from $3,500 to $5,000. The $5,000 amount is adjusted for inflation beginning after 1998 in $50 increments.

Effective date.—The provision is effective for plan years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except the Senate amendment also makes a corresponding change to title I of ERISA and provides that the $5,000 amount is adjusted for inflation beginning after 1997 in $50 increments.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except that the conference agreement does not increase the $5,000 limit for inflation.

2. Election to receive taxable cash compensation in lieu of nontaxable parking benefits (sec. 880 of the Senate amendment)

Present Law

Under present law, up to $165 per month of employer-provided parking is excludable from gross income. In order for the exclusion to apply, the parking must be provided in addition to and not in lieu of any compensation that is otherwise payable to the employee. Employer-provided parking cannot be provided as part of a cafeteria plan.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, no amount is includible in the income of an employee merely because the employer offers the employee a choice between cash and employer-provided parking. The amount of cash offered is includible in income only if the employee chooses the cash instead of parking.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Repeal of excess distribution and excess retirement accumulation taxes (sec. 882 of the Senate amendment)

Present Law

Under present law, a 15-percent excise tax is imposed on excess distributions from qualified retirement plans, tax-sheltered annuities, and individual retirement arrangements ("IRAs"). Excess distributions are generally the aggregate amount of retirement distributions from such plans during any calendar year in excess of $160,000 (for 1997) or 5 times that amount in the case of a lump-sum distribution. The 15-percent excise tax does not apply to distributions received in 1997, 1998, and 1999.

An additional 15-percent estate tax is imposed on an individual's excess retirement accumulations. Excess retirement accumulations are generally the balance in retirement plans in excess of the present value of a benefit that would not be subject to the 15-percent tax on excess distributions.

House Bill

No provision.

Senate Amendment

The Senate amendment repeals both the 15-percent excise tax on excess distributions and the 15-percent estate tax on excess retirement accumulations.

Effective date.—The provision repealing the excess distribution tax is effective with respect to excess distributions received after December 31, 1996. The repeal of the excess accumulation tax is effective with respect to decedents dying after December 31, 1996.

Conference Agreement

The conference agreement follows the Senate amendment.

4. Tax on prohibited transactions (sec. 884 of the Senate amendment)

Present Law

Present law prohibits certain transactions (prohibited transactions) between a qualified plan and a disqualified person in order to prevent persons with a close relationship to the qualified plan from using that relationship to the detriment of plan participants and beneficiaries. A two-tier excise tax is imposed on prohibited transactions. The initial level tax is equal to 10- percent of the amount involved with respect to the transaction. If the transaction is not corrected within a certain period, a tax equal to 100 percent of the amount involved may be imposed.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the initial-level prohibited transaction tax from 10 percent to 15 percent.

Effective date.—The provision is effective with respect to prohibited transactions occurring after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Basis recovery rules (sec. 885 of the Senate amendment)

Present Law

Under present law, amounts received as an annuity under a tax-qualified pension plan generally are includible in income in the year received, except to the extent the amount received represents return of the recipient's investment in the contract (i.e., basis). The portion of each annuity payment that represents a return of basis generally is determined by a simplified method. Under this method, the portion of each annuity payment that is a return to basis is equal to the employee's total basis as of the annuity starting date, divided by the number of anticipated payments under a specified table. The number of anticipated payments listed in the table is based on the age of the primary annuitant on the annuity starting date.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the present-law table applies to benefits based on the life of one annuitant. A separate table applies to benefits based on the life of more than one annuitant.

Effective date.—The provision is effective with respect to annuity starting dates after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment. As under the Senate amendment, a separate table applies to benefits based on the life of more than one annuitant, as follows:

Combined age of annuitants	*Number of payments*
Not more than 110	410
More than 110 but not more than 120	360
More than 120 but not more than 130	310
More than 130 but not more than 140	260
More than 140	210

The conference agreement clarifies that the new table applies to benefits based on the life of more than one annuitant, even if the amount of the annuity varies by annuitant. Thus, for example, the new table applies to a 50-percent joint and survivor annuity. The new table does not apply to an annuity paid on a single life merely because it has additional features, e.g., a term certain.

Effective date.—Same as the Senate amendment.

I. Other Revenue-Increase Provisions

1. Phase out suspense accounts for certain large farm corporations (sec. 1061 of the House bill and sec. 871 of the Senate amendment)

Present Law

A corporation (or a partnership with a corporate partner) engaged in the trade or business of farming must use an accrual method of accounting for such activities unless such corporation (or partnership), for each prior taxable year beginning after December 31, 1975, did not have gross receipts exceeding $1 million. If a farm corporation is required to change its method of accounting, the section 481 adjustment resulting from such change is included in gross income ratably over a 10-year period, beginning with the year of change. This rule does not apply to a family farm corporation.

A provision of the Revenue Act of 1987 ("1987 Act") requires a family corporation (or a partnership with a family corporation as a partner) to use an accrual method of accounting for its farming business unless, for each prior taxable year beginning after December 31, 1985, such corporation (and any

predecessor corporation) did not have gross receipts exceeding $25 million. A family corporation is one where at least 50 percent of the stock of the corporation is held by one, or in some limited cases, two or three, families.

A family farm corporation that must change to an accrual method of accounting as a result of the 1987 Act provision is required to establish a suspense account in lieu of including the entire amount of the section 481 adjustment in gross income. The initial balance of the suspense account equals the lesser of (1) the section 481 adjustment otherwise required for the year of change, or (2) the section 481 adjustment computed as if the change in method of accounting had occurred as of the beginning of the taxable year preceding the year of change.

The amount of the suspense account is required to be included in gross income if the corporation ceases to be a family corporation. In addition, if the gross receipts of the corporation attributable to farming for any taxable year decline to an amount below the lesser of (1) the gross receipts attributable to farming for the last taxable year for which an accrual method of accounting was not required, or (2) the gross receipts attributable to farming for the most recent taxable year for which a portion of the suspense account was required to be included in income, a portion of the suspense account is required to be included in gross income.

House Bill

The House bill repeals the ability of a family farm corporation to establish a suspense account when it is required to change to an accrual method of accounting. Thus, under the provision, any family farm corporation required to change to an accrual method of accounting would restore the section 481 adjustment applicable to the change in gross income ratably over a 10-year period beginning with the year of change.

In addition, any taxpayer with an existing suspense account is required to restore the account into income ratably over a 20-year period beginning in the first taxable year beginning after June 8, 1997, subject to the present-law requirements to restore such accounts more rapidly. The amount required to be restored to income for a taxable year pursuant to the 20-year spread period shall not exceed the net operating loss of the corporation for the year (in the case of a corporation with a net operating loss) or 50 percent of the net income of the taxpayer for the year (for corporations with taxable income). For this purpose, a net operating loss or taxable income is determined without regard to the amount restored to income under the provision. Any reduction in the amount required to be restored to income is taken into account ratably over the remaining years in the 20-year period or, if applicable, after the end of the 20-year period. Amounts that extend beyond the 20-year period remain subject to the net operating loss and 50-percent-of-taxable income rules. The net operating loss and 50-percent-of-taxable income rules do not apply to restorations of suspense accounts pursuant to present law.

Effective date.—The provision is effective for taxable years ending after June 8, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

In addition, the Senate amendment repeals the present-law requirement to accelerate the recovery of suspense accounts when the gross receipts of the taxpayer decreases.

Conference Agreement

The conference agreement follows the Senate amendment. In addition, the conferees wish to clarify that in the case of a family farm corporation that elects to be an S corporation for a taxable year, the net operating loss and 50 percent of taxable income limitations shall be determined by taking into account all the items of income, gain, deduction and loss of the corporation, whether or not such items are separately stated under section 1366.

2. Modify net operating loss carryback and carryforward rules (sec. 1062 of the House bill, and sec. 872 of the Senate amendment)

Present Law

The net operating loss ("NOL") of a taxpayer (generally, the amount by which the business deductions of a taxpayer exceeds its gross income) may be carried back three years and carried forward 15 years to offset taxable income in such years. A taxpayer may elect to forgo the carryback of an NOL. Special rules apply to real estate investment trusts ("REITs") (no carrybacks), specified liability losses (10-year carryback), and excess interest losses (no carrybacks).

House Bill

The House bill limits the NOL carryback period to two years and extends the NOL carryforward period to 20 years. The House bill does not apply to the carryback rules relating to REITs, specified liability losses, excess interest losses, and corporate capital losses. In addition, the House bill does not apply to NOLs arising from casualty losses of individual taxpayers.

Effective date.—The provision is effective for NOLs arising in taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment follows the House bill. In addition, the Senate amendment preserves the 3-year carryback for NOLs of farmers and small businesses attributable to losses incurred in Presidentially declared disaster areas.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Expand the limitations on deductibility of premiums and interest with respect to life insurance, endowment and annuity contracts (sec. 1063 of the House bill and sec. 873 of the Senate amendment)

Present Law

Exclusion of inside buildup and amounts received by reason of death

No Federal income tax generally is imposed on a policyholder with respect to the earnings under a life insurance contract ("inside buildup").[39] Further, an exclusion from Federal income tax is provided for amounts received under a life insurance contract paid by reason of the death of the insured (sec. 101(a)).

Premium deduction limitation

No deduction is permitted for premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy (sec. 264(a)(1)).

Interest deduction disallowance with respect to life insurance

Present law provides generally that no deduction is allowed for interest paid or accrued on any indebtedness with respect to one or more life insurance contracts or annuity or endowment contracts owned by the taxpayer covering any individual who is or was (1) an officer or employee of, or (2) financially interested in, any trade or business currently or formerly carried on by the taxpayer (the "COLI" rules).

This interest deduction disallowance rule generally does not apply to interest on debt with respect to contracts purchased on or before June 20, 1986; rather, an interest deduction limit based on Moody's Corporate Bond Yield Average—Monthly Average Corporates applies in the case of such contracts.[40]

An exception to this interest disallowance rule is provided for interest on indebtedness with respect to life insurance policies covering up to 20 key persons. A key person is an individual who is either an officer or a 20-percent owner of the taxpayer. The number of individuals that can be treated as key persons may not exceed the greater of (1) 5 individuals, or (2) the lesser of 5 percent of the total number of officers and employees of the taxpayer, or 20 individuals. For determining who is a 20-percent owner, all members of a controlled group are treated as one taxpayer. Interest paid or accrued on debt with respect to a contract covering a key person is deductible only to the extent the rate of interest does not exceed Moody's Corporate Bond Yield Average—Monthly Average Corporates for each month beginning after December 31, 1995, that interest is paid or accrued.

The foregoing interest deduction limitation was added in 1996 to existing interest deduction limitations with respect to life insurance and similar contracts.[41]

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[39] This favorable tax treatment is available only if the policyholder has an insurable interest in the insured when the contract is issued and if the life insurance contract meets certain requirements designed to limit the investment character of the contract (sec. 7702). Distributions from a life insurance contract (other than a modified endowment contract) that are made prior to the death of the insured generally are includible in income, to the extent that the amounts distributed exceed the taxpayer's basis in the contract; such distributions generally are treated first as a tax-free recovery of basis, and then as income (sec. 72(e)). In the case of a modified endowment contract, however, in general, distributions are treated as income first, loans are treated as distributions (i.e., income rather than basis recovery first), and an additional 10 percent tax is imposed on the income portion of distributions made before age 59-½ and in certain other circumstances (secs. 72(e) and (v)). A modified endowment contract is a life insurance contract that does not meet a statutory "7-pay" test, i.e., generally is funded more rapidly than 7 annual level premiums (sec. 7702A). Certain amounts received under a life insurance contract on the life of a terminally or chronically ill individual, and certain amounts paid by a viatical settlement provider for the sale or assignment of a life insurance contract on the life of a terminally ill or chronically ill individual, are treated as excludable as if paid of the death of the insured (sec. 101(g)).

[40] Phase-in rules apply generally with respect to otherwise deductible interest paid or accrued after December 31, 1995, and before January 1, 1999, in the case of debt incurred before January 1, 1996. In addition, transition rules apply.

[41] Since 1942, a limitation has applied to the deductibility of interest with respect to single premium contracts (sec. 264(a)(2)). For this purpose, a contract is treated as a single premium contract if (1) substantially all the premiums on the contract are paid within a period of 4 years from the date on which the contract is purchased, or (2) an amount is deposited with the insurer for payment of a substantial number of future premiums on the contract. Further, under a limitation added in 1964, no deduction is allowed for any amount paid or accrued on debt incurred or continued to purchase or carry a life insurance, endowment, or annuity contract pursuant to a plan of purchase that contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of the contract (sec. 264(a)(3)). An exception to the latter rule is provided, permitting deductibility of interest on bona

Interest deduction limitation with respect to tax-exempt interest income

Present law provides that no deduction is allowed for interest on debt incurred or continued to purchase or carry obligations the interest on which is wholly exempt from Federal income tax (sec. 265(a)(2)). In addition, in the case a financial institution, a proration rule provides that no deduction is allowed for that portion of the taxpayer's interest that is allocable to tax-exempt interest (sec. 265(b)). The portion of the interest deduction that is disallowed under this rule generally is the portion determined by the ratio of the taxpayer's (1) average adjusted bases of tax-exempt obligations acquired after August 7, 1986, to (2) the average adjusted bases for all of the taxpayer's assets (sec. 265(b)(2)).[42]

House Bill

Expansion of premium deduction limitation to individuals in whom taxpayer has an insurable interest

Under the House bill, the present-law premium deduction limitation is modified to provide that no deduction is permitted for premiums paid on any life insurance, annuity or endowment contract, if the taxpayer is directly or indirectly a beneficiary under the contract.

Expansion of interest disallowance to individuals in whom taxpayer has insurable interest

Under the House bill, no deduction is allowed for interest paid or accrued on any indebtedness with respect to life insurance policy, or endowment or annuity contract, covering the life of any individual. Thus, the provision limits interest deductibility in the case of such a contract covering any individual in whom the taxpayer has an insurable interest when the contract is first issued under applicable State law, except as otherwise provided under present law with respect to key persons and pre-1986 contracts.

Pro rata disallowance of interest on debt to fund life insurance

In the case of a taxpayer other than a natural person, no deduction is allowed for the portion of the taxpayer's interest expense that is allocable to unborrowed policy cash surrender values with respect to any life insurance policy or annuity or endowment contract issued after June 8, 1997. Interest expense is so allocable based on the ratio of (1) the taxpayer's average unborrowed policy cash values of life insurance policies, and annuity and endowment contracts, issued after June 8, 1997, to (2) the average adjusted bases for all assets of the taxpayer. This rule does not apply to any policy or contract owned by an entity engaged in a trade or business, covering any individual who is an employee, officer or director of the trade or business at the time first covered by the policy or contract. Such a policy or contract is not taken into account in determining unborrowed policy cash values.

The unborrowed policy cash values means the cash surrender value of the policy or contract determined without regard to any surrender charge, reduced by the amount of any loan with respect to the policy or contract. The cash surrender value is to be determined without regard to any other contractual or noncontractual arrangement that artificially depresses the cash value of a contract.

If a trade or business (other than a sole proprietorship or a trade or business of performing services as an employee) is directly or indirectly the beneficiary under any policy or contract, then the policy or contract is treated as held by the trade or business. For this purpose, the amount of the unborrowed cash value is treated as not exceeding the amount of the benefit payable to the trade or business. In the case of a partnership or S corporation, the provision applies at the partnership or corporate level. The amount of the benefit is intended to take into account the amount payable to the business under the contract (e.g., as a death benefit) or pursuant to another agreement (e.g., under a split dollar agreement). The amount of the benefit is intended also to include any amount by which liabilities of the business would be reduced by payments under the policy or contract (e.g., when payments under the policy reduce the principal or interest on a liability owed to or by the business).

As provided in regulations, the issuer or policyholder of the life insurance policy or endowment or annuity contract is required to report the amount of the amount of the unborrowed cash value in order to carry out this rule.

If interest expense is disallowed under other provisions of section 264 (limiting interest deductions with respect to life insurance policies or endowment or annuity contracts) or under section 265 (relating to tax-exempt interest), then the disallowed interest expense is not taken into account under this provision, and the average adjusted bases of assets is reduced by the amount of debt, interest on which is so disallowed. The provision is applied before present-law rules relating to capitalization of certain expenses where the taxpayer produces property (sec. 263A).

An aggregation rule is provided, treating related persons as one for purposes of the provision.

The provision does not apply to any insurance company subject to tax under subchapter L of the Code. Rather, the rules reducing certain deductions for losses incurred, in the case of property and casualty companies, and reducing reserve deductions or dividends received deductions of life insurance companies, are modified to take into account the increase in cash values of life insurance policies or annuity or endowment contracts held by insurance companies.

Effective date

The provisions apply with respect to contracts issued after June 8, 1997. For this purpose, a material increase in the death benefit or other material change in the contract causes the contract to be treated as a new contract. To the extent of additional covered lives under a contract after June 8, 1997, the contract is treated as a new contract. In the case of an increase in the death benefit of a contract that is converted to extended term insurance pursuant to nonforfeiture provisions, in a transaction to which section 501(d)(2) of the Health Insurance Portability and Accountability Act of 1996 applies, the contract is not treated as a new contract.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with modifications.

Expansion of premium deduction limitation to individuals in whom taxpayer has an insurable interest

The conference agreement provides that the premium deduction limitation does not apply to premiums with respect to any annuity contract described in section 72(s)(5) (relating to certain qualified pension plans, certain retirement annuities, individual retirement annuities, and qualified funding assets), nor to premiums with respect to any annuity to which section 72(u) applies (relating to current taxation of income on the contract in the case of an annuity contract held by a person who is not a natural person).

Expansion of interest disallowance to individuals in whom taxpayer has insurable interest

The conference agreement specifies the treatment of certain interest to which the provision of the bill providing for expansion of interest disallowance to individuals in whom taxpayer has insurable interest otherwise would apply. The conference agreement provides that in the case of a transfer for valuable consideration of a life insurance contract or any interest therein described in section 101(a)(2), the amount of the death benefit excluded from gross income under section 101(a) may not exceed an amount equal to the sum of the actual value of the consideration, premiums, interest disallowed as a deduction under new section 264(a)(4), and other amounts subsequently paid by the transferee. Thus, under the provision, in the case of the transfer for value of a life insurance contract, the interest with respect to the contract that otherwise would be disallowed under new section 264(a)(4) is capitalized, reducing the amount included in income by the transferee upon receipt by the transferee of the amounts paid by reason of the death of the insured.

Pro rata disallowance of interest on debt to fund life insurance

Under the pro rata interest disallowance provision of the bill, the conference agreement provides that interest expense is allocable to unborrowed policy cash values based on the ratio of (1) the taxpayer's average unborrowed policy cash values of life insurance policies, and annuity and endowment contracts, issued after June 8, 1997, to (2) the sum of (a) in the case of assets that are life insurance policies or annuity or endowment contracts, the average unborrowed policy cash values, and (b) in the case of other assets, the average adjusted bases for all such other assets of the taxpayer.

Under the pro rata interest disallowance rule, the conference agreement expands the exception for any policy or contract owned by an entity engaged in a trade or business, covering an individual who is an employee, officer or director of the trade or business at the time first covered. Under the conference agreement, the exception applies to any policy or contract owned by an entity engaged in a trade or business, which covers one individual who (at the time first insured under the policy or contract) is (1) a 20-percent owner of the entity, or (2) an individual (who is not a 20-percent owner) who is an officer, director or employee of the trade or business. The exception also applies in the case of a joint-life policy or contract under which the sole insureds are a 20-percent owner and the spouse of the 20-percent owner. A joint-life contract under which the sole insureds are a 20-percent owner and his or her spouse is the only type of policy or contract with more than one insured that comes within the exception. Thus, for example, if the insureds

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fide debt that is part of such a plan, if no part of 4 of the annual premiums due during the first 7 years is paid by means of debt (the "4-out-of-7 rule") (sec. 264(c)(1)). In addition to the specific disallowance rules of section 264, generally applicable principles of tax law apply.

[42] Special rules apply for certain tax-exempt obligations of small issuers (sec. 265(b)(3)).

under a contract include an individual described in the exception (e.g., an employee, officer, director, or 20-percent owner) and any individual who is not described in the exception (e.g., a debtor of the entity), then the exception does not apply to the policy or contract. For purposes of this exception, a 20-percent owner has the same meaning as under present-law section 264(d)(4). In addition, the conference agreement provides that the pro rata interest disallowance rule does not apply to any annuity contract to which section 72(u) applies (relating to current taxation of income on the contract in the case of an annuity contract held by a person who is not a natural person). The conference agreement provides that any policy or contract that is not subject to the pro rata interest disallowance rule by reason of this exception (for 20-percent owners, their spouses, employees, officers and directors, and in the case of an annuity contract to which section 72(u) applies) is not taken into account in the applying the ratio to determine the portion of the taxpayer's interest expense that is allocable to unborrowed policy cash values.

The conferees wish to clarify that the aggregation rule (treating related persons as one for purposes of the provision) is intended to prevent taxpayers from avoiding the pro rata interest limitation by owning life insurance, endowment or annuity contracts, while incurring interest expense through a related person.

Treatment of insurance companies

The conference agreement modifies the rules of the provision relating to the reduction of certain deductions of insurance companies. For purposes of those rules, an increase in the policy cash value for any policy or contract is (1) the amount of the increase in the adjusted cash value, reduced by (2) the gross premiums received with respect to the policy or contract during the taxable year, and increased by (3) distributions under the policy or contract to which section 72(e) apply (other than amounts includable in the policyholder's gross income). For this purpose, the adjusted cash value means the cash surrender value of the policy or contract, increased by (1) commissions payable with respect to the policy or contract for the taxable year, and (2) asset management fees, surrender and mortality charges, and any other fees or charges, specified in regulations, which are imposed (or would be imposed if the policy or contract were surrendered or canceled) with respect to the policy or contract for the taxable year.

Effective date

The conferees wish to clarify the rule under the effective date providing that the addition of covered lives is treated as a new contract only with respect to such additional covered lives. It is intended that this rule apply with respect to a master or group policy or contract, not with respect to a joint-life policy or contract (i.e., a policy or contract that insures more than one individual).

4. Allocation of basis of properties distributed to a partner by a partnership (sec. 1064 of the House bill and sec. 874 of the Senate amendment)

Present Law

In general

The partnership provisions of present law generally permit partners to receive distributions of partnership property without recognition of gain or loss (sec. 731).[43] Rules are provided for determining the basis of the distributed property in the hands of the distributee, and for allocating basis among multiple properties distributed, as well as for determining adjustments to the distributee partner's basis in its partnership interest. Property distributions are tax-free to a partnership. Adjustments to the basis of the partnership's remaining undistributed assets are not required unless the partnership has made an election that requires basis adjustments both upon partnership distributions and upon transfers of partnership interests (sec. 754).

Partner's basis in distributed properties and partnership interest

Present law provides two different rules for determining a partner's basis in distributed property, depending on whether or not the distribution is in liquidation of the partner's interest in the partnership. Generally, a substituted basis rule applies to property distributed to a partner in liquidation. Thus, the basis of property distributed in liquidation of a partner's interest is equal to the partner's adjusted basis in its partnership interest (reduced by any money distributed in the same transaction) (sec. 732(b)).

By contrast, generally, a carryover basis rule applies to property distributed to a partner other than in liquidation of its partnership interest, subject to a cap (sec. 732(a)). Thus, in a non-liquidating distribution, the distributee partner's basis in the property is equal to the partnership's adjusted basis in the property immediately before the distribution, but not to exceed the partner's adjusted basis in its partnership interest (reduced by any money distributed in the same transaction). In a non-liquidating distribution, the partner's basis in its partnership interest is reduced by the amount of the basis to the distributee partner of the property distributed and is reduced by the amount of any money distributed (sec. 733).

Allocating basis among distributed properties

In the event that multiple properties are distributed by a partnership, present law provides allocation rules for determining their bases in the distributee partner's hands. An allocation rule is needed when the substituted basis rule for liquidating distributions applies, in order to assign a portion of the partner's basis in its partnership interest to each distributed asset. An allocation rule is also needed in a non-liquidating distribution of multiple assets when the total carryover basis would exceed the partner's basis in its partnership interest, so a portion of the partner's basis in its partnership interest is assigned to each distributed asset.

Present law provides for allocation in proportion to the partnership's adjusted basis. The rule allocates basis first to unrealized receivables and inventory items in an amount equal to the partnership's adjusted basis (or if the allocated basis is less than partnership basis, then in proportion to the partnership's basis), and then among other properties in proportion to their adjusted bases to the partnership (sec. 732(c)).[44] Under this allocation rule, in the case of a liquidating distribution, the distributee partner can have a basis in the distributed property that exceeds the partnership's basis in the property.

House Bill

The House bill modifies the basis allocation rules for distributee partners. It allocates a distributee partner's basis adjustment among distributed assets first to unrealized receivables and inventory items in an amount equal to the partnership's basis in each such property (as under present law).

Under the provision, basis is allocated first to the extent of each distributed property's adjusted basis to the partnership. Any remaining basis adjustment, if an increase, is allocated among properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation (to the extent of each property's appreciation), and then in proportion to their respective fair market values. For example, assume that a partnership with two assets, A and B, distributes them both in liquidation to a partner whose basis in its interest is 55. Neither asset consists of inventory or unrealized receivables. Asset A has a basis to the partnership of 5 and a fair market value of 40, and asset B has a basis to the partnership of 10 and a fair market value of 10. Under the provision, basis is first allocated to asset A in the amount of 5 and to asset B in the amount of 10 (their adjusted bases to the partnership). The remaining basis adjustment is an increase totaling 40 (the partner's 55 basis minus the partnership's total basis in distributed assets of 15). Basis is then allocated to asset A in the amount of 35, its unrealized appreciation, with no allocation to asset B attributable to unrealized appreciation because its fair market value equals the partnership's adjusted basis. The remaining basis adjustment of 5 is allocated in the ratio of the assets' fair market values, i.e., 4 to asset A (for a total basis of 44) and 1 to asset B (for a total basis of 11).

If the remaining basis adjustment is a decrease, it is allocated among properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation (to the extent of each property's depreciation), and then in proportion to their respective adjusted bases (taking into account the adjustments already made). A remaining basis adjustment that is a decrease arises under the provision when the partnership's total adjusted basis in the distributed properties exceeds the amount of the partner's basis in its partnership interest, and the latter amount is the basis to be allocated among the distributed properties. For example, assume that a partnership with two assets, C and D, distributes them both in liquidation to a partner whose basis in its partnership interest is 20. Neither asset consists of inventory or unrealized receivables. Asset

[43] Exceptions to this nonrecognition rule apply: (1) when money (and the fair market value of marketable securities) received exceeds a partner's adjusted basis in the partnership (sec. 731(a)(1)); (2) when only money, inventory and unrealized receivables are received in liquidation of a partner's interest and loss is realized (sec. 731(a)(2)); (3) to certain disproportionate distributions involving inventory and unrealized receivables (sec. 751(b)); and (4) to certain distributions relating to contributed property (secs. 704(c) and 737). In addition, if a partner engages in a transaction with a partnership other than in its capacity as a member of the partnership, the transaction generally is considered as occurring between the partnership and one who is not a partner (sec. 707).

[44] A special rule allows a partner that acquired a partnership interest by transfer within two years of a distribution to elect to allocate the basis of property received in the distribution as if the partnership had a section 754 election in effect (sec. 732(d)). The special rule also allows the Service to require such an allocation where the value at the time of transfer of the property received exceeds 110 percent of its adjusted basis to the partnership (sec. 732(d)). Treas. Reg. sec. 1.732-1(d)(4) generally requires the application of section 732(d) where the allocation of basis under section 732(c) upon a liquidation of the partner's interest would have resulted in a shift of basis from non-depreciable property to depreciable property.

C has a basis to the partnership of 15 and a fair market value of 15, and asset D has a basis to the partnership of 15 and a fair market value of 5. Under the provision, basis is first allocated to the extent of the partnership's basis in each distributed property, or 15 to each distributed property, for a total of 30. Because the partner's basis in its interest is only 20, a downward adjustment of 10 (30 minus 20) is required. The entire amount of the 10 downward adjustment is allocated to the property D, reducing its basis to 5. Thus, the basis of property C is 15 in the hands of the distributee partner, and the basis of property D is 5 in the hands of the distributee partner.

Effective date.—The provision applies to partnership distributions after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. Treatment of inventory items of a partnership (sec. 1065 of the House bill and sec. 875 of the Senate amendment)

Present Law

Under present law, upon the sale or exchange of a partnership interest, any amount received that is attributable to unrealized receivables, or to inventory that has substantially appreciated, is treated as an amount realized from the sale or exchange of property that is not a capital asset (sec. 751(a)).

Present law provides a similar rule to the extent that a distribution is treated as a sale or exchange of a partnership interest. A distribution by a partnership in which a partner receives substantially appreciated inventory or unrealized receivables in exchange for its interest in certain other partnership property (or receives certain other property in exchange for its interest in substantially appreciated inventory or unrealized receivables) is treated as a taxable sale or exchange of property, rather than as a nontaxable distribution (sec. 751(b)).

For purposes of these rules, inventory of a partnership generally is treated as substantially appreciated if the fair market value of the inventory exceeds 120 percent of adjusted basis of the inventory to the partnership (sec. 751(d)(1)(A)). In applying this rule, inventory property is excluded from the calculation if a principal purpose for acquiring the inventory property was to avoid the rules relating to inventory (sec. 751(d)(1)(B)).

House Bill

The House bill eliminates the requirement that inventory be substantially appreciated in order to give rise to ordinary income under the rules relating to sales and exchanges of partnership interests and certain partnership distributions. This conforms the treatment of inventory to the treatment of unrealized receivables under these rules.

Effective date.—The provision is effective for sales, exchanges, and distributions after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with modifications. The conference agreement repeals the requirement that inventory be substantially appreciated only with respect to sales or exchanges of partnership interests under section 751 (a) of the Code, but not with respect to distributions under section 751(b) of the Code. Thus, present law is retained with respect to distributions governed by section 751(b).

Effective date.—The conference agreement follows the House bill and the Senate amendment, with a modification. The conference agreement provides that the provision is effective for sales, exchanges, and distributions after the date of enactment, except that the provision does not apply to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange.

6. Treatment of appreciated property contributed to a partnership (sec. 1066 of the House bill)

Present Law

Under present law, if a partner contributes appreciated property to a partnership, no gain is recognized to the contributing partner at the time of the contribution. The contributing partner's basis in its partnership interest is increased by the basis of the contributed property at the time of the contribution. The pre-contribution gain is reflected in the difference between the partner's capital account and its basis in its partnership interest ("book/tax differential"). Income, gain, loss, and deduction with respect to the contributed property must be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution (sec. 704(c)(1)(A)).

If the property is subsequently distributed to another partner within 5 years of the contribution, the contributing partner generally recognizes gain as if the property had been sold for its fair market value at the time of the distribution (sec. 704(c)(1)(B)). Similarly, the contributing partner generally includes pre-contribution gain in income to the extent that the value of other property distributed by the partnership to that partner exceeds its adjusted basis in its partnership interest, if the distribution by the partnership is made within 5 years after the contribution of the appreciated property (sec. 737).

House Bill

The House bill extends to 10 years the period in which a partner recognizes pre-contribution gain with respect to property contributed to a partnership. Thus, under the provision, a partner that contributes appreciated property to a partnership generally recognizes pre-contribution gain in the event that the partnership distributes the contributed property to another partner, or distributes to the contributing partner other property whose value exceeds that partner's basis in its partnership interest, if the distribution occurs within 10 years after the contribution to the partnership.

Effective date.—Effective for property contributed to a partnership after June 8, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification. The conference agreement extends to 7 years the period in which a partner recognizes pre-contribution gain with respect to property contributed to a partnership. Thus, under the conference agreement, a partner that contributes appreciated property to a partnership generally recognizes pre-contribution gain in the event that the partnership distributes the contributed property to another partner, or distributes to the contributing partner other property whose value exceeds that partner's basis in its partnership interest, if the distribution occurs within 7 years after the contribution to the partnership.

Effective date.—The effective date is the same as the House bill, with a modification. The conference agreement is effective for property contributed to a partnership after June 8, 1997, except that the provision does not apply to any property contributed to a partnership pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution, if the contract provides for the contribution of a fixed amount of property.

7. Earned income credit compliance provisions (sec. 1067 of the House bill and sec. 5851 of the Senate amendment to H.R. 2015 ("the Balanced Budget Act of 1997"))

Overview

Certain eligible low-income workers are entitled to claim a refundable earned income credit on their income tax return. A refundable credit is a credit that not only reduces an individual's tax liability but allows refunds to the individual in excess of income tax liability. The amount of the credit an eligible individual may claim depends upon whether the individual has one, more than one, or no qualifying children, and is determined by multiplying the credit rate by the individual's[45] earned income up to an earned income amount. The maximum amount of the credit is the product of the credit rate and the earned income amount. The credit is reduced by the amount of the alternative minimum tax ("AMT") the taxpayer owes for the year. The credit is phased out above certain income levels.

For individuals with earned income (or AGI, if greater) in excess of the beginning of the phaseout range, the maximum credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For individuals with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed. The definition of AGI used for phasing out the earned income credit disregards certain losses. The losses disregarded are: (1) net capital losses (if greater than zero); (2) net losses from trusts and estates; (3) net losses from nonbusiness rents and royalties; and (4) 50 percent of the net losses from business, computed separately with respect to sole proprietorships (other than in farming), sole proprietorships in farming, and other businesses. Also, an individual is not eligible for the earned income credit if the aggregate amount of "disqualified income" of the taxpayer for the taxable year exceeds $2,250. Disqualified income is the sum of: (1) interest (taxable and tax-exempt); (2) dividends; (3) net rent and royalty income (if greater than zero); (4) capital gain net income; and (5) net passive income (if greater than zero) that is not self-employment income. The earned income amount, the phaseout amount and the disqualified income amount are indexed for inflation.

The parameters for the credit depend upon the number of qualifying children the individual claims. For 1997, the parameters are given in the following table:

[45] In the case of a married individual who files a joint return with his or her spouse, the income for purposes of these tests is the combined income of the couple.

PRESENT-LAW EARNED INCOME CREDIT PARAMETERS

	Two or more qualifying children	One qualifying child	No qualifying children
Credit rate (percent)	40.00	34.00	7.65
Earned income amount	$9,140	$6,500	$4,340
Maximum credit	$3,656	$2,210	$332
Phaseout begins	$11,930	$11,930	$5,430
Phaseout rate (percent)	21.06	15.98	7.65
Phaseout ends	$29,290	$25,760	$9,770

In order to claim the credit, an individual must either have a qualifying child or meet other requirements. A qualifying child must meet a relationship test, an age test, an identification test, and a residence test. In order to claim the credit without a qualifying child, an individual must not be a dependent and must be over age 24 and under age 65.

a. Deny EIC eligibility for prior acts of recklessness or fraud (sec. 1067 of the House bill and sec. 5851 of the Senate amendment to H.R. 2015)

Present Law

The accuracy-related penalty, which is imposed at a rate of 20 percent, applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation overstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement (sec. 6662). Negligence includes any careless, reckless, or intentional disregard of rules or regulations, as well as any failure to make a reasonable attempt to comply with the provisions of the Code.

The fraud penalty, which is imposed at a rate of 75 percent, applies to the portion of any underpayment that is attributable to fraud (sec. 6663).

Neither the accuracy-related penalty nor the fraud penalty is imposed with respect to any portion of an underpayment if it is shown that there was a reasonable cause for that portion and that the taxpayer acted in good faith with respect to that portion.

House Bill

Under the House bill, a taxpayer who fraudulently claims the earned income credit (EIC) is ineligible to claim the EIC for a subsequent period of 10 years. In addition, a taxpayer who erroneously claims the EIC due to reckless or intentional disregard of rules or regulations is ineligible to claim the EIC for a subsequent period of two years. These sanctions are in addition to any other penalty imposed under present law. The determination of fraud or of reckless or intentional disregard of rules or regulations are made in a deficiency proceeding (which provides for judicial review).

Effective date.—The provision is effective for taxable years beginning after December 31, 1996.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

b. Recertification required when taxpayer found to be ineligible for EIC in past (sec. 1067 of the House bill and sec. 5851 of the Senate amendment to H.R. 2015)

Present law

If an individual fails to provide a correct TIN and claims the EIC, such omission is treated as a mathematical or clerical error. Also, if an individual who claims the EIC with respect to net earnings from self employment fails to pay the proper amount of self-employment tax on such net earnings, the failure is treated as a mathematical or clerical error for purposes of the amount of EIC claimed. Generally, taxpayers have 60 days in which they can either provide a correct TIN or request that the IRS follow the current-law deficiency procedures. If a taxpayer fails to respond within this period, he or she must file an amended return with a correct TIN or clarify that any self-employment tax has been paid in order to obtain the EIC originally claimed.

The IRS must follow deficiency procedures when investigating other types of questionable EIC claims. Under these procedures, contact letters are first sent to the taxpayer. If the necessary information is not provided by the taxpayer, a statutory notice of deficiency is sent by certified mail, notifying the taxpayer that the adjustment will be assessed unless the taxpayer files a petition in Tax Court within 90 days. If a petition is not filed within that time and there is no other response to the statutory notice, the assessment is made and the EIC is denied.

House Bill

Under the House bill, a taxpayer who has been denied the EIC as a result of deficiency procedures is ineligible to claim the EIC in subsequent years unless evidence of eligibility for the credit is provided by the taxpayer. To demonstrate current eligibility, the taxpayer is required to meet evidentiary requirements established by the Secretary of the Treasury. Failure to provide this information when claiming the EIC is treated as a mathematical or clerical error. If a taxpayer is recertified as eligible for the credit, the taxpayer is not required to provide this information in the future unless the IRS again denies the EIC as a result of a deficiency procedure. Ineligibility for the EIC under the provision is subject to review by the courts.

Effective date.—The provision is effective for taxable years beginning after December 31, 1996.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

c. Due diligence requirements for paid preparers (sec. 1067 of the House bill and sec. 5851 of the Senate amendment to H.R. 2015)

Present Law

Several penalties apply in the case of an understatement of tax that is caused by an income tax return preparer. First, if any part of an understatement of tax on a return or claim for refund is attributable to a position for which there was not a realistic possibility of being sustained on its merits and if any person who is an income tax return preparer with respect to such return or claim for refund knew (or reasonably should have known) of such position and such position was not disclosed or was frivolous, then that return preparer is subject to a penalty of $250 with respect to that return or claim (sec. 6694(a)). The penalty is not imposed if there is reasonable cause for the understatement and the return preparer acted in good faith.

In addition, if any part of an understatement of tax on a return or claim for refund is attributable to a willful attempt by an income tax return preparer to understate the tax liability of another person or to any reckless or intentional disregard of rules or regulations by an income tax return preparer, then the income tax return preparer is subject to a penalty of $1,000 with respect to that return or claim (sec. 6694(b)).

Also, a penalty for aiding and abetting the understatement of tax liability is imposed in cases where any person aids, assists in, procures, or advises with respect to the preparation or presentation of any portion of a return or other document if (1) the person knows or has reason to believe that the return or other document will be used in connection with any material matter arising under the tax laws, and (2) the person knows that if the portion of the return or other document were so used, an understatement of the tax liability of another person would result (sec. 6701).

Additional penalties are imposed on return preparers with respect to each failure to (1) furnish a copy of a return or claim for refund to the taxpayer, (2) sign the return or claim for refund, (3) furnish his or her identifying number, (4) retain a copy or list of the returns prepared, and (5) file a correct information return (sec. 6695). The penalty is $50 for each failure and the total penalties imposed for any single type of failure for any calendar year are limited to $25,000.

House Bill

Under the House bill, return preparers are required to fulfill certain due diligence requirements with respect to returns they prepare claiming the EIC. The penalty for failure to meet these requirements is $100. This penalty is in addition to any other penalty imposed under present law.

Effective date.—The provision is effective for taxable years beginning after December 31, 1996.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Modify the definition of AGI used to phaseout the EIC

Present Law

The EIC is phased out above certain income levels. For individuals with earned income (or AGI, if greater) in excess of the beginning of the phaseout range, the maximum credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For individuals with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed. The definition of AGI used for the phase out of the earned income credit disregards certain losses. The losses disregarded are: (1) net capital losses (if greater than zero); (2) net losses from trusts and estates; (3) net losses from nonbusiness rents and royalties; and (4) 50 percent of the net losses from business, computed separately with respect to sole proprietorships (other than in farming), sole proprietorships in farming, and other businesses.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement modifies the definition of AGI used for phasing out the credit by adding two items of nontaxable income and changing the percentage of certain

losses disregarded. The two items added are: (1) tax-exempt interest, and (2) nontaxable distributions from pensions, annuities, and individual retirement arrangements (but only if not rolled over into similar vehicles during the applicable rollover period). The conference agreement also increases the amount of net losses from businesses, computed separately with respect to sole proprietorships (other than farming), sole proprietorships in farming, and other businesses disregarded from 50 percent to 75 percent.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

8. Eligibility for income forecast method (sec. 1068 of the House bill and sec. 876 of the Senate amendment)

Present Law

A taxpayer generally recovers the cost of property used in a trade or business through depreciation or amortization deductions over time. Tangible property generally is depreciated under the modified Accelerated Cost Recovery System ("MACRS") of section 168, which applies specific recovery periods and depreciation methods to the cost of various types of depreciable property. MACRS does not apply to certain property, including any motion picture film, video tape, or sound recording or to other any property if the taxpayer elects to exclude such property from MACRS and the taxpayer applies a unit-of-production method or other method of depreciation not expressed in a term of years. The cost of such property may be depreciated under the "income forecast" method.

The income forecast method is considered to be a method of depreciation not expressed in a term of years. Under the income forecast method, the depreciation deduction for a taxable year for a property is determined by multiplying the cost of the property (less estimated salvage value) by a fraction, the numerator of which is the income generated by the property during the year and the denominator of which is the total forecasted or estimated income to be derived from the property during its useful life. The income forecast method is available to any property if (1) the taxpayer elects to exclude such property from MACRS and (2) for the first taxable year for which depreciation is allowable, the property is properly depreciated under such method. The income forecast method has been held to be applicable for computing depreciation deductions for motion picture films, television films and taped shows, books, patents, master sound recordings and video games. Most recently, the income forecast method has been held applicable to consumer durable property subject to short-term "rent-to-own" leases.

House Bill

The House bill clarifies the types of property to which the income forecast method may be applied. Under the House bill, the income forecast method is available to motion picture films, television films and taped shows, books, patents, master sound recordings, copyrights, and other such property as designated by the Secretary of the Treasury.

In addition, consumer durables subject to rent-to-own contracts are provided a three-year recovery period and a four-year class life for MACRS purposes (and are not eligible for the income forecast method). Such property generally is described in Rev. Proc. 95-38, 1995-34 I.R.B. 25.

Effective date.—The provision is effective for property placed in service after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement generally follows the House bill and the Senate amendment, with modifications to depreciation applicable to qualified rent-to-own property. First, the conference agreement provides that the special 3-year recovery period may apply to any property generally used in the home for personal, but not business, use. The conferees understand that certain rent-to-own property, including computer and peripheral equipment, may be used in the home for either personal or business purposes, and the taxpayer may not be aware of how its customers may use the property. So as not to increase the administrative burdens of taxpayers, the conferees intend that if such dual-use property does not represent a significant portion of a taxpayer's leasing property and if such other leasing property predominantly is qualified rent-to-own property, then such dual-use property generally also would be qualified rent-to-own property. However, if such dual-use property represents a significant portion of the taxpayer's leasing property, the conferees intend that the burden of proof be placed on the taxpayer to show that such property is qualified rent-to-own property.

In addition, the conference agreement modifies the definition of "rent-to-own contract" to include leases that provide for decreasing regular periodic payments.

Finally, the conferees wish to clarify that the 3-year recovery period provided under the provision only applies to property subject to leases and no inference is intended as to whether any arrangement constitutes a lease for tax purposes.

9. Require taxpayers to include rental value of residence in income without regard to period of rental (sec. 1069 of the House bill)

Present Law

Gross income for purposes of the Internal Revenue Code generally includes all income from whatever source derived, including rents. The Code (sec. 280A(g)) provides a *de minimis* exception to this rule where a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year. In this case, the income from such rental is not included in gross income and no deductions arising from such rental use are allowed as a deduction.

House Bill

The House bill repeals the 15-day rules of section 280A(g). The House bill also provides that no reduction in basis is required if the taxpayer (1) rented the dwelling unit for less than 15 days during the taxable year and (2) did not claim depreciation on the dwelling unit for the period of rental.

Effective date.—The provision applies to taxable years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

10. Modify the exception to the related party rule of section 1033 for individuals to only provide an exception for de minimis amounts (sec. 1070 of the House bill and sec. 877 of the Senate amendment)

Present Law

Under section 1033, gain realized by a taxpayer from certain involuntary conversions of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within a specified replacement period of time. Pursuant to a provision of Public Law 104-7, subchapter C corporations (and certain partnerships with corporate partners) are not entitled to defer gain under section 1033 if the replacement property or stock is purchased from a related person. A person is treated as related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1). An exception to this related party rule provides that a taxpayer could purchase replacement property or stock from a related person and defer gain under section 1033 to the extent the related person acquired the replacement property or stock from an unrelated person within the replacement period.

House Bill

The House bill expands the present-law denial of the application of section 1033 to any other taxpayer (including an individual) that acquires replacement property from a related party (as defined by secs. 267(b) and 707(b)(1)) unless the taxpayer has aggregate realized gain of $100,000 or less for the taxable year with respect to converted property with aggregate realized gains. In the case of a partnership (or S corporation), the annual $100,000 limitation applies to both the partnership (or S corporation) and each partner (or shareholder).

Effective date.—The provision applies to involuntary conversions occurring after June 8, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

11. Repeal of exception for certain sales by manufacturers to dealers (sec. 1071 of the House bill and sec. 878 of the Senate amendment)

Present Law

In general, the installment sales method of accounting may not be used by dealers in personal property. Present law provides an exception which permits the use of the installment method for installment obligations arising from the sale of tangible personal property by a manufacturer of the property (or an affiliate of the manufacturer) to a dealer,[46] but only if the dealer is obligated to make payments of principal only when the dealer resells (or rents) the property, the manufacturer has the right to repurchase the property at a fixed (or ascertainable) price after no longer than a 9-month period following the sale to the dealer, and certain other conditions are met. In order to meet the other conditions, the aggregate face amount of the installment obligations that otherwise qualify for the exception must equal at least 50 percent of the total sales to dealers that gave rise to such receivables (the "50-percent test") in both the taxable year and the preceding taxable year, except that, if the taxpayer met all of the requirements for the exception in the preceding taxable year, the taxpayer would not be treated as failing to meet the 50-percent test before the second consecutive year in which the taxpayer did not actually meet the test. In addition, these requirements must be met by the taxpayer in its first taxable year beginning after October 22, 1986, except that obligations issued before that date

[46] I.e., the sale of the property must be intended to be for resale or leasing by the dealer.

are treated as meeting the applicable requirements if such obligations were conformed to the requirements of the provision within 60 days of that date.

House Bill

The House bill repeals the exception that permits the use of the installment method of accounting for certain sales by manufacturers to dealers.

Effective date.—The provision is effective for taxable years beginning after the date of enactment. Any resulting adjustment from a required change in accounting will be includible ratably over the 4 taxable years beginning after that date.

Senate Amendment

The Senate amendment is the same as the House bill, except for the effective date.

Effective date.—The provision is effective for taxable years beginning one year after the date of enactment. Any resulting adjustment from a required change in accounting will be includible ratably over the 4 taxable years beginning after that date.

Conference Agreement

The conference agreement follows the Senate amendment.

12. Extension of Federal unemployment surtax (sec. 881 of the Senate amendment)

Present Law

The Federal Unemployment Tax Act (FUTA) imposes a 6.2-percent gross tax rate on the first $7,000 paid annually by covered employers to each employee. Employers in States with programs approved by the Federal Government and with no delinquent Federal loans may credit 5.4-percentage points against the 6.2-percent tax rate, making the minimum, net Federal unemployment tax rate 0.8 percent. Since all States have approved programs, 0.8 percent is the Federal tax rate that generally applies. This Federal revenue finances administration of the system, half of the Federal-State extended benefits program, and a Federal account for State loans. The States use the revenue turned back to them by the 5.4-percent credit to finance their regular State programs and half of the Federal-State extended benefits program.

In 1976, Congress passed a temporary surtax of 0.2 percent of taxable wages to be added to the permanent FUTA tax rate. Thus, the current 0.8-percent FUTA tax rate has two components: a permanent tax rate of 0.6 percent, and a temporary surtax rate of 0.2 percent. The temporary surtax subsequently has been extended through 1998.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the temporary surtax rate through December 31, 2007. It also increases the limit from 0.25 percent to 0.50 percent of covered wages on the Federal Unemployment Account (FUA) in the Unemployment Trust Fund.

Effective date.—The provision is effective for labor performed on or after January 1, 1999.

Conference Agreement

The conference agreement follows the Senate amendment.

13. Treatment of charitable remainder trusts (sec. 883 of the Senate amendment)

Present Law

In general

Sections 170(f), 2055(e)(2) and 2522(c)(2) disallow a charitable deduction for income, estate or gift tax purposes, respectively, where the donor transfers an interest in property to a charity (e.g., a remainder) while also either retaining an interest in that property (e.g., an income interest) or transferring an interest in that property to a noncharity for less than full and adequate consideration. Exceptions to this general rule are provided for: (1) remainder interests in charitable remainder annuity trusts, charitable remainder unitrusts, pooled income funds, farms, and personal residences; (2) present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the property; (3) an undivided portion of the donor's entire interest in the property; and (4) a qualified conservation easement.

Charitable remainder annuity trusts and charitable remainder unitrusts

A charitable remainder annuity trust is a trust which is required to pay a fixed dollar amount, not less often than annually, of at least 5 percent of the initial value of the trust to a non-charity for the life of an individual or a period of years not to exceed 20 years, with the remainder passing to charity. A charitable remainder unitrust is a trust which generally is required to pay, at least annually, a fixed percentage of the fair market value of the trust's assets determined at least annually to a noncharity for the life of an individual or a period of years not to exceed 20 years, with the remainder passing to charity (sec. 664(d)).

Distributions from a charitable remainder annuity trust or charitable remainder unitrust are treated first as ordinary income to the extent of the trust's current and previously undistributed ordinary income for the trust's year in which the distribution occurred; second, as capital gains to the extent of the trust's current capital gain and previously undistributed capital gain for the trust's year in which the distribution occurred; third, as other income (e.g., tax-exempt income) to the extent of the trust's current and previously undistributed other income for the trust's year in which the distribution occurred; and, fourth, as corpus (sec. 664(b)).

Distributions are includible in the income of the beneficiary for the year that the annuity or unitrust amount is required to be distributed even though the annuity or unitrust amount is not distributed until after the close of the trust's taxable year. Treas. reg. sec. 1.664–1(d)(4).

On April 18, 1997, the Treasury Department proposed regulations providing additional rules under sections 664 and 2702 to address perceived abuses involving distributions from charitable remainder trusts. One of those proposed rules would require that payment of any required annuity or unitrust amount by a charitable remainder trust (other than an "income only" unitrust) be made by the close of the trust's taxable year in which such payments are due. See Prop. Treas. reg. secs. 1.664–2(a)(1)(i) and 1.664–3(a)(1)(i).

House Bill

No provision.

Senate Amendment

Under the Senate amendment, a trust cannot be a charitable remainder annuity trust if the annuity for any year is greater than 50 percent of the initial fair market value of the trust's assets or be a charitable remainder unitrust if the percentage of assets that are required to be distributed at least annually is greater than 50 percent. Any trust that fails this 50-percent rule will not be a charitable remainder trust whose taxation is governed under section 664, but will be treated as a complex trust and, accordingly, all its income will be taxed to its beneficiaries or to the trust.

Effective date.—The provision applies to transfers to a trust made after June 18, 1997.

Conference Agreement

The conference agreement follows the Senate amendment with a modification that requires that the value of the charitable remainder with respect to any transfer to a qualified charitable remainder annuity trust or charitable remainder unitrust be at least 10 percent of the net fair market value of such property transferred in trust on the date of the contribution to the trust. The 10-percent test is measured on each transfer to the charitable remainder trust and, consequently, a charitable remainder trust which meets the 10-percent test on the date of transfer will not subsequently fail to meet that test if interest rates have declined between the trust's creation and the death of a measuring life. Similarly, where a charitable remainder trust is created for the joint lives of two individuals with a remainder to charity, the trust will not cease to qualify as a charitable remainder trust because the value of the charitable remainder was less than 10 percent of the trust's assets at the first death of those two individuals. The conference agreement provides several additional rules in order to provide relief for trusts that do not meet the 10-percent rule.

First, where a transfer is made after July 28, 1997, to a charitable remainder trust that fails the 10-percent test, the trust is treated as meeting the 10-percent requirement if the governing instrument of the trust is changed by reformation, amendment, construction, or otherwise to meet such requirement by reducing the payout rate or duration (or both) of any noncharitable beneficiary's interest to the extent necessary to satisfy such requirement so long as the reformation is commenced within the period permitted for reformations of charitable remainder trusts under section 2055(e)(3). The statute of limitations applicable to a deficiency of any tax resulting from reformation of the trust shall not expire before the date one year after the Treasury Department is notified that the trust has been reformed. In substance, this rule relaxes the requirements of section 2055(e)(3)(B) to the extent necessary for the reformation for the trust to meet the 10-percent requirement.

Second, a transfer to a trust will be treated as if the transfer never had been made where a court having jurisdiction over the trust subsequently declares the trust void (because, e.g., the application of the 10 percent rule frustrates the purposes for which the trust was created) and judicial proceedings to revoke the trust are commenced within the period permitted for reformations of charitable remainder trusts under section 2055(e)(3). Under this provision, the effect of "unwinding" the trust is that any transactions made by the trust with respect to the property transferred (e.g., income earned on the assets transferred to the trust and capital gains generated by the sales of the property transferred) would be income and capital gain of the donor (or the donor's estate if the trust was testamentary), and the donor (or the donor's estate if the trust was testamentary) would not be permitted a charitable deduction with respect to the transfer. The statute of limitations applicable to a deficiency of any tax resulting from "unwinding" the trust shall not expire before the date one year after the Treasury Department is notified that the trust has been revoked.

Third, where an additional contribution is made after July 28, 1997, to a charitable remainder unitrust created before July 29, 1997, and that unitrust would not meet the 10-percent requirement with respect to the additional contribution, the conference agreement provides that such additional contribution will be treated, under regulations to be issued by the Secretary of the Treasury, as if it had been made to a new trust that does not meet the 10-percent requirement, but which does not affect the status of the original unitrust as a charitable remainder trust.

The conferees intend that this provision of the conference agreement not limit or alter the validity of regulations proposed by the Treasury Department on April 18, 1997, or the Treasury Department's authority to address abuses of the rules governing the taxation of charitable remainder trusts or their beneficiaries.

Effective date.—The requirement that the payout rate not exceed 50 percent applies to transfers to a trust made after June 18, 1997.

The requirement that the value of the charitable remainder with respect to any transfer to a qualified remainder trust be at least 10 percent of the fair market value of the assets transferred in trust applies to transfers to a trust made after July 28, 1997. However, the 10-percent requirement does not apply to a charitable remainder trust created by a testamentary instrument (e.g., a will or revocable trust) executed before July 29, 1997, if the instrument is not modified after that date and the settlor dies before January 1, 1999, or could not be modified after July 28, 1997, because the settlor was under a mental disability on that date (i.e., July 28, 1997) and all times thereafter.

14. Modify general business credit carryback and carryforward rules (sec. 788(b) of the Senate amendment)

Present Law

A qualified taxpayer is allowed to claim the rehabilitation credit, the energy credit, the reforestation credit, the work opportunity credit, the alcohol fuels credit, the research credit, the low-income housing credit, the enhanced oil recovery credit, the disabled access credit, the renewable electricity production credit, the empowerment zone employment credit, the Indian employment credit, the employer social security credit, and the orphan drug credit (collectively, known as the general business credit), subject to certain limitations based on tax liability for the year. Unused general business credits generally may be carried back three years and carried forward 15 years to offset tax liability of such years, subject to the same limitations.

House Bill

No provision.

Senate Amendment

The Senate amendment limits the carryback period for the general business credit to one year and extends the carryforward period to 20 years.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement includes the Senate amendment with a clarification that the provision is effective for credits arising in taxable years beginning after December 31, 1997.

15. Using Federal case registry of child support orders for tax enforcement purposes

Present Law

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 mandated the creation of a Federal Case Registry of Child Support Orders (the FCR) by October 1, 1998. Although HHS has not yet issued final regulations, the FCR is required to include the names, and the State case identification numbers of individuals who are owed or who owe child support or for whom paternity is being established. It may also include the social security numbers (SSNs) of these individuals.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

Not later than October 1, 1999, the Secretary of the Treasury will have access to the Federal Case Registry of Child Support Orders. Also, by October 1, 1999, the data elements on the State Case Registry will include the SSNs of children covered by cases in the Registry, and the States will provide the SSNs of these children to the FCR.

Effective date.— The provision is effective on October 1, 1999.

16. Expanded SSA records for tax enforcement

Present Law

Under the Family Support Act of 1988, States must require each parent to furnish their social security number (SSN) for birth records. Parents can apply directly to the Social Security Administration (SSA) for an SSN for their child; or, in most states, they may apply for the child's SSN when obtaining a birth certificate. On an individual's SSN application, the SSA currently requires the mother's maiden name but not her SSN.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

SSA is required to obtain social security numbers (SSNs) of both parents on minor children's applications for SSNs. The SSA will provide this information to the IRS as part of the Data Master File ("DM-1 file"). The conferees anticipate that the IRS will use the information to identify questionable claims for the earned income credit, the dependent exemption, and other tax benefits, before tax refunds are paid out.

Effective date.—The provision is effective on the date of enactment.

17. Treatment of amounts received under the work requirements of the Personal Responsibility and Work Opportunity Act of 1996

Present Law

Workfare payments

Generally under the Personal Responsibility and Work Opportunity Act of 1996, the receipt of certain government assistance payments is denied unless the recipient meets certain work requirements. The tax treatment of payments received with respect to these work requirements ("workfare payments") was not specified in that legislation.

Earned income credit

Certain eligible low-income workers are entitled to claim a refundable earned income credit on their income tax return. The amount of the credit an eligible individual may claim depends upon whether the individual has one, more than one, or no qualifying children, and is generally determined by multiplying the credit rate by the individual's earned income up to an earned income amount. The maximum amount of the credit is the product of the credit rate and the earned income amount. The credit is reduced by the amount of the alternative minimum tax ("AMT") the taxpayer owes for the year. The credit is phased out above certain income levels. For individuals with earned income (or AGI, if greater) in excess of the beginning of the phaseout range, the maximum credit amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For individuals with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed. For these purposes, both earned income and AGI are defined to include wages. There is no explicit provision whether workfare payments are wages for purposes of the earned income credit.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that workfare payments are not wages for purposes of the earned income credit. There is no inference intended with respect to whether workfare payments otherwise qualify as wages for purposes of income and employment taxes or as wages for purposes of an employer's eligibility for the work opportunity tax credit and the welfare-to-work tax credit. Also, there is no inference intended with respect to whether workfare payments are wages for purposes of the earned income credit before enactment of this provision.

Effective date.—The provision is effective on the date of enactment.

XI. FOREIGN TAX PROVISIONS

A. General Provisions

1. Simplify foreign tax credit limitation for individuals (sec. 1103 of the House bill and sec. 901 of the Senate amendment)

Present Law

In order to compute the foreign tax credit, a taxpayer computes foreign source taxable income and foreign taxes paid in each of the applicable separate foreign tax credit limitation categories. In the case of an individual, this requires the filing of IRS Form 1116.

In many cases, individual taxpayers who are eligible to credit foreign taxes may have only a modest amount of foreign source gross income, all of which is income from investments. Taxable income of this type ordinarily is includible in the single foreign tax credit limitation category for passive income. However, under certain circumstances, the Code treats investment-type income (e.g., dividends and interest) as income in one of several other separate limitation categories (e.g., high withholding tax interest income or general limitation income). For this reason, any taxpayer with foreign source gross income is required to provide sufficient detail on Form 1116 to ensure that foreign source taxable income from investments, as well as all other foreign source taxable income, is allocated to the correct limitation category.

House Bill

The House bill allows individuals with no more than $300 ($600 in the case of married persons filing jointly) of creditable foreign taxes, and no foreign source income other than passive income, an exemption from the foreign tax credit limitation rules. (It is intended that an individual electing this exemption will not be required to file Form

1116 in order to obtain the benefit of the foreign tax credit.) An individual making this election is not entitled to any carryover of excess foreign taxes to or from a taxable year to which the election applies.

For purposes of this election, passive income generally is defined to include all types of income that is foreign personal holding company income under the subpart F rules, plus income inclusions from foreign personal holding companies and passive foreign investment companies, provided that the income is shown on a payee statement furnished to the individual. For purposes of this election, creditable foreign taxes include only foreign taxes that are shown on a payee statement furnished to the individual.

Effective date.—The provision applies to taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Simplify translation of foreign taxes (sec. 1104 of the House bill and sec. 902 of the Senate amendment)

Present Law

Translation of foreign taxes

Foreign income taxes paid in foreign currencies are required to be translated into U.S. dollar amounts using the exchange rate as of the time such taxes are paid to the foreign country or U.S. possession. This rule applies to foreign taxes paid directly by U.S. taxpayers, which taxes are creditable in the year paid or accrued, and to foreign taxes paid by foreign corporations that are deemed paid by a U.S. corporation that is a shareholder of the foreign corporation, and hence creditable, in the year that the U.S. corporation receives a dividend or has an income inclusion from the foreign corporation.

Redetermination of foreign taxes

For taxpayers that utilize the accrual basis of accounting for determining creditable foreign taxes, accrued and unpaid foreign tax liabilities denominated in foreign currencies are translated at the exchange rate as of the last day of the taxable year of accrual. If a difference exists between the dollar value of accrued foreign taxes and the dollar value of those taxes when paid, a redetermination of foreign taxes arises. A foreign tax redetermination may occur in the case of a refund of foreign taxes. A foreign tax redetermination also may arise because the amount of foreign currency units actually paid differs from the amount of foreign currency units accrued. In addition, a redetermination may arise due to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment.

As a general matter, a redetermination of foreign tax paid or accrued directly by a U.S. person requires notification of the Internal Revenue Service and a redetermination of U.S. tax liability for the taxable year for which the foreign tax was claimed as a credit. The Treasury regulations provide exceptions to this rule for de minimis cases. In the case of a redetermination of foreign taxes that qualify for the indirect (or "deemed-paid") foreign tax credit under sections 902 and 960, the Treasury regulations generally require taxpayers to make appropriate adjustments to the payor foreign corporation's pools of earnings and profits and foreign taxes.

House Bill

Translation of foreign taxes

Translation of certain accrued foreign taxes

With respect to taxpayers that take foreign income taxes into account when accrued, the House bill generally provides for foreign taxes to be translated at the average exchange rate for the taxable year to which such taxes relate. This rule does not apply (1) to any foreign income tax paid after the date two years after the close of the taxable year to which such taxes relate, (2) with respect to taxes of an accrual-basis taxpayer that are actually paid in a taxable year prior to the year to which they relate, or (3) to tax payments that are denominated in an inflationary currency (as defined by regulations).

Translation of all other foreign taxes

Under the House bill, foreign taxes not eligible for application of the preceding rule generally are translated into U.S. dollars using the exchange rates as of the time such taxes are paid. The House bill provides the Secretary of the Treasury with authority to issue regulations that would allow foreign tax payments to be translated into U.S. dollar amounts using an average exchange rate for a specified period.

Redetermination of foreign taxes

Under the House bill, a redetermination is required if (1) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer; (2) accrued taxes are not paid before the date two years after the close of the taxable year to which such taxes relate; or (3) any tax paid is refunded in whole or in part. Thus, for example, the House bill provides that if at the close of the second taxable year after the taxable year to which an accrued tax relates, any portion of the tax so accrued has not yet been paid, a foreign tax redetermination under section 905(c) is required for the amount representing the unpaid portion of that accrued tax. In other words, the previous accrual of any tax that is unpaid as of that date is denied. In cases where a redetermination is required, as under present law, the bill specifies that the taxpayer must notify the Secretary, who will redetermine the amount of the tax for the year or years affected. In the case of indirect foreign tax credits, regulatory authority is granted to prescribe appropriate adjustments to the foreign tax credit pools in lieu of such a redetermination.

The House bill provides that in the case of accrued taxes not paid within the date two years after the close of the taxable year to which such taxes relate, any such taxes if subsequently paid are taken into account for the taxable year to which such taxes relate. These taxes are translated into U.S. dollar amounts using the exchange rates in effect as of the time such taxes are paid.

For example, assume that in year 1 a taxpayer accrues 1,000 units of foreign tax that relate to year 1 and that the currency involved is not inflationary . Further assume that as of the end of year 1 the tax is unpaid. In this case, the House bill provides that the taxpayer translates 1,000 units of accrued foreign tax into U.S. dollars at the average exchange rate for year 1. If the 1,000 units of tax are paid by the taxpayer in either year 2 or year 3, no redetermination of foreign tax is required. If any portion of the tax so accrued remains unpaid as of the end of year 3, however, the taxpayer is required to redetermine its foreign tax accrued in year 1 to eliminate the accrued but unpaid tax, thereby reducing its foreign tax credit for such year. If the taxpayer pays the disallowed taxes in year 4, the taxpayer again redetermines its foreign taxes (and foreign tax credit) for year 1, but the taxes paid in year 4 are translated into U.S. dollars at the exchange rate for year 4.

Effective date

The provision generally is effective for foreign taxes paid (in the case of taxpayers using the cash basis for determining the foreign tax credit) or accrued (in the case of taxpayers using the accrual basis for determining the foreign tax credit) in taxable years beginning after December 31, 1997. The provision's changes to the foreign tax redetermination rules apply to foreign taxes which relate to taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill with one modification with respect to the treatment of accrued taxes that are paid more than two years after the close of the taxable year to which such taxes relate. In the case of the indirect foreign tax credit, any such taxes are taken into account for the taxable year in which paid, and are translated into U.S. dollar amounts using the exchange rates as of the time such taxes are paid. In the case of the direct foreign tax credit, as under the House bill, any such taxes are taken into account for the taxable year to which such taxes relate, but are translated into U.S. dollar amounts using the exchange rates in effect as of the time such taxes are paid.

Conference Agreement

The conference agreement follows the Senate amendment with one modification. The conference agreement clarifies that the regulatory authority applicable in the case of indirect foreign tax credits allows, in lieu of a redetermination of taxes, appropriate adjustments to the pools of post-1986 foreign income taxes and the pools of post-1986 undistributed earnings.

3. Election to use simplified foreign tax credit limitation for alternative minimum tax purposes (sec. 1105 of the House bill and sec. 903 of the Senate amendment)

Present Law

Computing foreign tax credit limitations requires the allocation and apportionment of deductions between items of foreign source income and items of U.S. source income. Foreign tax credit limitations must be computed both for regular tax purposes and for purposes of the alternative minimum tax (AMT). Consequently, the allocation and apportionment of deductions must be done separately for regular tax foreign tax credit limitation purposes and AMT foreign tax credit limitation purposes.

House Bill

The House bill permits taxpayers to elect to use as their AMT foreign tax credit limitation fraction the ratio of foreign source regular taxable income to entire alternative minimum taxable income, rather than the ratio of foreign source alternative minimum taxable income to entire alternative minimum taxable income. Under this election, foreign source regular taxable income is used, however, only to the extent it does not exceed entire alternative minimum taxable income. In the event that foreign source regular taxable income does exceed entire alternative minimum taxable income, and the taxpayer has income in more than one foreign tax credit limitation category, it is intended that the foreign source taxable income in each such category generally would be reduced by a pro rata portion of that excess.

The election is available only in the first taxable year beginning after December 31, 1997 for which the taxpayer claims an AMT foreign tax credit. It is intended that a taxpayer will be treated, for this purpose, as claiming an AMT foreign tax credit for any taxable year for which the taxpayer chooses to have the benefits of the foreign tax credit and in which the taxpayer is subject to the alternative minimum tax or would be subject to the alternative minimum tax but for the availability of the AMT foreign tax credit. The election, once made, will apply to all subsequent taxable years, and may be revoked only with the consent of the Secretary of the Treasury.

Effective date.—The provision applies to taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Simplify treatment of personal transactions in foreign currency (sec. 1106 of the House bill and sec. 904 of the Senate amendment)

Present Law

When a U.S. taxpayer makes a payment in a foreign currency, gain or loss (referred to as "exchange gain or loss") generally arises from any change in the value of the foreign currency relative to the U.S. dollar between the time the currency was acquired (or the obligation to pay was incurred) and the time that the payment is made. Gain or loss results because foreign currency, unlike the U.S. dollar, is treated as property for Federal income tax purposes.

Exchange gain or loss can arise in the course of a trade or business or in connection with an investment transaction. Exchange gain or loss also can arise where foreign currency was acquired for personal use.

House Bill

If an individual acquires foreign currency and disposes of it in a personal transaction and the exchange rate changes between the acquisition and disposition of such currency, the House bill applies nonrecognition treatment to any resulting exchange gain, provided that such gain does not exceed $200. The provision does not change the treatment of resulting exchange losses.

Effective date.—The provision applies to taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with one modification. The conference agreement clarifies that transactions entered into in connection with a business trip constitute personal transactions for purposes of this provision. Exchange gain resulting from such transactions is eligible for nonrecognition treatment under this provision.

5. Simplify foreign tax credit limitation for dividends from 10/50 companies (sec. 1107 of the House bill)

Present Law

U.S. persons may credit foreign taxes against U.S. tax on foreign source income. The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S. source income. Separate limitations are applied to specific categories of income.

Special foreign tax credit limitation rules apply in the case of dividends received from a foreign corporation in which the taxpayer owns at least 10 percent of the stock by vote and which is not a controlled foreign corporation (a so-called "10/50 company"). Dividends received by the taxpayer from each 10/50 company are subject to a separate foreign tax credit limitation.

House Bill

Under the House bill, a single foreign tax credit limitation generally applies to dividends received by the taxpayer from all 10/50 companies. However, separate foreign tax credit limitations continue to apply to dividends received by the taxpayer from each 10/50 company that qualifies as a passive foreign investment company. Regulatory authority is granted to provide rules regarding the treatment of distributions out of earnings and profits for periods prior to the taxpayer's acquisition of such stock. To the extent the regulations treat distributions from a foreign corporation out of earnings and profits for pre-acquisition periods as subject to a separate foreign tax credit limitation, it is expected that the regulations would allow the taxpayer to elect to apply that separate foreign tax credit limitation (rather than the limitation applicable to dividends from all 10/50 companies) also to distributions out of post-acquisition earnings and profits of such corporation.

Effective date.—The provision is effective for taxable years beginning after December 31, 2001.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally provides for look-through treatment to apply in characterizing dividends from 10/50 companies for foreign tax credit limitation purposes. Under the conference agreement, any dividend from a 10/50 company paid out of earnings and profits accumulated in a taxable year beginning after December 31, 2002 is treated as income in a foreign tax credit limitation category in proportion to the ratio of the earnings and profits attributable to income in such foreign tax credit limitation category to the total earnings and profits. Regulatory authority is granted to provide rules regarding the treatment of distributions out of earning and profits for periods prior to the taxpayer's acquisition of such stock.

In the case of dividends from a 10/50 company paid out of earnings and profits accumulated in a taxable year beginning before January 1, 2003, the conference agreement provides that a single foreign tax credit limitation generally applies to *all* such dividends from all 10/50 companies. However, separate foreign tax credit limitations continue to apply to any such dividends received by the taxpayer from each 10/50 company that qualifies as a passive foreign investment company. Regulatory authority is granted to provide rules regarding the treatment of distributions out of earning and profits for periods prior to the taxpayer's acquisition of such stock.

Effective date.—The provision is effective for taxable years beginning after December 31, 2002.

B. General Provisions Affecting Treatment of Controlled Foreign Corporations (secs. 1111–1113 of the House bill and secs. 911–913 of the Senate amendment)

Present Law

If an upper-tier controlled foreign corporation ("CFC") sells stock of a lower-tier CFC, the gain generally is included in the income of U.S. 10-percent shareholders as subpart F income and such U.S. shareholder's basis in the stock of the first-tier CFC is increased to account for the inclusion. The inclusion is not characterized for foreign tax credit limitation purposes by reference to the nature of the income of the lower-tier CFC; instead it generally is characterized as passive income.

For purposes of the foreign tax credit limitations applicable to so-called 10/50 companies, a CFC is not treated as a 10/50 company with respect to any distribution out of its earnings and profits for periods during which it was a CFC and, except as provided in regulations, the recipient of the distribution was a U.S. 10-percent shareholder in such corporation.

If subpart F income of a lower-tier CFC is included in the gross income of a U.S. 10-percent shareholder, no provision of present law allows adjustment of the basis of the upper-tier CFC's stock in the lower-tier CFC.

The subpart F income earned by a foreign corporation during its taxable year is taxed to the persons who are U.S. 10-percent shareholders of the corporation on the last day, in that year, on which the corporation is a CFC. In the case of a U.S. 10-percent shareholder who acquired stock in a CFC during the year, such inclusions are reduced by all or a portion of the amount of dividends paid in that year by the foreign corporation to any person other than the acquiror with respect to that stock.

As a general rule, subpart F income does not include income earned from sources within the United States if the income is effectively connected with the conduct of a U.S. trade or business by the CFC. This general rule does not apply, however, if the income is exempt from, or subject to a reduced rate of, U.S. tax pursuant to a provision of a U.S. treaty.

A U.S. corporation that owns at least 10 percent of the voting stock of a foreign corporation is treated as if it had paid a share of the foreign income taxes paid by the foreign corporation in the year in which the foreign corporation's earnings and profits become subject to U.S. tax as dividend income of the U.S. shareholder. A U.S. corporation also may be deemed to have paid taxes paid by a second- or third-tier foreign corporation if certain conditions are satisfied.

House Bill

Lower-tier CFCs

Characterization of gain on stock disposition

Under the House bill, if a CFC is treated as having gain from the sale or exchange of stock in a foreign corporation, the gain is treated as a dividend to the same extent that it would have been so treated under section 1248 if the CFC were a U.S. person. This provision, however, does not affect the determination of whether the corporation whose stock is sold or exchanged is a CFC.

Thus, for example, if a U.S. corporation owns 100 percent of the stock of a foreign corporation, which owns 100 percent of the stock of a second foreign corporation, then under the House bill, any gain of the first corporation upon a sale or exchange of stock of the second corporation is treated as a dividend for purposes of subpart F income inclusions to the U.S. shareholder, to the extent

of earnings and profits of the second corporation attributable to periods in which the first foreign corporation owned the stock of the second foreign corporation while the latter was a CFC with respect to the U.S. shareholder.

Gain on disposition of stock in a related corporation created or organized under the laws of, and having a substantial part of its assets in a trade or business in, the same foreign country as the gain recipient, even if recharacterized as a dividend under the House bill provision, is not excluded from foreign personal holding company income under the same-country exception that applies to actual dividends.

Under the House bill, for purposes of this rule, a CFC is treated as having sold or exchanged stock if, under any provision of subtitle A of the Code, the CFC is treated as having gain from the sale or exchange of such stock. Thus, for example, if a CFC distributes to its shareholder stock in a foreign corporation, and the distribution results in gain being recognized by the CFC under section 311(b) as if the stock were sold to the shareholder for fair market value, the House bill makes clear that, for purposes of this rule, the CFC is treated as having sold or exchanged the stock.

The House bill also repeals a provision added to the Code by the Technical and Miscellaneous Revenue Act of 1988 that, except as provided by regulations, requires a recipient of a distribution from a CFC to have been a U.S. 10-percent shareholder of that CFC for the period during which the earnings and profits which gave rise to the distribution were generated in order to avoid treating the distribution as one coming from a 10/50 company. Thus, under the House bill, a CFC is not treated as a 10/50 company with respect to any distribution out of its earnings and profits for periods during which it was a CFC, whether or not the recipient of the distribution was a U.S. 10-percent shareholder of the corporation when the earnings and profits giving rise to the distribution were generated.

Adjustments to basis of stock

Under the House bill, when a lower-tier CFC earns subpart F income, and stock in that corporation is later disposed of by an upper-tier CFC, the resulting income inclusion of the U.S. 10-percent shareholders, under regulations, is to be adjusted to account for previous inclusions, in a manner similar to the adjustments provided to the basis of stock in a first-tier CFC. Thus, just as the basis of a U.S. 10-percent shareholder in a first-tier CFC rises when subpart F income is earned and falls when previously taxed income is distributed, so as to avoid double taxation of the income on a later disposition of the stock of that company, the subpart F income from gain on the disposition of a lower-tier CFC generally is reduced by income inclusions of earnings that were not subsequently distributed by the lower-tier CFC.

For example, assume that a U.S. person is the owner of all of the stock of a first-tier CFC which, in turn, is the sole shareholder of a second-tier CFC. In year 1, the second-tier CFC earns $100 of subpart F income which is included in the U.S. person's gross income for that year. In year 2, the first-tier CFC disposes of the second-tier CFC's stock and recognizes $300 of income with respect to the disposition. All of that income constitutes subpart F foreign personal holding company income. Under the House bill, the Secretary is granted regulatory authority to reduce the U.S. person's year 2 subpart F inclusion by $100—the amount of year 1 subpart F income of the second-tier CFC that was included, in that year, in the U.S. person's gross income. Such an adjustment, in effect, allows for a step-up in the basis of the stock of the second-tier CFC to the extent of its subpart F income previously included in the U.S. person's gross income.

Subpart F inclusions in year of acquisition

If a U.S. 10-percent shareholder acquires the stock of a CFC from another U.S. 10-percent shareholder during a taxable year of the CFC in which it earns subpart F income, the House bill provision reduces the acquiror's subpart F income inclusion for that year by a portion of the amount of the dividend deemed (under sec. 1248) to be received by the transferor. The portion by which the inclusion is reduced (as is the case if a dividend was paid to the previous owner of the stock) does not exceed the lesser of the amount of dividends with respect to such stock deemed received (under sec. 1248) by other persons during the year or the amount determined by multiplying the subpart F income for the year by the proportion of the year during which the acquiring shareholder did not own the stock.

Treatment of U.S. income earned by a CFC

Under the House bill, an exemption or reduction by treaty of the branch profits tax that would be imposed under section 884 on a CFC does not affect the general statutory exemption from subpart F income that is granted for U.S. source effectively connected income. For example, assume a CFC earns income of a type that generally would be subpart F income, and that income is earned from sources within the United States in connection with business operations therein. Further assume that repatriation of that income is exempted from the U.S. branch profits tax under a provision of an applicable U.S. income tax treaty. The House bill provides that, notwithstanding the treaty's effect on the branch tax, the income is not treated as subpart F income as long as it is not exempt from U.S. taxation (or subject to a reduced rate of tax) under any other treaty provision.

Extension of indirect foreign tax credit

The House bill extends the application of the indirect foreign tax credit (secs. 902 and 960) to taxes paid or accrued by certain fourth-, fifth-, and sixth-tier foreign corporations. In general, three requirements are required to be satisfied by a foreign company at any of these tiers to qualify for the credit. First, the company must be a CFC. Second, the U.S. corporation claiming the credit under section 902(a) must be a U.S. shareholder (as defined in sec. 951(b)) with respect to the foreign company. Third, the product of the percentage ownership of voting stock at each level from the U.S. corporation down must equal at least 5 percent. The House bill limits the application of the indirect foreign tax credit below the third tier to taxes paid or incurred in taxable years during which the payor is a CFC. Foreign taxes paid below the sixth tier of foreign corporations remain ineligible for the indirect foreign tax credit.

Effective dates

Lower-tier CFCs.—The provision that treats gains on dispositions of stock in lower-tier CFCs as dividends under section 1248 principles applies to gains recognized on transactions occurring after the date of enactment.

The provision that expands look-through treatment, for foreign tax credit limitation purposes, of dividends from CFCs is effective for distributions after the date of enactment.

The provision that provides for regulatory adjustments to U.S. shareholder inclusions, with respect to gains of CFCs from dispositions of stock in lower-tier CFCs is effective for determining inclusions for taxable years of U.S. shareholders beginning after December 31, 1997. Thus, the House bill permits regulatory adjustments to an inclusion occurring after the effective date to account for income that was previously taxed under the subpart F provisions either prior to or subsequent to the effective date.

Subpart F inclusions in year of acquisition.—The provision that permits dispositions of stock to be taken into consideration in determining a U.S. shareholder's subpart F inclusion for a taxable year is effective with respect to dispositions occurring after the date of enactment.

Treatment of U.S. source income earned by a CFC.—The provision concerning the effect of treaty exemptions from, or reductions of, the branch profits tax on the determination of subpart F income is effective for taxable years beginning after December 31, 1986.

Extension of indirect foreign tax credit.—The provision that extends application of the indirect foreign tax credit to certain CFCs below the third tier is effective for foreign taxes paid or incurred by CFCs for taxable years of such corporations beginning after the date of enactment.

In the case of any chain of foreign corporations, the taxes of which would be eligible for the indirect foreign tax credit, under present law or under the House bill, but for the denial of indirect credits below the third or sixth tier, as the case may be, no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of enactment will have the effect of permitting taxes to be taken into account under the indirect foreign tax credit provisions of the Code which could not have been taken into account under those provisions but for such transaction.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

C. Modification of Passive Foreign Investment Company Provisions to Eliminate Overlap with Subpart F, to Allow Mark-to-Market Election, and to Require Measurement Based on Value for PFIC Asset Test (secs. 1121–1123 of the House bill and secs. 751–753 of the Senate amendment)

Present Law

Overview

U.S. citizens and residents and U.S. corporations (collectively, "U.S. persons") are taxed currently by the United States on their worldwide income, subject to a credit against U.S. tax on foreign income based on foreign income taxes paid with respect to such income. A foreign corporation generally is not subject to U.S. tax on its income from operations outside the United States.

Income of a foreign corporation generally is taxed by the United States when it is repatriated to the United States through payment to the corporation's U.S. shareholders, subject to a foreign tax credit. However, a variety of regimes imposing current U.S. tax on income earned through a foreign corporation have been reflected in the Code. Today the principal anti-deferral regimes set forth in the Code are the controlled foreign corporation rules of subpart F (secs. 951–964) and the passive foreign investment company

rules (secs. 1291–1297). Additional anti-deferral regimes set forth in the Code are the foreign personal holding company rules (secs. 551–558); the personal holding company rules (secs. 541–547); the accumulated earnings tax (secs. 531–537); and the foreign investment company and electing foreign investment company rules (secs. 1246–1247). The anti-deferral regimes included in the Code overlap such that a given taxpayer may be subject to multiple sets of anti-deferral rules.

Controlled foreign corporations

A controlled foreign corporation (CFC) is defined generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only) (sec. 957). Stock ownership includes not only stock owned directly, but also stock owned indirectly or constructively (sec. 958).

Certain income of a CFC (referred to as "subpart F income") is subject to current U.S. tax. The United States generally taxes the U.S. 10-percent shareholders of a CFC currently on their pro rata shares of the subpart F income of the CFC. In effect, the Code treats those U.S. shareholders as having received a current distribution out of the CFC's subpart F income. Such shareholders also are subject to current U.S. tax on their pro rata shares of the CFC's earnings invested in U.S. property. The foreign tax credit may reduce the U.S. tax on these amounts.

Passive foreign investment companies

The Tax Reform Act of 1986 established an anti-deferral regime for passive foreign investment companies (PFICs). A PFIC is any foreign corporation if (1) 75 percent or more of its gross income for the taxable year consists of passive income, or (2) 50 percent or more of the average fair market value of its assets consists of assets that produce, or are held for the production of, passive income. For purposes of applying the PFIC asset test, the assets of a CFC are required to be measured using adjusted basis; the assets of a foreign corporation that is not a CFC are measured using fair market value unless the corporation elects to use adjusted basis.

Two alternative sets of income inclusion rules apply to U.S. persons that are shareholders in a PFIC. One set of rules applies to PFICs that are "qualified electing funds," under which electing U.S. shareholders include currently in gross income their respective shares of the PFIC's total earnings, with a separate election to defer payment of tax, subject to an interest charge, on income not currently received. The second set of rules applies to PFICs that are not qualified electing funds ("nonqualified funds"), under which the U.S. shareholders pay tax on income realized from the PFIC and an interest charge that is attributable to the value of deferral.

Overlap between subpart F and the PFIC provisions

A foreign corporation that is a CFC is also a PFIC if it meets the passive income test or the passive asset test described above. In such a case, the 10-percent U.S. shareholders are subject both to the subpart F provisions (which require current inclusion of certain earnings of the corporation) and to the PFIC provisions (which impose an interest charge on amounts distributed from the corporation and gains recognized upon the disposition of the corporation's stock, unless an election is made to include currently all of the corporation's earnings).

House Bill

Elimination of overlap between subpart F and the PFIC provisions

In the case of a PFIC that is also a CFC, the House bill generally treats the corporation as not a PFIC with respect to certain 10-percent shareholders. This rule applies if the corporation is a CFC (within the meaning of section 957(a)) and the shareholder is a U.S. shareholder (within the meaning of section 951(b)) of such corporation (i.e., if the shareholder is subject to the current inclusion rules of subpart F with respect to such corporation). Moreover, the rule applies for that portion of the shareholder's holding period with respect to the corporation's stock which is after December 31, 1997 and during which the corporation is a CFC and the shareholder is a U.S. shareholder. Accordingly, a shareholder that is subject to current inclusion under the subpart F rules with respect to stock of a PFIC that is also a CFC generally is not subject also to the PFIC provisions with respect to the same stock. The PFIC provisions continue to apply in the case of a PFIC that is also a CFC to shareholders that are not subject to subpart F (i.e., to shareholders that are U.S. persons and that own (directly, indirectly, or constructively) less than 10 percent of the corporation's stock by vote).

If a shareholder of a PFIC is subject to the rules applicable to nonqualified funds before becoming eligible for the special rules provided under the proposal for shareholders that are subject to subpart F, the stock held by such shareholder continues to be treated as PFIC stock unless the shareholder makes an election to pay tax and an interest charge with respect to the unrealized appreciation in the stock or the accumulated earnings of the corporation.

If, under the House bill, a shareholder is not subject to the PFIC provisions because the shareholder is subject to subpart F and the shareholder subsequently ceases to be subject to subpart F with respect to the corporation, for purposes of the PFIC provisions, the shareholder's holding period for such stock is treated as beginning immediately after such cessation. Accordingly, in applying the rules applicable to PFICs that are not qualified electing funds, the earnings of the corporation are not attributed to the period during which the shareholder was subject to subpart F with respect to the corporation and was not subject to the PFIC provisions.

Mark-to-market election

The House bill allows a shareholder of a PFIC to make a mark-to-market election with respect to the stock of the PFIC, provided that such stock is marketable (as defined below). Under such an election, the shareholder includes in income each year an amount equal to the excess, if any, of the fair market value of the PFIC stock as of the close of the taxable year over the shareholder's adjusted basis in such stock. The shareholder is allowed a deduction for the excess, if any, of the adjusted basis of the PFIC stock over its fair market value as of the close of the taxable year. However, deductions are allowable under this rule only to the extent of any net mark-to-market gains with respect to the stock included by the shareholder for prior taxable years.

Under the House bill, this mark-to-market election is available only for PFIC stock that is "marketable." For this purpose, PFIC stock is considered marketable if it is regularly traded on a national securities exchange that is registered with the Securities and Exchange Commission or on the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934. In addition, PFIC stock is considered marketable if it is regularly traded on any exchange or market that the Secretary of the Treasury determines has rules sufficient to ensure that the market price represents a legitimate and sound fair market value. Any option on stock that is considered marketable under the foregoing rules is treated as marketable, to the extent provided in regulations. PFIC stock also is treated as marketable, to the extent provided in regulations, if the PFIC offers for sale (or has outstanding) stock of which it is the issuer and which is redeemable at its net asset value in a manner comparable to a U.S. regulated investment company (RIC).

In addition, the House bill treats as marketable any PFIC stock owned by a RIC that offers for sale (or has outstanding) any stock of which it is the issuer and which is redeemable at its net asset value. The House bill treats as marketable any PFIC stock held by any other RIC that otherwise publishes net asset valuations at least annually, except to the extent provided in regulations. It is believed that even for RICs that do not make a market in their own stock, but that do regularly report their net asset values in compliance with the securities laws, inaccurate valuation may bring exposure to legal liabilities, and this exposure may ensure the reliability of the values such RICs assign to the PFIC stock they hold.

The shareholder's adjusted basis in the PFIC stock is adjusted to reflect the amounts included or deducted under this election. In the case of stock owned indirectly by a U.S. person through a foreign entity (as discussed below), the basis adjustments for mark-to-market gains and losses apply to the basis of the PFIC in the hands of the intermediary owner, but only for purposes of the subsequent application of the PFIC rules to the tax treatment of the indirect U.S. owner. In addition, similar basis adjustments are made to the adjusted basis of the property actually held by the U.S. person by reason of which the U.S. person is treated as owning PFIC stock.

Amounts included in income pursuant to a mark-to-market election, as well as gain on the actual sale or other disposition of the PFIC stock, is treated as ordinary income. Ordinary loss treatment also applies to the deductible portion of any mark-to-market loss on PFIC stock, as well as to any loss realized on the actual sale or other disposition of PFIC stock to the extent that the amount of such loss does not exceed the net mark-to-market gains previously included with respect to such stock. The source of amounts with respect to a mark-to-market election generally is determined in the same manner as if such amounts were gain or loss from the sale of stock in the PFIC.

An election to mark to market applies to the taxable year for which made and all subsequent taxable years, unless the PFIC stock ceases to be marketable or the Secretary of the Treasury consents to the revocation of such election.

Under constructive ownership rules, U.S. persons that own PFIC stock through certain foreign entities may make this election with respect to the PFIC. These constructive ownership rules apply to treat PFIC stock owned directly or indirectly by or for a foreign partnership, trust, or estate as owned proportionately by the partners or beneficiaries, except as provided in regulations. Stock in a

PFIC that is thus treated as owned by a person is treated as actually owned by that person for purposes of again applying the constructive ownership rules. In the case of a U.S. person that is treated as owning PFIC stock by application of this constructive ownership rule, any disposition by the U.S. person or by any other person that results in the U.S. person being treated as no longer owning the PFIC stock, as well as any disposition by the person actually owning the PFIC stock, is treated as a disposition by the U.S. person of the PFIC stock.

In addition, a CFC that owns stock in a PFIC is treated as a U.S. person that may make the election with respect to such PFIC stock. Any amount includible (or deductible) in the CFC's gross income pursuant to this mark-to-market election is treated as foreign personal holding company income (or a deduction allocable to foreign personal holding company income). The source of such amounts, however, is determined by reference to the actual residence of the CFC.

In the case of a taxpayer that makes the mark-to-market election with respect to stock in a PFIC that is a nonqualified fund after the beginning of the taxpayer's holding period with respect to such stock, a coordination rule applies to ensure that the taxpayer does not avoid the interest charge with respect to amounts attributable to periods before such election. A similar rule applies to RICs that make the mark-to-market election under the House bill after the beginning of their holding period with respect to PFIC stock (to the extent that the RIC had not previously marked to market the stock of the PFIC).

Except as provided in the coordination rules described above, the rules of section 1291 (with respect to nonqualified funds) do not apply to a shareholder of a PFIC if a mark-to-market election is in effect for the shareholder's taxable year. Moreover, in applying section 1291 in a case where a mark-to-market election was in effect for any prior taxable year, the shareholder's holding period for the PFIC stock is treated as beginning immediately after the last taxable year for which such election applied.

A special rule applicable in the case of a PFIC shareholder that becomes a U.S. person treats the adjusted basis of any PFIC stock held by such person on the first day of the year in which such shareholder becomes a U.S. person as equal to the greater of its fair market value on such date or its adjusted basis on such date. Such rule applies only for purposes of the mark-to-market election.

Effective date

The provision is effective for taxable years of U.S. persons beginning after December 31, 1997, and taxable years of foreign corporations ending with or within such taxable years of U.S. persons.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with one modification to the rules regarding the measurement of assets for purposes of applying the PFIC asset test. Under the conference agreement, if the stock of a foreign corporation is publicly traded for the taxable year, the PFIC asset test is applied using fair market value for purposes of measuring the PFIC's assets. For this purpose, the stock of a foreign corporation is treated as publicly traded if such stock is readily tradeable on a national securities exchange that is registered with the Securities and Exchange Commission, the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or any other exchange or market that the Secretary of the Treasury determines has rules sufficient to ensure that the market price represents a sound fair market value. Because the PFIC asset test is applied based on quarterly measurements of the corporation's assets, it is intended that a corporation the stock of which is publicly traded on each such quarterly measurement date during the taxable year will be eligible for this asset measurement rule for such taxable year. In applying the PFIC asset test, it is intended that the total value of a publicly-traded foreign corporation's assets generally will be treated as equal to the sum of the aggregate value of its outstanding stock plus its liabilities.

The conference agreement does not change the rules applicable to non-publicly-traded foreign corporations for purposes of the measurement of assets in applying the PFIC asset test. Accordingly, CFCs that are not publicly traded continue to be required to measure their assets using adjusted basis, and any other foreign corporations that are not publicly traded continue to measure their assets using fair market value unless they elect to use adjusted basis.

D. Simplify Formation and Operation of International Joint Ventures (secs. 1131, 1141–1145, and 1151 of the House bill and secs. 921, 931–935, and 941 of the Senate amendment)

Present Law

Under section 1491, an excise tax generally is imposed on transfers of property by a U.S. person to a foreign corporation as paid-in surplus or as a contribution to capital or to a foreign partnership, estate or trust. The tax is 35 percent of the amount of gain inherent in the property transferred but not recognized for income tax purposes at the time of the transfer. However, several exceptions to the section 1491 excise tax are available. Under section 1494(c), a substantial penalty applies in the case of a failure to report a transfer described in section 1491.

Section 367 applies to require gain recognition upon certain transfers by U.S. persons to foreign corporations. Under section 367(d), a U.S. person that contributes intangible property to a foreign corporation is treated as having sold the property to the corporation and is treated as receiving deemed royalty payments from the corporation. These deemed royalty payments are treated as U.S. source income. A U.S. person may elect to apply similar rules to a transfer of intangible property to a foreign partnership that otherwise would be subject to the section 1491 excise tax.

A foreign partnership may be required to file a partnership return. If a foreign partnership fails to file a required return, losses and credits with respect to the partnership may be disallowed to the partnership. A U.S. person that acquires or disposes of an interest in a foreign partnership, or whose proportional interest in the partnership changes substantially, may be required to file an information return with respect to such event.

A partnership generally is considered to be a domestic partnership if it is created or organized in the United States or under the laws of the United States or any State. A foreign partnership generally is any partnership that is not a domestic partnership.

House Bill

Transfers of foreign entities

The House bill repeals the sections 1491–1494 excise tax and information reporting rules that apply to certain transfers of appreciated property by a U.S. person to a foreign entity. Instead of the excise tax that applies under present law to transfers to a foreign estate or trust, gain recognition is required upon a transfer of appreciated property by a U.S. person to a foreign estate or trust. Instead of the excise tax that applies under present law to certain transfers to foreign corporations, regulatory authority is granted under section 367 to deny nonrecognition treatment to such a transfer in a transaction that is not otherwise described in section 367. Instead of the excise tax that applies under present law to transfers to foreign partnerships, regulatory authority is granted to provide for gain recognition on a transfer of appreciated property to a partnership in cases where such gain otherwise would be transferred to a foreign partner. In addition, regulatory authority is granted to deny the nonrecognition treatment that is provided under section 1035 to certain exchanges of insurance policies, where the transfer is to a foreign person.

The House bill repeals the rule that treats as U.S. source income any deemed royalty arising under section 367(d). Under the House bill, in the case of a transfer of intangible property to a foreign corporation, the deemed royalty payments under section 367(d) are treated as foreign source income to the same extent that an actual royalty payment would be considered to be foreign source income. Regulatory authority is granted to provide similar treatment in the case of a transfer of intangible property to a foreign partnership.

Information reporting

The House bill provides detailed information reporting rules in the case of foreign partnerships. A foreign partnership generally is required to file a partnership return for a taxable year if the partnership has U.S. source income or is engaged in a U.S. trade or business, except to the extent provided in regulations.

Under the House bill, reporting rules similar to those applicable under present law in the case of controlled foreign corporations apply in the case of foreign partnerships. A U.S. partner that controls a foreign partnership is required to file an annual information return with respect to such partnership. For this purpose, a U.S. partner is considered to control a foreign partnership if the partner holds a more than 50 percent interest in the capital, profits, or, to the extent provided in regulations, losses, of the partnership. Similar information reporting also will be required from a U.S. 10-percent partner of a foreign partnership that is controlled by U.S. 10-percent partners. A $10,000 penalty applies to a failure to comply with these reporting requirements; additional penalties of up to $50,000 apply in the case of continued noncompliance after notification by the Secretary of the Treasury. The penalties for failure to report information with respect to a controlled foreign corporation are conformed with these penalties.

Under the House bill, reporting by a U.S. person of an acquisition or disposition of an interest in a foreign partnership, or a change in the person's proportional interest in the partnership, is required only in the case of acquisitions, dispositions, or changes involving at least a 10-percent interest. A $10,000 penalty applies to a failure to comply with these reporting requirements; additional penalties of up to $50,000 apply in the case of continued noncompliance after notification by the Secretary. The penalties for failure to report information with respect to a foreign

corporation are conformed with these penalties.

Under the House bill, reporting rules similar to those applicable under present law in the case of transfers by U.S. persons to foreign corporations apply in the case of transfers to foreign partnerships. These reporting rules apply in the case of a transfer to a foreign partnership only if the U.S. person holds at least a 10-percent interest in the partnership or the value of the property transferred by such person to the partnership during a 12-month period exceeded $100,000. A penalty equal to 10 percent of the value of the property transferred applies to a failure to comply with these reporting requirements. The penalty under present law for failure to report transfers to a foreign corporation is conformed with this penalty. In the case of a transfer to a foreign partnership, failure to comply also results in gain recognition with respect to the property transferred.

Under the House bill, in the case of a failure to report required information with respect to a foreign corporation, partnership, or trust, the statute of limitations with respect to any event or period to which such information relates does not expire before the date that is three years after the date on which such information is provided.

Foreign or domestic partnership determination

Under the House bill, regulatory authority is granted to provide rules treating a partnership as a foreign partnership where such treatment is more appropriate. It is expected that a recharacterization of a partnership as foreign rather than domestic under such regulations will be based only on material factors such as the residence of the partners and the extent to which the partnership is engaged in business in the United States or earns U.S. source income. It also is expected that such regulations will provide guidance regarding the determination of whether an entity that is a partnership for Federal income tax purposes is to be considered to be created or organized in the United States or under the law of the United States or any State.

Effective date

The provisions with respect to the repeal of sections 1491–1494 are effective upon date of enactment. The provisions with respect to the source of a deemed royalty under section 367(d) also are effective for transfers made and royalties deemed received after date of enactment.

The provisions regarding information reporting with respect to foreign partnerships generally are effective for partnership taxable years beginning after date of enactment. The provisions regarding information reporting with respect to interests in, and transfers to, foreign partnerships are effective for transfers to, and changes in interest in, foreign partnerships after date of enactment. Taxpayers may elect to apply these rules to transfers made after August 20, 1996 (and thereby avoid a penalty under section 1494(c)) and the Secretary may prescribe simplified reporting requirements for these cases. The provision with respect to the statute of limitations in the case of noncompliance with reporting requirements is effective for information returns due after date of enactment.

The provision granting regulatory authority with respect to the treatment of partnerships as foreign or domestic is effective for partnership taxable years beginning after date of enactment.

Senate Amendment

The Senate amendment generally follows the House bill with several modifications.

Under the Senate amendment, gain recognition is required upon a transfer of appreciated property by a U.S. person to a foreign estate or trust, except as provided in regulations. This rule does not apply to a transfer to a trust to the extent that any person is treated as the owner of the trust under section 679.

Under the Senate amendment, the penalty equal to 10 percent of the value of the transferred property that applies to a failure to comply with the information reporting requirements with respect to a transfer of property to a foreign corporation or partnership may not exceed $100,000 except in cases of intentional disregard for such reporting requirements.

Under the Senate amendment, regulatory authority is granted to provide rules treating a partnership as a domestic or foreign partnership, where such treatment is more appropriate, without regard to where the partnership is created or organized. It is expected that a recharacterization of a partnership under such regulations will be based only on material factors such as the residence of the partners and the extent to which the partnership is engaged in business in the United States or earns U.S. source income. It also is expected that such regulations will provide guidance regarding the determination of whether an entity that is a partnership for Federal income tax purposes is to be considered to be created or organized in the United States or under the law of the United States or any State.

Conference Agreement

The conference agreement generally follows the Senate amendment with modifications.

The conference agreement clarifies that, for purposes of the requirement of gain recognition upon a transfer of appreciated property by a U.S. person to a foreign estate or trust, a U.S. trust that becomes a foreign trust is treated as having transferred all of its assets to a foreign trust.

The conference agreement further clarifies that, in the case of a transfer by a U.S. person to a foreign corporation as paid-in surplus or as a contribution to capital in a transaction not otherwise described in section 367 (e.g., a capital contribution by a non-shareholder), regulatory authority is granted under section 367 to treat such transfer as a fair market value sale and to require gain recognition thereon.

For purposes of the information reporting rules applicable to a U.S. partner that controls a foreign partnership, the conference agreement clarifies that a partner's interest in a partnership is determined with application of constructive ownership rules similar to those provided in section 267(c) (other than paragraph (3)).

Finally, the conference agreement provides that regulations issued under the grant of regulatory authority to provide rules treating a partnership as a domestic or foreign partnership will apply only to partnerships created or organized after the date such regulations are filed with the Federal Register (or, if earlier, the date of a public notice substantially describing the expected contents of the regulations). Accordingly, regulations issued under this grant of regulatory authority will not be applied to reclassify pre-existing partnerships. In connection with this regulatory authority, the conferees wish to make clear that it is intended that the general rule for classifying a partnership as domestic or foreign will continue to be the place where the partnership is created or organized (or the laws under which it is created or organized), and that the regulations are expected to provide a different classification result only in unusual cases. The conferees also expect that any regulations will avoid period-by-period reclassifications of partnerships.

E. Modification of Reporting Threshold for Stock Ownership of a Foreign Corporation (sec. 1146 of the House bill and sec. 936 of the Senate amendment)

Present Law

Several provisions of the Code require U.S. persons to report information with respect to a foreign corporation in which they are shareholders or officers or directors. Sections 6038 and 6035 generally require every U.S. citizen or resident who is an officer, or director, or who owns at least 10 percent of the stock, of a foreign corporation that is a controlled foreign corporation or a foreign personal holding company to file Form 5471 annually.

Section 6046 mandates the filing of information returns by certain U.S. persons with respect to a foreign corporation upon the occurrence of certain events. U.S. persons required to file these information returns are those who acquire 5 percent or more of the value of the stock of a foreign corporation, others who become U.S. persons while owning that percentage of the stock of a foreign corporation, and U.S. citizens and residents who are officers or directors of foreign corporations with such U.S. ownership.

A failure to file the required information return under section 6038 may result in monetary penalties or reduction of foreign tax credit benefits. A failure to file the required information returns under sections 6035 or 6046 may result in monetary penalties.

House Bill

The House bill increases the threshold for stock ownership of a foreign corporation that results in information reporting obligations under section 6046 from 5 percent (based on value) to 10 percent (based on vote or value).

Effective date.—The provision is effective for reportable transactions occurring after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

F. Other Foreign Simplification Provisions

1. Transition rule for certain trusts (sec. 1161 of the House bill and sec. 951 of the Senate amendment)

Present Law

Under rules enacted with the Small Business Job Protection Act of 1996, a trust is considered to be a U.S. trust if two criteria are met. First, a court within the United States must be able to exercise primary supervision over the administration of the trust. Second, U.S. fiduciaries of the trust must have the authority to control all substantial decisions of the trust. A trust that does not satisfy both of these criteria is considered to be a foreign trust. These rules for defining a U.S. trust generally are effective for taxable years of a trust that begin after December 31, 1996. A trust that qualified as a U.S. trust under prior law could fail to qualify as a U.S. trust under these new criteria.

House Bill

Under the House bill, the Secretary of the Treasury is granted authority to allow nongrantor trusts that had been treated as U.S. trusts under prior law to elect to continue to be treated as U.S. trusts, notwithstanding the new criteria for qualification as a U.S. trust.

Effective date.—The provision is effective for taxable years beginning after December 31, 1996.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Simplify stock and securities trading safe harbor (sec. 1162 of the House bill and sec. 952 of the Senate amendment)

Present Law

A nonresident alien individual or foreign corporation that is engaged in a trade or business within the United States is subject to U.S. taxation on its net income that is effectively connected with the trade or business, at graduated rates of tax. Under a "safe harbor" rule, foreign persons that trade in stocks or securities for their own accounts are not treated as engaged in a U.S. trade or business for this purpose.

For a foreign corporation to qualify for the safe harbor, it must not be a dealer in stock or securities. In addition, if the principal business of the foreign corporation is trading in stock or securities for its own account, the safe harbor generally does not apply if the principal office of the corporation is in the United States.

For foreign persons who invest in securities trading partnerships, the safe harbor applies only if the partnership is not a dealer in stock and securities. In addition, if the principal business of the partnership is trading stock or securities for its own account, the safe harbor generally does not apply if the principal office of the partnership is in the United States.

Under Treasury regulations that apply to both corporations and partnerships, the determination of the location of the entity's principal office turns on the location of various functions relating to operation of the entity, including communication with investors and the general public, solicitation and acceptance of sales of interests, and maintenance and audits of its books of account (Treas. reg. sec. 1.864-2(c)(2)(ii) and (iii)). Under the regulations, the location of the entity's principal office does not depend on the location of the entity's management or where investment decisions are made.

House Bill

The House bill modifies the stock and securities trading safe harbor by eliminating the requirement for both partnerships and foreign corporations that trade stock or securities for their own accounts that the entity's principal office not be within the United States.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Clarification of determination of foreign taxes deemed paid (sec. 1178(a) of the House bill and sec. 953(a) of the Senate amendment)

Present Law

Under section 902, a domestic corporation that receives a dividend from a foreign corporation in which it owns 10 percent or more of the voting stock is deemed to have paid a portion of the foreign taxes paid by such foreign corporation. The domestic corporation that receives a dividend is deemed to have paid a portion of the foreign corporation's post-1986 foreign income taxes based on the ratio of the amount of such dividend to the foreign corporation's post-1986 undistributed earnings. The foreign corporation's post-1986 foreign income taxes is the sum of the foreign income taxes with respect to the taxable year in which the dividend is distributed plus certain foreign income taxes with respect to prior taxable years (beginning after December 31, 1986).

House Bill

The House bill clarifies that, for purposes of the deemed paid credit under section 902 for a taxable year, a foreign corporation's post-1986 foreign income taxes includes foreign income taxes with respect to prior taxable years (beginning after December 31, 1986) only to the extent such taxes are not attributable to dividends distributed by the foreign corporation in prior taxable years. No inference is intended regarding the determination of foreign taxes deemed paid under present law.

Effective date.—The provision is effective on date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Clarification of foreign tax credit limitation for financial services income (sec. 1178(b) of the House bill and sec. 953(b) of the Senate amendment)

Present Law

Under section 904, separate foreign tax credit limitations apply to various categories of income. Two of these separate limitation categories are passive income and financial services income. For purposes of the separate foreign tax credit limitation applicable to passive income, certain income that is treated as high-taxed income is excluded from the definition of passive income. For purposes of the separate foreign tax credit limitation applicable to financial services income, the definition of financial services income generally incorporates passive income as defined for purposes of the separate limitation applicable to passive income.

House Bill

The House bill clarifies that the exclusion of income that is treated as high-taxed income does not apply for purposes of the separate foreign tax credit limitation applicable to financial services income. No inference is intended regarding the treatment of high-taxed income for purposes of the separate foreign tax credit limitation applicable to financial services income under present law.

Effective date.—The provision is effective on date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

G. Other Foreign Provisions

1. Eligibility of licenses of computer software for foreign sales corporation benefits (sec. 1101 of the House bill and sec. 741 of the Senate amendment)

Present law

Under special tax provisions that provide an export benefit, a portion of the foreign trade income of an eligible foreign sales corporation ("FSC") is exempt from Federal income tax. Foreign trade income is defined as the gross income of a FSC that is attributable to foreign trading gross receipts. The term "foreign trading gross receipts" includes the gross receipts of a FSC from the sale, lease, or rental of export property and from services related and subsidiary to such sales, leases, or rentals.

For purposes of the FSC rules, export property is defined as property (1) which is manufactured, produced, grown, or extracted in the United States by a person other than a FSC; (2) which is held primarily for sale, lease, or rental in the ordinary conduct of a trade or business by or to a FSC for direct use, consumption, or disposition outside the United States; and (3) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States. Intangible property generally is excluded from the definition of export property for purposes of the FSC rules; this exclusion applies to copyrights other than films, tapes, records, or similar reproductions for commercial or home use. The temporary Treasury regulations provide that a license of a master recording tape for reproduction outside the United States is not excluded from the definition of export property (Treas. Reg. sec. 1.927(a)-1T(f)(3)). The statutory exclusion for intangible property does not contain any specific reference to computer software. However, the temporary Treasury regulations provide that a copyright on computer software does not constitute export property, and that standardized, mass marketed computer software constitutes export property if such software is not accompanied by a right to reproduce for external use (Treas. Reg. sec. 1.927(a)-1T(f)(3)).

House Bill

The House bill provides that computer software licensed for reproduction abroad is not excluded from the definition of export property for purposes of the FSC provisions. Accordingly, computer software that is exported with a right to reproduce is eligible for the benefits of the FSC provisions. In light of the rapid innovations in the computer and software industries, the Committee intends that the term "computer software" be construed broadly to accommodate technological changes in the products produced by both industries. No inference is intended regarding the qualification as export property of computer software licensed for reproduction abroad under present law.

Effective date.—The provision generally applies to gross receipts from computer software licenses attributable to periods after December 31, 1997. Accordingly, in the case of a multi-year license, the provision applies to gross receipts attributable to the period of such license that is after December 31, 1997. In the case of gross receipts attributable to 1998, the provision applies to only one-third of such gross receipts. In the case of gross receipts attributable to 1999, the provision applies to only two-thirds of such gross receipts.

Senate Amendment

The Senate amendment is the same as the House bill, with a modification to the effective date.

Effective date.—The provision applies to gross receipts from computer software licenses attributable to periods after December 31, 1997. Accordingly, in the case of a multi-year license, the provision applies to gross receipts attributable to the period of such license that is after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Increase dollar limitation on section 911 exclusion (sec. 1102 of the House bill)

Present Law

U.S. citizens generally are subject to U.S. income tax on all their income, whether derived in the United States or elsewhere. A U.S. citizen who earns income in a foreign country also may be taxed on such income by that foreign country. A credit against the U.S. income tax imposed on foreign source income is allowed for foreign taxes paid on such income.

U.S. citizens living abroad may be eligible to exclude from their income for U.S. tax purposes certain foreign earned income and foreign housing costs. In order to qualify for these exclusions, a U.S. citizen must be either (1) a bona fide resident of a foreign country for an uninterrupted period that includes an entire taxable year or (2) present overseas for 330 days out of any 12 consecutive month period. In addition, the taxpayer must have his or her tax home in a foreign country.

The exclusion for foreign earned income generally applies to income earned from sources outside the United States as compensation for personal services actually rendered by the taxpayer. The maximum exclusion for foreign earned income for a taxable year is $70,000.

The exclusion for housing costs applies to reasonable expenses, other than deductible interest and taxes, paid or incurred by or on behalf of the taxpayer for housing for the taxpayer and his or her spouse and dependents in a foreign country. The exclusion amount for housing costs for a taxable year is equal to the excess of such housing costs for the taxable year over an amount computed pursuant to a specified formula.

The combined earned income exclusion and housing cost exclusion may not exceed the taxpayer's total foreign earned income. The taxpayer's foreign tax credit is reduced by the amount the credit that is attributable to excluded income.

House Bill

Under the House bill, the $70,000 limitation on the exclusion for foreign earned income is increased to $80,000, in increments of $2,000 each year beginning in 1998. The $80,000 limitation on the exclusion for foreign earned income is indexed for inflation beginning in 2008 (for inflation after 2006).

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

3. Treatment of certain securities positions under the subpart F investment in U.S. property rules (sec. 743 of the Senate amendment)

Present Law

Under the rules of subpart F (secs. 951-964), the U.S. 10-percent shareholders of a controlled foreign corporation (CFC) are required to include in income currently for U.S. tax purposes certain earnings of the CFC, whether or not such earnings are distributed currently to the shareholders. The U.S. 10-percent shareholders of a CFC are subject to current U.S. tax on their shares of certain income earned by the CFC (referred to as "subpart F income'). The U.S. 10-percent shareholders also are subject to current U.S. tax on their shares of the CFC's earnings to the extent invested by the CFC in certain U.S. property.

A shareholder's current income inclusion with respect to a CFC's investment in U.S. property for a taxable year is based on the CFC's average investment in U.S. property for such year. For this purpose, the U.S. property held by the CFC must be measured as of the close of each quarter in the taxable year. U.S. property generally is defined to include tangible property located in the United States, stock of a U.S. corporation, obligations of a U.S. person, and the right to use certain intellectual property in the United States. Exceptions are provided for, among other things, obligations of the United States, U.S. bank deposits, certain trade or business obligations, and stock or debts of certain unrelated U.S. corporations.

House Bill

No provision.

Senate Amendment

The Senate amendment provides two additional exceptions from the definition of U.S. property for purposes of the subpart F rules. Both exceptions relate to transactions entered into by a securities or commodities dealer in the ordinary course of its business as a securities or commodities dealer.

The first exception covers the deposit of collateral or margin by a securities or commodities dealer, or the receipt of such a deposit by a securities or commodities dealer, if such deposit is made or received on commercial terms in the ordinary course of the dealer's business as a securities or commodities dealer. This exception applies to deposits of margin or collateral for securities loans, notional principal contracts, options contracts, forward contracts, futures contracts, and any other financial transaction with respect to which the Secretary of the Treasury determines that the posting of collateral or margin is customary.

The second exception covers repurchase agreement transactions and reverse repurchase agreement transactions entered into by or with a securities or commodities dealer in the ordinary course of its business as a securities or commodities dealer. The exception applies only to the extent that the obligation under the transaction does not exceed the fair market value of readily marketable securities transferred or otherwise posted as collateral.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 1997, and taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Conference Agreement

The conference agreement generally follows the Senate amendment. Under the conference agreement, for purposes of these two additional exceptions under section 956, the term "dealer in commodities" means futures commission merchants and dealers in commodities within the meaning of the new definition that is added to section 475 by the conference agreement. In addition, the conferees wish to clarify that the addition of these two exceptions under section 956 is not intended to create any inference regarding the treatment of an obligation of a U.S. person to return stock that is borrowed pursuant to a securities loan.

4. Exception from foreign personal holding company income under subpart F for active financing income (sec. 744 of the Senate amendment)

Present Law

Under the subpart F rules, certain U.S. shareholders of a controlled foreign corporation ("CFC") are subject to U.S. tax currently on certain income earned by the CFC, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, "foreign personal holding company income" and insurance income. The U.S. 10-percent shareholders of a CFC also are subject to current inclusion with respect to their shares of the CFC's foreign base company services income (i.e., income derived from services performed for a related person outside the country in which the CFC is organized).

Foreign personal holding company income generally consists of the following: dividends, interest, royalties, rents and annuities; net gains from sales or exchanges of (1) property that gives rise to the preceding types of income, (2) property that does not give rise to income, and (3) interests in trusts, partnerships, and REMICs; net gains from commodities transactions; net gains from foreign currency transactions; and income that is equivalent to interest.

Insurance income subject to current inclusion under the subpart F rules includes any income of a CFC attributable to the issuing or reinsuring of any insurance or annuity contract in connection with risks located in a country other than the CFC's country of organization and related person insurance income. Subpart F insurance income also includes income attributable to an insurance contract in connection with risks located within the CFC's country of organization, as the result of an arrangement under which another corporation receives a substantially equal amount of consideration for insurance of other-country risks. Investment income of a CFC that is allocable to any insurance or annuity contract related to risks located outside the CFC's country of organization is taxable as subpart F insurance income (Prop. Treas. reg. sec. 1.953-1(a)). Investment income allocable to risks located within the CFC's country of organization generally is taxable as foreign personal holding company income.

House Bill

No provision.

Senate Amendment

The Senate amendment provides a temporary exception from foreign personal holding company income for subpart F purposes for certain income that is derived in the active conduct of an insurance, banking, financing or similar business. Such exception is applicable only for taxable years beginning in 1998.

Under the Senate amendment, foreign personal holding company income does not include income that is derived in or incident to

the active conduct of a banking, financing or similar business by a CFC that is predominantly engaged in the active conduct of such business. For this purpose, income derived in the active conduct of a banking, financing, or similar business generally is determined under the principles applicable in determining financial services income for foreign tax credit limitation purposes. Moreover, the Secretary of the Treasury shall prescribe regulations applying look-through treatment in characterizing for this purpose dividends, interest, income equivalent to interest, rents, and royalties from related persons. A CFC is considered to be predominantly engaged in the active conduct of a banking, financing, or similar business if (1) more than 70 percent of its gross income is derived from transactions with unrelated persons and more than 20 percent of its gross income from that business is derived from transactions with unrelated persons located within the country in which the CFC is organized or incorporated, or (2) the CFC is predominantly engaged in the active conduct of a banking or securities business, or is a qualified bank or securities affiliate, as defined for purposes of the passive foreign investment company provisions.

Under the Senate amendment, foreign personal holding company income also does not include certain investment income of a qualifying insurance company with respect to risks located within the CFC's country of organization. These exceptions apply to income derived from investments of assets equal to the total of (1) unearned premiums and reserves ordinary and necessary for the proper conduct of the CFC's insurance business, (2) one-third of premiums earned during the taxable year on insurance contracts regulated in the country in which sold as property, casualty, or health insurance contracts, and (3) the greater of $10 million or 10 percent of reserves for insurance contracts regulated in the country in which sold as life insurance or annuity contracts. For this purpose, a qualifying insurance company is an entity that is subject to regulation as an insurance company under the laws of its country of incorporation and that realizes at least 50 percent of its gross income (other than income from investments) from premiums related to risks located within such country. These exceptions for insurance investment income do not apply to investment income which is received by the CFC from a related person. Similarly, the exceptions do not apply to investment income that is attributable directly or indirectly to the insurance or reinsurance of risks of related persons. The Senate amendment does not change the rule of present law that investment income of a CFC that is attributable to the issuing or reinsuring of any insurance or annuity contract related to risks outside of its country of organization is taxable as Subpart F insurance income.

The Senate amendment also provides an exception from foreign base company services income for income derived from services performed in connection with the active conduct of a banking, financing, insurance or similar business by a CFC that is predominantly engaged in the active conduct of such business.

Effective date.—The provision applies only to taxable years of foreign corporations beginning in 1998, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

Conference Agreement

The conference agreement generally follows the Senate amendment with modifications.

Under the conference agreement, the temporary exception from foreign personal holding company income applies to income that is derived in the active conduct of a banking, financing or similar business by a CFC that is predominantly engaged in the active conduct of such business. For this purpose, income derived in the active conduct of a banking, financing, or similar business generally is determined under the principles applicable in determining financial services income for foreign tax credit limitation purposes. However, in the case of a corporation that is engaged in the active conduct of a banking or securities business, the income that is eligible for this exception is determined under the principles applicable in determining the income which is treated as nonpassive income for purposes of the passive foreign investment company provisions. The conferees generally intend that the income of a corporation engaged in the active conduct of a banking or securities business that is eligible for this exception is the income that is treated as nonpassive under the regulations proposed under section 1296(b). See Prop. Treas. Reg. secs. 1.1296–4 and 1.1296–6. In this regard, the conferees intend that eligible income will include income or gains with respect to foreclosed property which is incident to the active conduct of a banking business.

For purposes of the temporary exception, a corporation is considered to be predominantly engaged in the active conduct of a banking, financing, or similar business if it is engaged in the active conduct of a banking or securities business or is a qualified bank affiliate or qualified securities affiliate. In this regard, the conferees intend that a corporation will be considered to be engaged in the active conduct of a banking or securities business if the corporation would be treated as so engaged under the regulations proposed under section 1296(b); the conferees further intend that qualified bank affiliates and qualified securities affiliates will be as determined under such proposed regulations. See Prop. Treas. Reg. secs. 1.1296–4 and 1.1296–6.

Alternatively, a corporation is considered to be engaged in the active conduct of a banking, financing or similar business if more than 70 percent of its gross income is derived from such business from transactions with unrelated persons located within the country under the laws of which the corporation is created or organized. For this purpose, income derived by a qualified business unit of a corporation from transactions with unrelated persons located in the country in which the qualified business unit maintains its principal office and conducts substantial business activity is treated as derived by the corporation from transactions with unrelated persons located within the country in which the corporation is created or organized. A person other than a natural person is considered to be located within the country in which it maintains an office through which it engages in a trade or business and by which the transaction is effected. A natural person is treated as located within the country in which such person is physically located when such person enters into the transaction.

The conference agreement provides a temporary exception from foreign personal holding company income for certain investment income of a qualifying insurance company with respect to risks located within the CFC's country of creation or organization. The rules of this provision of the conference agreement differ from the rules of present-law section 953 of the Code, which determines the subpart F inclusions of a U.S. shareholder relating to insurance income of a CFC. Such insurance income under section 953 generally is computed in accordance with the rules of subchapter L of the Code. The conferees believe that review of the rules of this provision would be appropriate when final guidance under section 953 is published by the Treasury Department.

The conference agreement provides a temporary exception for income (received from a person other than a related person) from investments made by a qualifying insurance company of its reserves or 80 percent of its unearned premiums (as defined for purposes of the provision). For this purpose, in the case of contracts regulated in the country in which sold as property, casualty, or health insurance contracts, unearned premiums and reserves mean unearned premiums and reserves for losses incurred determined using the methods and interest rates that would be used if the qualifying insurance company were subject to tax under subchapter L of the Code. Thus, for this purpose, unearned premiums are determined in accordance with section 832(b)(4), and reserves for losses incurred are determined in accordance with section 832(b)(5) and 846 of the Code (as well as any other rules applicable to a U.S. property and casualty insurance company with respect to such amounts).

In the case of a contract regulated in the country in which sold as a life insurance or annuity contract, the following three alternative rules for determining reserves are provided under the conference agreement. It is intended that any one of the three rules may be elected with respect to a particular line of business.

First, reserves for such contracts may be determined generally under the rules applicable to domestic life insurance companies under subchapter L of the Code, using the methods there specified, but substituting for the interest rates in Code section 807(d)(2)(B) an interest rate determined for the country in which the qualifying insurance company was created or organized, calculated in the same manner as the mid-term applicable Federal interest rate ("AFR") (within the meaning of section 1274(d)).

Second, the reserves for such contracts may be determined generally using a preliminary term foreign reserve method, except that the interest rate to be used is the interest rate determined for the country in which the qualifying insurance company was created or organized, calculated in the same manner as the mid-term AFR. If a qualifying insurance company uses such a preliminary term method with respect to contracts insuring risks located in the country in which the company is created or organized, then such method is the method that applies for purposes of this election.

Third, reserves for such contracts may be determined to be equal to the net surrender value of the contract (as defined in section 807(e)(1)(A)).

In no event may the reserve for any contract at any time exceed the foreign statement reserve for the contract, reduced by any catastrophe or deficiency reserve. This rule applies whether the contract is regulated as a property, casualty, health, life insurance, annuity, or any other type of contract.

The conference agreement also provides a temporary exception for income from investment of assets equal to (1) one-third of premiums earned during the taxable year on insurance contracts regulated in the country in which sold as property, casualty, or

health insurance contracts, and (2) the greater of 10 percent of reserves, or, in the case of a qualifying insurance company that is a startup company, $10 million. For this purpose, a startup company is a company (including any predecessor) that has not been engaged in the active conduct of an insurance business for more than 5 years. It is intended that the 5-year period commences when the foreign company first is engaged in the active conduct of an insurance business. If the foreign company was formed before being acquired by the U.S. shareholder, the 5-year period commences when the acquired company first was engaged in the active conduct of an insurance business. The conferees intend that in the event of the acquisition of a book of business from another company through an assumption or indemnity reinsurance transaction, the period commences when the acquiring company first engaged in the active conduct of an insurance business, except that if more than a substantial part (e.g., 80 percent) of the business of the ceding company is acquired, then the 5-year period commences when the ceding company first engaged in the active conduct of an insurance business. In addition, it is not intended that reinsurance transactions among related persons be used to multiply the number of 5-year periods.

To prevent the shifting of relatively high-yielding assets to generate investment income that qualifies under this temporary exception, the conference agreement provides that, under rules prescribed by the Secretary, income is allocated to contracts as follows. In the case of contracts that are separate-account-type contracts (including variable contracts not meeting the requirements of section 817), only the income specifically allocable to such contracts is taken into account. In the case of other contracts, income not specifically allocable is allocated ratably among such contracts.

The conference agreement modifies the definition of a qualifying insurance company. Under the conference agreement, a qualifying insurance company means any entity which: (1) is regulated as an insurance company under the laws of the country in which it is incorporated; (2) derives at least 50 percent of its net written premiums from the insurance or reinsurance of risks situated within its country of incorporation; and (3) is engaged in the active conduct of an insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

The conference agreement clarifies that this provision does not apply to investment income (includable in the income of a U.S. shareholder of a CFC pursuant to section 953) allocable to contracts that insure related party risks or risks located in a country other than the country in which the qualifying insurance company is created or organized.

Finally, the conference agreement provides an anti-abuse rule applicable for purposes of these temporary exceptions from foreign personal holding company income. For purposes of applying these exceptions, items with respect to a transaction or series of transactions shall be disregarded if one of the principal purposes of the transaction or transactions is to qualify income or gain for these exceptions, including any change in the method of computing reserves or any other transaction or transactions one of the principal purposes of which is the acceleration or deferral of any item in order to claim the benefits of these exceptions.

The conferees recognize that insurance, banking, financing, and similar businesses are businesses the active conduct of which involves the generation of income, such as interest and dividends, of a type that generally is treated as passive for purposes of subpart F. For purposes of this temporary provision, the conferees intend to delineate the income derived in the active conduct of such businesses, while retaining the present-law anti-deferral rules of subpart F with respect to income not derived in the active conduct of these financial services businesses. However, the conferees recognize that the line between income derived in the active conduct of such businesses and income otherwise derived by entities so engaged can be difficult to draw. The conferees believe that the issues of the determination of income derived in the active conduct of such businesses and the potential mobility of the business activity and income recognition of insurance, banking, financing, and similar businesses require further study. In the event that it becomes necessary to consider a possible extension of the provision in the future, the conferees would invite the comments of taxpayers and the Treasury Department regarding these issues.

5. Treat service income of nonresident alien individuals earned on foreign ships as foreign source income and disregard the U.S. presence of such individuals (sec. 745 of the Senate amendment)

Present Law

Nonresident alien individuals generally are subject to U.S. taxation and withholding on their U.S. source income. Compensation for labor and personal services performed within the United States is considered U.S. source unless such income qualifies for a de minimis exception. To qualify for the exception, the compensation paid to a nonresident alien individual must not exceed $3,000, the compensation must reflect services performed on behalf of a foreign employer, and the individual must be present in the United Sates for not more than 90 days during the taxable year. Special rules apply to exclude certain items from the gross income of a nonresident alien. An exclusion applies to gross income derived by a nonresident alien individual from the international operation of a ship if the country in which such individual is resident provides a reciprocal exemption for U.S. residents. However, this exclusion does not apply to income from personal services performed by an individual crew member on board a ship. Consequently, wages exceeding $3,000 in a taxable year that are earned by nonresident alien individual crew members of a foreign ship while the vessel is within U.S. territory are subject to income taxation by the United States.

U.S. residents are subject to U.S. tax on their worldwide income. In general, a non-U.S. citizen is considered to be a resident of the United States if the individual (1) has entered the United States as a lawful permanent U.S. resident or (2) is present in the United States for 31 or more days during the current calendar year and has been present in the United States for a substantial period of time—183 or more days—during a three-year period computed by weighting toward the present year (the "substantial presence test"). An individual generally is treated as present in the United States on any day if such individual is physically present in the United States at any time during the day. Certain categories of individuals (e.g., foreign government employees and certain students) are not treated as U.S. residents even if they are present in the United States for the requisite period of time. Crew members of a foreign vessel who are on board the vessel while it is stationed within U.S. territorial waters are treated as present in the United States.

House Bill

No provision.

Senate Amendment

The Senate amendment treats gross income of a nonresident alien individual, who is present in the United States as a member of the regular crew of a foreign vessel, from the performance of personal services in connection with the international operation of a ship as income from foreign sources. Thus, such income is exempt from U.S. income and withholding tax. However, such persons are not excluded for purposes of applying the minimum participation standards of section 410 to a plan of the employer. In addition, for purposes of determining whether an individual is a U.S. resident under the substantial presence test, the Senate amendment provides that the days that such individual is present as a member of the regular crew of a foreign vessel are disregarded.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement generally follows the Senate amendment with modifications. The conference agreement provides that the treatment of income of a nonresident alien crew member of a foreign vessel as foreign source income will not apply for purposes of the pension rules and certain employee benefit provisions. The conference agreement further provides that, for purposes of determining whether an individual is a U.S. resident under the substantial presence test, any day that such individual is present as a member of the regular crew of a foreign vessel is disregarded only if the individual does not otherwise engage in trade or business within the United States on such day.

XII. SIMPLIFICATION PROVISIONS RELATING TO INDIVIDUALS AND BUSINESSES

A. Provisions Relating to Individuals

1. Modifications to standard deduction of dependents; AMT treatment of certain minor children (sec. 1201 of the House bill and sec. 1001 of the Senate amendment)

Present Law

Standard deduction of dependents.—The standard deduction of a taxpayer for whom a dependency exemption is allowed on another taxpayer's return can not exceed the lesser of (1) the standard deduction for an individual taxpayer (projected to be $4,250 for 1998) or (2) the greater of $500 (indexed)[1] or the dependent's earned income (sec. 63(c)(5)).

Taxation of unearned income of children under age 14.—The tax on a portion of the unearned income (e.g., interest and dividends) of a child under age 14 is the additional tax that the child's custodial parent would pay if the child's unearned income were included in that parent's income. The portion of the child's unearned income which is taxed at the parent's top marginal rate is the amount by which the child's unearned income is more than the sum of (1) $500[2] (indexed) plus (2) the greater of (a) $500[3] (indexed) or (b) the child's itemized deductions directly connected with the production of the unearned income (sec. 1(g)).

Alternative minimum tax ("AMT") exemption for children under age 14.—Single taxpayers

[1] The indexed amount is projected to be $700 for 1998.

[2] Projected to be $700 for 1998.

[3] Projected to be $700 for 1998.

are entitled to an exemption from the alternative minimum tax ("AMT") of $33,750. However, in the case of a child under age 14, his exemption from the AMT, in substance, is the unused alternative minimum tax exemption of the child's custodial parent, limited to sum of earned income and $1,400 (sec. 59(j)).

House Bill

Standard deduction of dependents.—The House bill increases the standard deduction for a taxpayer with respect to whom a dependency exemption is allowed on another taxpayer's return to the lesser of (1) the standard deduction for individual taxpayers or (2) the greater of: (a) $500[4] (indexed for inflation as under present law), or (b) the individual's earned income plus $250. The $250 amount is indexed for inflation after 1998.

Alternative minimum tax exemption for children under age 14.—The House bill increases the AMT exemption amount for a child under age 14 to the lesser of (1) $33,750 or (2) the sum of the child's earned income plus $5,000. The $5,000 amount is indexed for inflation after 1998.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Increase de minimis threshold for estimated tax to $1,000 for individuals (sec. 1202 of the House bill and sec. 1002 of the Senate amendment)

Present Law

An individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax (sec. 6654). An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax shown on the return of the individual for the preceding year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax shown on the return for the current year. The 100 percent of last year's liability safe harbor is modified to be a 110 percent of last year's liability safe harbor for any individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year. Income tax withholding from wages is considered to be a payment of estimated taxes. In general, payment of estimated taxes must be made quarterly. The addition to tax is not imposed where the total tax liability for the year, reduced by any withheld tax and estimated tax payments, is less than $500.

House Bill

The House bill increases the $500 individual estimated tax de minimis threshold to $1,000.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Optional methods for computing SECA tax combined (sec. 1203 of the House bill)

Present Law

The Self-Employment Contributions Act ("SECA") imposes taxes on net earnings from self-employment to provide social security coverage to self-employed workers. The maximum amount of earnings subject to the SECA tax is coordinated with, and is set at the same level as, the maximum level of wages and salaries subject to FICA taxes ($65,000 for OASDI taxes in 1997 and indexed annually, and without limit for the Hospital Insurance tax). Special rules allow certain self-employed individuals to continue to maintain social security coverage during a period of low income. The method applicable to farmers is slightly more favorable than the method applicable to other self-employed persons.

A farmer may increase his or her self-employment income, for purposes of obtaining social security coverage, by reporting two-thirds of the first $2,400 of gross income as net earnings from self-employment, i.e., the optional amount of net earnings from self-employment would not exceed $1,600. There is no limit on the number of times a farmer may use this method. The optional method for non farm income is similar, also permitting two-thirds of the first $2,400 of gross income to be treated as self-employment income. However, the optional non farm method may not be used more than five times by any individual, and may only be used if the taxpayer had net earnings from self-employment of $400 or more in at least two of the three years immediately preceding the year in which the optional method is elected.

In general, to receive benefits, including Disability Insurance Benefits, under the Social Security Act, a worker must have a minimum number of quarters of coverage. A minimum amount of wages or self-employment income must be reported to obtain a quarter of coverage. A maximum of four quarters of coverage may be obtained each year. In 1978, the amount of earnings required to obtain a quarter of coverage began increasing each year. Starting in 1994, a farmer could obtain only two quarters of coverage under the optional method applicable to farmers.

House Bill

The House bill combines the farm and non farm optional methods into a single combined optional method applicable to all self-employed workers. A self-employed worker may elect to use the optional method an unlimited number of times. If it is used, it must be applied to all self- employment earnings for the year, both farm and non farm.

The $2,400 amount is increased to an amount which would provide four quarters of coverage in 1998 (the "lower limit'). Such amount increases each year based on the earnings requirements under the Social Security Act.

The optional method in this provision is elected on a year-by-year basis. An election for a taxable year must be filed with the original Federal income tax return for the year, and may not be made retroactively by filing an amended return.

Effective date: The provision is effective for taxable years beginning after January 1, 1998.

Senate Amendment

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

4. Treatment of certain reimbursed expenses of rural letter carriers' vehicles (sec. 1204 of the House bill and sec. 1003 of the Senate amendment)

Present Law

A taxpayer who uses his or her automobile for business purposes may deduct the business portion of the actual operation and maintenance expenses of the vehicle, plus depreciation (subject to the limitations of sec. 280F). Alternatively, the taxpayer may elect to utilize a standard mileage rate in computing the deduction allowable for business use of an automobile that has not been fully depreciated. Under this election, the taxpayer's deduction equals the applicable rate multiplied by the number of miles driven for business purposes and is taken in lieu of deductions for depreciation and actual operation and maintenance expenses.

An employee of the U.S. Postal Service may compute his deduction for business use of an automobile in performing services involving the collection and delivery of mail on a rural route by using, for all business use mileage, 150 percent of the standard mileage rate.

Rural letter carriers are paid an equipment maintenance allowance (EMA) to compensate them for the use of their personal automobiles in delivering the mail. The tax consequences of the EMA are determined by comparing it with the automobile expense deductions that each carrier is allowed to claim (using either the actual expenses method or the 150 percent of the standard mileage rate). If the EMA exceeds the allowable automobile expense deductions, the excess generally is subject to tax. If the EMA falls short of the allowable automobile expense deductions, a deduction is allowed only to the extent that the sum of this shortfall and all other miscellaneous itemized deductions exceeds two percent of the taxpayer's adjusted gross income.

House Bill

The House bill repeals the special rate for Postal Service employees of 150 percent of the standard mileage rate. In its place, the House bill requires that the rate of reimbursement provided by the Postal Service to rural letter carriers be considered to be equivalent to their expenses. The rate of reimbursement that is considered to be equivalent to their expenses is the rate of reimbursement contained in the 1991 collective bargaining agreement, which may be increased by no more than the rate of inflation.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. Travel expenses of Federal employees participating in a Federal criminal investigation (sec. 1205 of the House bill and sec. 1004 of the Senate amendment)

Present Law

Unreimbursed ordinary and necessary travel expenses paid or incurred by an individual in connection with temporary employment away from home (e.g., transportation costs and the cost of meals and lodging) are generally deductible, subject to the two-percent floor on miscellaneous itemized deductions. Travel expenses paid or incurred in connection with indefinite employment away from

[4] Projected to be $700 for 1998.

home, however, are not deductible. A taxpayer's employment away from home in a single location is indefinite rather than temporary if it lasts for one year or more; thus, no deduction is permitted for travel expenses paid or incurred in connection with such employment (sec. 162(a)). If a taxpayer's employment away from home in a single location lasts for less than one year, whether such employment is temporary or indefinite is determined on the basis of the facts and circumstances.

House Bill

The one-year limitation with respect to deductibility of expenses while temporarily away from home does not include any period during which a Federal employee is certified by the Attorney General (or the Attorney General's designee) as traveling on behalf of the Federal Government in a temporary duty status to investigate or provide support services to the investigation of a Federal crime. Thus, expenses for these individuals during these periods are fully deductible, regardless of the length of the period for which certification is given (provided that the other requirements for deductibility are satisfied).

Effective date.—The provision is effective for amounts paid or incurred with respect to taxable years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

6. Payment of taxes by commercially acceptable means (sec. 1206 of the House bill)

Present Law

Payment of taxes may be made by checks or money orders, to the extent and under the conditions provided by Treasury regulations (sec. 6311).

House Bill

In general

The Internal Revenue Service (IRS) is engaged in a long-term modernization of its information systems, the Tax Systems Modernization (TSM) Program. This modernization is intended to address deficiencies in the current IRS information systems and to plan effectively for future information system needs and requirements. The systems changes are designed to reduce the burden on taxpayers, generate additional revenue through improved voluntary compliance, and achieve productivity gains throughout the IRS. One key element of this program is electronic filing of tax returns.

At the present time, increasing reliance is being placed upon electronic funds transfers for payment of obligations. In light of this, the IRS seeks to integrate these payment methods in its TSM program, including electronic filing of returns, as well as into its traditional collection functions. The House bill allows the IRS to accept payment by any commercially acceptable means that the Secretary deems appropriate, to the extent and under the conditions provided in Treasury regulations. This will include, for example, electronic funds transfers, including those arising from credit cards, debit cards, and charge cards.

The IRS contemplates that it will proceed to negotiate contracts to implement this provision with one or more private sector credit and debit card systems. The House bill provides that the Federal Government may pay fees with respect to any such contracts only out of amounts specifically appropriated for that purpose.

Billing error resolution

In the course of processing these transactions, it will be necessary to resolve billing errors and other disputes. The Internal Revenue Code contains mechanisms for the determination of tax liability, defenses and other taxpayer protections, and the resolution of disputes with respect to those liabilities. The Truth-in-Lending Act contains provisions for determination of credit card liabilities, defenses and other consumer protections, and the resolution of disputes with respect to these liabilities.

The House bill excludes credit card, debit card, and charge card issuers and processing mechanisms from the resolution (such as through the "billing error" resolution process) of tax liability, but makes IRS subject to the Truth-in-Lending provisions insofar as those provisions impose obligations and responsibilities with regard to the "billing error" resolution process. It is not intended that consumers obtain additional ways to dispute their tax liabilities under the Truth-in-Lending provisions.

The House bill also specifically includes the use of debit cards in this provision and provides that the corresponding defenses and "billing error" provisions of the Electronic Fund Transfer Act will apply in a similar manner.

The House bill adds new section 6311(d)(3) to the Code. This section describes the circumstances under which section 161 of the Truth-in-Lending Act ("TILA") and section 908 of the Electronic Fund Transfer Act ("EFTA") apply to disputes that may arise in connection with payments of taxes made by credit card or debit card. Subsections (A) through (C) recognize that "billing errors" relating to the credit card account, such as an error arising from a credit card transaction posted to a cardholder's account without the cardholder's authorization, an amount posted to the wrong cardholder's account, or an incorrect amount posted to a cardholder's account as a result of a computational error or numerical transposition, are governed by the billing error provisions of section 161 of TILA. Similarly, subsections 6311(d)(3)(A)–(C) provide that errors such as those described above which arise in connection with payments of internal revenue taxes made by debit card, are governed by section 908 of EFTA.

The Internal Revenue Code provides that refunds are only authorized to be paid to the person who made the overpayment (generally the taxpayer). Subsection 6311(d)(3)(E), however, provides that where a taxpayer is entitled to receive funds as a result of the correction of a billing error made under section 161 of TILA in connection with a credit card transaction, or under section 908 of EFTA in connection with a debit card transaction, the IRS is authorized to utilize the appropriate credit card or debit card system to initiate a credit to the taxpayer's credit card or debit card account. The IRS may, therefore, provide such funds through the taxpayer's credit card or debit card account rather than directly to the taxpayer.

On the other hand, subsections 6311(d)(3)(A)–(C) provide that any alleged error or dispute asserted by a taxpayer concerning the merits of the taxpayer's underlying tax liability or tax return is governed solely by existing tax laws, and is not subject to section 161 or section 170 of TILA, section 908 of EFTA, or any similar provisions of State law. Absent the exclusion from section 170 of TILA, in a collection action brought against the cardholder by the card issuer the cardholder might otherwise assert as a defense that the IRS had incorrectly computed his tax liability. A collection action initiated by a credit card issuer against the taxpayer/cardholder will be an inappropriate vehicle for the determination of a taxpayer's tax liability, especially since the United States will not be a party to such an action.

Similarly, without the exclusion from section 161 of TILA and section 908 of EFTA, a taxpayer could contest the merits of his tax liability by putting the charge which appears on the credit card bill in dispute. Pursuant to TILA or EFTA, the taxpayer's card issuer will have to investigate the dispute, thereby finding itself in the middle of a dispute between the IRS and the taxpayer. It is believed that it is improper to attempt to resolve tax disputes through the billing process. It is also noted that the taxpayer retains the traditional, existing remedies for resolving tax disputes, such as resolving the dispute administratively with the IRS, filing a petition with the Tax Court after receiving a statutory notice of deficiency, or paying the disputed tax and filing a claim for refund (and subsequently filing a refund suit if the claim is denied or not acted upon).

Creditor status

The TILA imposes various responsibilities and obligations on creditors. Although the definition of the term "creditor" set forth in 15 U.S.C. sec. 1602 is limited, and will generally not include the IRS, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card are, pursuant to 15 U.S.C. sec. 1602(f), creditors.

In addition, 12 CFR sec. 226.12(e) provides that the creditor must transmit a credit statement to the card issuer within 7 business days from accepting the return or forgiving the debt. There is a concern that the response deadlines otherwise imposed by 12 CFR sec. 226.12(e), if applicable, will be difficult for the IRS to comply with (given the volume of payments the IRS is likely to receive in peak periods). This could subject the IRS to unwarranted damage actions. Consequently, the House bill generally provides an exception to creditor status for the IRS.

Privacy protections

The House bill also addresses privacy questions that arise from the IRS' participation in credit card processing systems. It is believed that taxpayers expect that the maximum possible protection of privacy will be accorded any transactions they have with the IRS. Accordingly, the House bill provides the greatest possible protection of taxpayers' privacy that is consistent with developing and operating an efficient tax administration system. It is expected that the principle will be fully observed in the implementation of this provision.

A key privacy issue is the use and redisclosure of tax information by financial institutions for purposes unrelated to the processing of credit card charges, i.e., marketing and related uses. To accept credit card charges by taxpayers, the IRS will have to disclose tax information to financial institutions to obtain payment and to resolve billing disputes. To obtain payment, the IRS will have to disclose, at a minimum, information on the "credit slip," i.e., the dollar amount of the payment and the taxpayer's credit card number.

The resolution of billing disputes may require the disclosure of additional tax information to financial institutions. In most

cases, providing a copy of the credit slip and verifying the transaction amount will be sufficient. Conceivably, financial institutions could require some information regarding the underlying liability even where the dispute concerns a "billing dispute" matter. This additional information will not necessarily be shared as widely as the initial payment data. In lieu of disclosing further information, the IRS may elect to allow disputed amounts to be charged back to the IRS and to reinstate the corresponding tax liability.

Despite the language in most cardholder agreements that permits redisclosure of credit card transaction information, the public may be largely unaware of how widely that information is shared. For example, some financial institutions may share credit, payment, and purchase information with private credit bureaus, who, in turn, may sell this information to direct mail marketers, and others. Without use and redisclosure restrictions, taxpayers may discover that some traditionally confidential tax information might be widely disseminated to direct mail marketers and others.

It is intended that credit or debit card transaction information will generally be restricted to those uses necessary to process payments and resolve billing errors, as well as other purposes that are specified in the statute. The House bill directs the Secretary to issue published procedures on what constitutes authorized uses and disclosures. It is anticipated that the Secretary's published procedures will prohibit the use of transaction information for marketing tax-related services by the issuer or any marketing that targets only those who use their credit card to pay their taxes. It is also anticipated that the published procedures will prohibit the sale of transaction information to a third party.

Effective date.—The provision is effective nine months after the date of enactment. The IRS may, in this interim period, conduct internal tests and negotiate with card issuers, but may not accept credit or debit cards for payment of tax liability.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the requirement that a separate appropriation be made for payment by the IRS of credit card fees is deleted, and a prohibition on the payment by the IRS of any fee or the provision of any other consideration is added.

B. Provisions Relating to Businesses Generally

1. Modifications to look-back method for long-term contracts (sec. 1211 of the House bill, and sec. 1011 of the Senate amendment)

Present Law

Taxpayers engaged in the production of property under a long-term contract generally must compute income from the contract under the percentage of completion method. Under the percentage of completion method, a taxpayer must include in gross income for any taxable year an amount that is based on the product of (1) the gross contract price and (2) the percentage of the contract completed as of the end of the year. The percentage of the contract completed as of the end of the year is determined by comparing costs incurred with respect to the contract as of the end of the year with estimated total contract costs.

Because the percentage of completion method relies upon estimated, rather than actual, contract price and costs to determine gross income for any taxable year, a "look-back method" is applied in the year a contract is completed in order to compensate the taxpayer (or the Internal Revenue Service) for the acceleration (or deferral) of taxes paid over the contract term. The first step of the look-back method is to reapply the percentage of completion method using actual contract price and costs rather than estimated contract price and costs. The second step generally requires the taxpayer to recompute its tax liability for each year of the contract using gross income as reallocated under the look-back method. If there is any difference between the recomputed tax liability and the tax liability as previously determined for a year, such difference is treated as a hypothetical underpayment or overpayment of tax to which the taxpayer applies a rate of interest equal to the overpayment rate, compounded daily.[5] The taxpayer receives (or pays) interest if the net amount of interest applicable to hypothetical overpayments exceeds (or is less than) the amount of interest applicable to hypothetical underpayments.

House Bill

Election not to apply the look-back method for de minimis amounts

The House bill provides that a taxpayer may elect not to apply the look-back method with respect to a long-term contract if for each prior contract year, the cumulative taxable income (or loss) under the contract as determined using estimated contract price and costs is within 10 percent of the cumulative taxable income (or loss) as determined using actual contract price and costs.

The House bill also provides that a taxpayer may elect not to reapply the look-back method with respect to a contract if, as of the close of any taxable year after the year the contract is completed, the cumulative taxable income (or loss) under the contract is within 10 percent of the cumulative look-back income (or loss) as of the close of the most recent year in which the look-back method was applied (or would have applied but for the other de minimis exception described above).

Further, the House bill provides that for purposes of the look-back method, only one rate of interest is to apply for each accrual period. An accrual period with respect to a taxable year begins on the day after the return due date (determined without regard to extensions) for the taxable year and ends on such return due date for the following taxable year. The applicable rate of interest is the overpayment rate in effect for the calendar quarter in which the accrual period begins.

Effective date

The provision applies to contracts completed in taxable years ending after the date of enactment. The change in the interest rate calculation also applies for purposes of the look-back method applicable to the income forecast method of depreciation for property placed in service after September 13, 1995.

Senate Amendment

The Senate amendment is the same as the House bill.

[5] The overpayment rate equals the applicable Federal short-term rate plus two percentage points. This rate is adjusted quarterly by the IRS. Thus, in applying the look-back method for a contract year, a taxpayer may be required to use five different interest rates.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Minimum tax treatment of certain property and casualty insurance companies (sec. 1212 of the House bill and sec. 1012 of the Senate amendment)

Present Law

Present law provides that certain property and casualty insurance companies may elect to be taxed only on taxable investment income for regular tax purposes (sec. 831(b)). Eligible property and casualty insurance companies are those whose net written premiums (or if greater, direct written premiums) for the taxable year exceed $350,000 but do not exceed $1,200,000.

Under present law, all corporations including insurance companies are subject to an alternative minimum tax. Alternative minimum taxable income is increased by 75 percent of the excess of adjusted current earnings over alternative minimum taxable income (determined without regard to this adjustment and without regard to net operating losses).

House Bill

The House bill provides that a property and casualty insurance company that elects for regular tax purposes to be taxed only on taxable investment income determines its adjusted current earnings under the alternative minimum tax without regard to any amount not taken into account in determining its gross investment income under section 834(b). Thus, adjusted current earnings of an electing company is determined without regard to underwriting income (or underwriting expense, as provided in sec. 56(g)(4)(B)(i)(II)).

Effective date.—Taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Treatment of construction allowances provided to lessees (sec. 961 of the House bill and sec. 1014 of the Senate amendment)

Present Law

Issues have arisen as to the proper treatment of amounts provided to a lessee by a lessor for property to be constructed and used by the lessee pursuant to the lease ("construction allowances"). In general, incentive payments are includible in income as accessions to wealth.[6] A coordinated issue paper issued by the Internal Revenue Service ("IRS") on October 7, 1996, states the IRS position that construction allowances should generally be included in income in the year received. However, the paper does recognize that amounts received by a lessee from a lessor and expended by the lessee on assets owned by the lessor were not includible in the lessee's income. The issue paper provides that tax ownership is determined by applying a "benefits and burdens of ownership" test that includes an examination of several factors.

House Bill

The House bill provides that the gross income of a lessee does not include amounts

[6] *John B. White, Inc.* v. *Comm.*, 55 T.C. 729 (1971), aff'd per curiam 458 F. 2d 989 (3d Cir.), cert. denied, 409 U.S. 876 (1972). However, see, e.g., *Federated Department Stores* v. *Comm.*, 51 T.C. 500 (1968) aff'd 426 F. 2d 417 (6th Cir. 1970) and *The May Department Stores Co.* v. *Comm.*, 33 TCM 1128 (1974), aff'd 519 F. 2d 1154 (8th Cir. 1975) with respect to the application of section 118 to certain payments.

received in cash (or treated as a rent reduction) from a lessor under a short-term lease of retail space for the purpose of the lessee's construction or improvement of qualified long-term real property for use in the lessee's trade or business at such retail space. The exclusion only applies to the extent the allowance does not exceed the amount expended by the lessee on the construction or improvement of qualified long-term real property.

The House bill provides that the lessor must treat the amounts expended on the construction allowance as nonresidential real property owned by the lessor.

The House bill contains reporting requirements to ensure that both the lessor and lessee treat such amounts in accordance with the provision. Under regulations, the lessor and the lessee shall, at such times and in such manner as provided by the regulations, furnish to the Secretary of the Treasury information concerning the amounts received (or treated as a rent reduction), the amounts expended on qualified long-term real property, and such other information as the Secretary deems necessary to carry out the provision.

Effective date.—The provision applies to leases entered into after the date of enactment. No inference is intended as to the treatment of amounts that are not subject to the provision.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement generally follows the House bill and the Senate amendment, with a clarification of the coordination of the provision and present-law rule that allows lessors to take losses with respect to certain leasehold improvements abandoned at the end of the term of the lease (sec. 168(i)(8)). In addition, the conferees wish to emphasize that no inference is intended as to the treatment of amounts that are not subject to the provision, and that the provisions of the IRS issue paper and present law (including case law) will continue to apply where applicable.

C. Partnership Simplification Provisions

1. General provisions

a. Simplified flow-through for electing large partnerships (sec. 1221 of the House bill and sec. 1021 of the Senate amendment)

Present Law

Treatment of partnerships in general

A partnership generally is treated as a conduit for Federal income tax purposes. Each partner takes into account separately his distributive share of the partnership's items of income, gain, loss, deduction or credit. The character of an item is the same as if it had been directly realized or incurred by the partner. Limitations affecting the computation of taxable income generally apply at the partner level.

The taxable income of a partnership is computed in the same manner as that of an individual, except that no deduction is permitted for personal exemptions, foreign taxes, charitable contributions, net operating losses, certain itemized deductions, or depletion. Elections affecting the computation of taxable income derived from a partnership are made by the partnership, except for certain elections such as those relating to discharge of indebtedness income and the foreign tax credit.

Capital gains

The net capital gain of an individual is taxed generally at the same rates applicable to ordinary income, subject to a maximum marginal rate of 28 percent. Net capital gain is the excess of net long-term capital gain over net short-term capital loss. Individuals with a net capital loss generally may deduct up to $3,000 of the loss each year against ordinary income. Net capital losses in excess of the $3;000 limit may be carried forward indefinitely.

A special rule applies to gains and losses on the sale, exchange or involuntary conversion of certain trade or business assets (sec. 1231). In general, net gains from such assets are treated as long-term capital gains but net losses are treated as ordinary losses.

A partner's share of a partnership's net short-term capital gain or loss and net long-term capital gain or loss from portfolio investments is separately reported to the partner. A partner's share of a partnership's net gain or loss under section 1231 generally is also separately reported.

Deductions and credits

Miscellaneous itemized deductions (e.g., certain investment expenses) are deductible only to the extent that, in the aggregate, they exceed two percent of the individual's adjusted gross income.

In general, taxpayers are allowed a deduction for charitable contributions, subject to certain limitations. The deduction allowed an individual generally cannot exceed 50 percent of the individual's adjusted gross income for the taxable year. The deduction allowed a corporation generally cannot exceed 10 percent of the corporation's taxable income. Excess contributions are carried forward for five years.

A partner's distributive share of a partnership's miscellaneous itemized deductions and charitable contributions is separately reported to the partner.

Each partner is allowed his distributive share of credits against his taxable income.

Foreign taxes

The foreign tax credit generally allows U.S. taxpayers to reduce U.S. income tax on foreign income by the amount of foreign income taxes paid or accrued with respect to that income. In lieu of electing the foreign tax credit, a taxpayer may deduct foreign taxes. The total amount of the credit may not exceed the same proportion of the taxpayer's U.S. tax which the taxpayer's foreign source taxable income bears to the taxpayer's worldwide taxable income for the taxable year.

Unrelated business taxable income

Tax-exempt organizations are subject to tax on income from unrelated businesses. Certain types of income (such as dividends, interest and certain rental income) are not treated as unrelated business taxable income. Thus, for a partner that is an exempt organization, whether partnership income is unrelated business taxable income depends on the character of the underlying income. Income from a publicly traded partnership, however, is treated as unrelated business taxable income regardless of the character of the underlying income.

Special rules related to oil and gas activities

Taxpayers involved in the search for and extraction of crude oil and natural gas are subject to certain special tax rules. As a result, in the case of partnerships engaged in such activities, certain specific information is separately reported to partners.

A taxpayer who owns an economic interest in a producing deposit of natural resources (including crude oil and natural gas) is permitted to claim a deduction for depletion of the deposit as the minerals are extracted. In the case of oil and gas produced in the United States, a taxpayer generally is permitted to claim the greater of a deduction for cost depletion or percentage depletion. Cost depletion is computed by multiplying a taxpayer's adjusted basis in the depletable property by a fraction, the numerator of which is the amount of current year production from the property and the denominator of which is the property's estimated reserves as of the beginning of that year. Percentage depletion is equal to a specified percentage (generally, 15 percent in the case of oil and gas) of gross income from production. Cost depletion is limited to the taxpayer's basis in the depletable property; percentage depletion is not so limited. Once a taxpayer has exhausted its basis in the depletable property, it may continue to claim percentage depletion deductions (generally referred to as "excess percentage depletion").

Certain limitations apply to the deduction for oil and gas percentage depletion. First, percentage depletion is not available to oil and gas producers who also engage (directly or indirectly) in significant levels of oil and gas retailing or refining activities (so-called "integrated producers" of oil and gas). Second, the deduction for percentage depletion may be claimed by a taxpayer only with respect to up to 1,000 barrels-per-day of production. Third, the percentage depletion deduction may not exceed 100 percent of the taxpayer's net income for the taxable year from the depletable oil and gas property. Fourth, a percentage depletion deduction may not be claimed to the extent that it exceeds 65 percent of the taxpayer's pre-percentage depletion taxable income.

In the case of a partnership that owns depletable oil and gas properties, the depletion allowance is computed separately by the partners and not by the partnership. In computing a partner's basis in his partnership interest, basis is increased by the partner's share of any partnership-related excess percentage depletion deductions and is decreased (but not below zero) by the partner's total amount of depletion deductions attributable to partnership property.

Intangible drilling and development costs ("IDCs") incurred with respect to domestic oil and gas wells generally may be deducted at the election of the taxpayer. In the case of integrated producers, no more than 70 percent of IDCs incurred during a taxable year may be deducted. IDCs not deducted are capitalized and generally are either added to the property's basis and recovered through depletion deductions or amortized on a straight-line basis over a 60-month period.

The special treatment granted to IDCs incurred in the pursuit of oil and gas may give rise to an item of tax preference or (in the case of corporate taxpayers) an adjusted current earnings ("ACE") adjustment for the alternative minimum tax. The tax preference item is based on a concept of "excess IDCs." In general, excess IDCs are the excess of IDCs deducted for the taxable year over the amount of those IDCs that would have been deducted had they been capitalized and amortized on a straight-line basis over 120 months commencing with the month production begins from the related well. The amount of tax preference is then computed as the difference between the excess IDC amount and 65 percent of the taxpayer's net income from oil and gas (computed without a deduction for excess IDCs). For IDCs incurred in taxable years beginning after 1992, the ACE adjustment related to IDCs is repealed for taxpayers other than integrated

producers. Moreover, beginning in 1993, the IDC tax preference generally is repealed for taxpayers other than integrated producers. In this case, however, the repeal of the excess IDC preference may not result in more than a 40 percent reduction (30 percent for taxable years beginning in 1993) in the amount of the taxpayer's alternative minimum taxable income computed as if that preference had not been repealed.

Passive losses

The passive loss rules generally disallow deductions and credits from passive activities to the extent they exceed income from passive activities. Losses not allowed in a taxable year are suspended and treated as current deductions from passive activities in the next taxable year. These losses are allowed in full when a taxpayer disposes of the entire interest in the passive activity to an unrelated person in a taxable transaction. Passive activities include trade or business activities in which the taxpayer does not materially participate. (Limited partners generally do not materially participate in the activities of a partnership.) Passive activities also include rental activities (regardless of the taxpayer's material participation)[7]. Portfolio income (such as interest and dividends), and expenses allocable to such income, are not treated as income or loss from a passive activity.

The $25,000 allowance also applies to low-income housing and rehabilitation credits (on a deduction equivalent basis), regardless of whether the taxpayer claiming the credit actively participates in the rental real estate activity generating the credit. In addition, the income phaseout range for the $25,000 allowance for rehabilitation credits is $200,000 to $250,000 (rather than $100,000 to $150,000). For interests acquired after December 31, 1989 in partnerships holding property placed in service after that date, the $25,000 deduction-equivalent allowance is permitted for the low-income housing credit without regard to the taxpayer's income.

A partnership's operations may be treated as multiple activities for purposes of the passive loss rules. In such case, the partnership must separately report items of income and deductions from each of its activities.

Income, loss and other items from a publicly traded partnership are treated as separate from income and loss from any other publicly traded partnership, and also as separate from any income or loss from passive activities.

The Omnibus Budget Reconciliation Act of 1993 added a rule, effective for taxable years beginning after December 31, 1993, treating a taxpayer's rental real estate activities in which he materially participates as not subject to limitation under the passive loss rules if the taxpayer meets eligibility requirements relating to real property trades or businesses in which he performs services (sec. 469(c)(7)). Real property trade or business means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business. An individual taxpayer generally meets the eligibility requirements if (1) more than half of the personal services the taxpayer performs in trades or business during the taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and (2) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

REMICs

A tax is imposed on partnerships holding a residual interest in a real estate mortgage investment conduit ("REMIC"). The amount of the tax is the amount of excess inclusions allocable to partnership interests owned by certain tax-exempt organizations ("disqualified organizations") multiplied by the highest corporate tax rate.

Contribution of property to a partnership

In general, a partner recognizes no gain or loss upon the contribution of property to a partnership. However, income, gain, loss and deduction with respect to property contributed to a partnership by a partner must be allocated among the partners so as to take into account the difference between the basis of the property to the partnership and its fair market value at the time of contribution. In addition, the contributing partner must recognize gain or loss equal to such difference if the property is distributed to another partner within five years of its contribution (sec. 704(c)), or if other property is distributed to the contributor within the five year period (sec. 737).

Election of optional basis adjustments

In general, the transfer of a partnership interest or a distribution of partnership property does not affect the basis of partnership assets. A partnership, however, may elect to make certain adjustments in the basis of partnership property (sec. 754). Under a section 754 election, the transfer of a partnership interest generally results in an adjustment in the partnership's basis in its property for the benefit of the transferee partner only, to reflect the difference between that partner's basis for his interest and his proportionate share of the adjusted basis of partnership property (sec. 743(b)). Also under the election, a distribution of property to a partner in certain cases results in an adjustment in the basis of other partnership property (sec. 734(b)).

Terminations

A partnership terminates if either (1) all partners cease carrying on the business, financial operation or venture of the partnership, or (2) within a 12-month period 50 percent or more of the total partnership interests are sold or exchanged (sec. 708).

House Bill

In general

The House bill modifies the tax treatment of an electing large partnership (generally, any partnership that elects under the provision, if the number of partners in the preceding taxable year is 100 or more) and its partners. The provision provides that each partner takes into account separately the partner's distributive share of the following items, which are determined at the partnership level: (1) taxable income or loss from passive loss limitation activities; (2) taxable income or loss from other activities (e.g., portfolio income or loss); (3) net capital gain or loss to the extent allocable to passive loss limitation activities and other activities; (4) tax-exempt interest; (5) net alternative minimum tax adjustment separately computed for passive loss limitation activities and other activities; (6) general credits; (7) low-income housing credit; (8) rehabilitation credit; (9) credit for producing fuel from a nonconventional source; (10) creditable foreign taxes and foreign source items; and (11) any other items to the extent that the Secretary determines that separate treatment of such items is appropriate.[8] Separate treatment may be appropriate, for example, should changes in the law necessitate such treatment for any items.

Under the House bill, the taxable income of an electing large partnership is computed in the same manner as that of an individual, except that the items described above are separately stated and certain modifications are made. These modifications include disallowing the deduction for personal exemptions, the net operating loss deduction and certain itemized deductions.[9] All limitations and other provisions affecting the computation of taxable income or any credit (except for the at risk, passive loss and itemized deduction limitations, and any other provision specified in regulations) are applied at the partnership (and not the partner) level.

All elections affecting the computation of taxable income or any credit generally are made by the partnership.

Capital gains

Under the House bill, netting of capital gains and losses occurs at the partnership level. A partner in a large partnership takes into account separately his distributive share of the partnership's net capital gain or net capital loss.[10] Such net capital gain or loss is treated as long-term capital gain or loss.

Any excess of net short-term capital gain over net long-term capital loss is consolidated with the partnership's other taxable income and is not separately reported.

A partner's distributive share of the partnership's net capital gain is allocated between passive loss limitation activities and other activities. The net capital gain is allocated to passive loss limitation activities to the extent of net capital gain from sales and exchanges of property used in connection with such activities, and any excess is allocated to other activities. A similar rule applies for purposes of allocating any net capital loss.

Any gains and losses of the partnership under section 1231 are netted at the partnership level. Net gain is treated as long-term capital gain and is subject to the rules described above. Net loss is treated as ordinary loss and consolidated with the partnership's other taxable income.

Deductions

The House bill contains two special rules for deductions. First, miscellaneous itemized deductions are not separately reported to partners. Instead, 70 percent of the amount of such deductions is disallowed at the partnership level;[11] the remaining 30 percent is

[7] An individual who actively participates in a rental real estate activity and holds at least a 10-percent interest may deduct up to $25,000 of passive losses. The $25,000 amount phases out as the individual's income increases from $100,000 to $150,000.

[8] In determining the amounts required to be separately taken into account by a partner, those provisions of the large partnership rules governing computations of taxable income are applied separately with respect to that partner by taking into account that partner's distributive share of the partnership's items of income, gain, loss, deduction or credit. This rule permits partnerships to make otherwise valid special allocations of partnership items to partners.

[9] An electing large partnership is allowed a deduction under section 212 for expenses incurred for the production of income, subject to 70-percent disallowance. No income from an electing large partnership is treated as fishing or farming income.

[10] The term "net capital gain" has the same meaning as in section 1222(11). The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchanges of capital assets. Thus, the partnership cannot offset any portion of capital losses against ordinary income.

[11] The 70-percent figure is intended to approximate the amount of such deductions that would be denied at the partner level as a result of the 2-percent floor.

allowed at the partnership level in determining taxable income, and is not subject to the two-percent floor at the partner level.

Second, charitable contributions are not separately reported to partners under the bill. Instead, the charitable contribution deduction is allowed at the partnership level in determining taxable income, subject to the limitations that apply to corporate donors.

Credits in general

Under the House bill, general credits are separately reported to partners as a single item. General credits are any credits other than the low-income housing credit, the rehabilitation credit and the credit for producing fuel from a nonconventional source. A partner's distributive share of general credits is taken into account as a current year general business credit. Thus, for example, the credit for clinical testing expenses is subject to the present law limitations on the general business credit. The refundable credit for gasoline used for exempt purposes and the refund or credit for undistributed capital gains of a regulated investment company are allowed to the partnership, and thus are not separately reported to partners.

In recognition of their special treatment under the passive loss rules, the low-income housing and rehabilitation credits are separately reported.[12] In addition, the credit for producing fuel from a nonconventional source is separately reported.

The House bill imposes credit recapture at the partnership level and determines the amount of recapture by assuming that the credit fully reduced taxes. Such recapture is applied first to reduce the partnership's current year credit, if any; the partnership is liable for any excess over that amount. Under the House bill, the transfer of an interest in an electing large partnership does not trigger recapture.

Foreign taxes

The House bill retains present-law treatment of foreign taxes. The partnership reports to the partner creditable foreign taxes and the source of any income, gain, loss or deduction taken into account by the partnership. Elections, computations and limitations are made by the partner.

Tax-exempt interest

The House bill retains present-law treatment of tax-exempt interest. Interest on a State or local bond is separately reported to each partner.

Unrelated business taxable income

The House bill retains present-law treatment of unrelated business taxable income. Thus, a tax-exempt partner's distributive share of partnership items is taken into account separately to the extent necessary to comply with the rules governing such income.

Passive losses

Under the House bill, a partner in an electing large partnership takes in an electing to account separately his distributive share of the partnership's taxable income or loss from passive loss limitation activities. The term "passive loss limitation activity" means any activity involving the conduct of a trade or business (including any activity treated as a trade or business under sec. 469(c)(5) or (6)) and any rental activity. A partner's share of an electing large partnership's taxable income or loss from passive loss limitation activities is treated as an item of income or loss from the conduct of a trade or business which is a single passive activity, as defined in the passive loss rules. Thus, an electing large partnership generally is not required to separately report items from multiple activities.

A partner in an electing large partnership also takes into account separately his distributive share of the partnership's taxable income or loss from activities other than passive loss limitation activities. Such distributive share is treated as an item of income or expense with respect to property held for investment. Thus, portfolio income (e.g., interest and dividends) is reported separately and is reduced by portfolio deductions and allocable investment interest expense.

In the case of a partner holding an interest in an electing large partnership which is not a limited partnership interest, such partner's distributive share of any items are taken into account separately to the extent necessary to comply with the passive loss rules. Thus, for example, income of an electing large partnership is not treated as passive income with respect to the general partnership interest of a partner who materially participates in the partnership's trade or business.

Under the House bill, the requirement that the passive loss rule be separately applied to each publicly traded partnership (sec. 469(k) of the Code) continues to apply.

Alternative minimum tax

Under the House bill, alternative minimum tax ("AMT") adjustments and preferences are combined at the partnership level. An electing large partnership would report to partners a net AMT adjustment separately computed for passive loss limitation activities and other activities. In determining a partner's alternative minimum taxable income, a partner's distributive share of any net AMT adjustment is taken into account instead of making separate AMT adjustments with respect to partnership items. The net AMT adjustment is determined by using the adjustments applicable to individuals (in the case of partners other than corporations), and by using the adjustments applicable to corporations (in the case of corporate partners). Except as provided in regulations, the net AMT adjustment is treated as a deferral preference for purposes of the section 53 minimum tax credit.

Discharge of indebtedness income

If an electing large partnership has income from the discharge of any indebtedness, such income is separately reported to each partner. In addition, the rules governing such income (sec. 108) are applied without regard to the large partnership rules. Partner-level elections under section 108 are made by each partner separately. Thus, for example, the large partnership provisions do not affect section 108(d)(6), which provides that certain section 108 rules apply at the partner level, or section 108(b)(5), which provides for an election to reduce the basis of depreciable property. The large partnership provisions also do not affect the election under 108(c) (added by the Omnibus Budget Reconciliation Act of 1993) to exclude discharge of indebtedness income with respect to qualified real property business indebtedness.

REMICs

For purposes of the tax on partnerships holding residual interests in REMICs, all interests in an electing large partnership are treated as held by disqualified organizations. Thus, an electing large partnership holding a residual interest in a REMIC is subject to a tax equal to the excess inclusions multiplied by the highest corporate rate. The amount subject to tax is excluded from partnership income.

Election of optional basis adjustments

Under the House bill, an electing large partnership may still elect to adjust the basis of partnership assets with respect to transferee partners. The computation of an electing large partnership's taxable income is made without regard to the section 743(b) adjustment. As under present law, the section 743(b) adjustment is made only with respect to the transferee partner. In addition, an electing large partnership is permitted to adjust the basis of partnership property under section 734(b) if property is distributed to a partner, as under present law.

Terminations

The House bill provides that an electing large partnership does not terminate for tax purposes solely because 50 percent of its interests are sold or exchanged within a 12-month period.

Partnerships and partners subject to large partnership rules

Definition of electing large partnership

An "electing large partnership" is any partnership that elects under the provision, if the number of partners in the preceding taxable year is 100 or more. The number of partners is determined by counting only persons directly holding partnership interests in the taxable year, including persons holding through nominees; persons holding indirectly (e.g., through another partnership) are not counted. Regulations may provide, however, that if the number of partners in any taxable year falls below 100, the partnership may not be treated as an electing large partnership. The election applies to the year for which made and all subsequent years and cannot be revoked without the Secretary's consent.

Special rules for certain service partnerships

An election under this provision is not effective for any partnership if substantially all the partners are: (1) individuals performing substantial services in connection with the partnership's activities, or personal service corporations the owner-employees of which perform such services; (2) retired partners who had performed such services; or (3) spouses of partners who had performed such services. In addition, the term "partner" does not include any individual performing substantial services in connection with the partnership's activities and holding a partnership interest, or an individual who formerly performed such services and who held a partnership interest at the time the individual performed such services.

Exclusion for commodity partnerships

An election under this provision is not effective for any partnership the principal activity of which is the buying and selling of commodities (not described in sec. 1221(1)), or options, futures or forwards with respect to commodities.

Special rules for partnerships holding oil and gas properties

Simplified reporting treatment of electing large partnerships with oil and gas activities

The House bill provides special rules for electing large partnerships with oil and gas activities that operate under the simplified

[12] It is understood that the rehabilitation and low-income housing credits which are subject to the same passive loss rules (i.e., in the case of the low-income housing credit, where the partnership interest was acquired or the property was placed in service before 1990) could be reported together on the same line.

reporting regime. These partnerships are collectively referred to herein as "oil and gas large partnerships." Generally, the House bill provides that an oil and gas large partnership reports information to its partners under the general simplified large partnership reporting regime described above. To prevent the extension of percentage depletion deductions to persons excluded therefrom under present law, however, certain partners are treated as disqualified persons under the House bill.

The treatment of a disqualified person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property is determined under the bill without regard to the special rules applicable to large partnerships. Thus, an oil and gas large partnership reports information related to oil and gas activities to a partner who is a disqualified person in the same manner and to the same extent that it reports such information to that partner under present law. The simplified reporting rules of the bill, however, apply with respect to reporting such a partner's share of items not related to oil and gas activities.

The House bill defines two categories of taxpayers as disqualified persons. The first category encompasses taxpayers who do not qualify for the deduction for percentage depletion under section 613A (i.e., integrated producers of oil and gas). The second category includes any person whose average daily production of oil and gas (for purposes of determining the depletable oil and natural gas quantity under section 613A(c)(2)) is at least 500 barrels for its taxable year in which (or with which) the partnership's taxable year ends. In making this computation, all production of domestic crude oil and natural gas attributable to the partner is taken into account, including such partner's proportionate share of any production of the large partnership.

A taxpayer that falls within a category of disqualified person has the responsibility of notifying any large partnership in which it holds a direct or indirect interest (e.g., through a pass-through entity) of its status as such. Thus, for example, if an integrated producer owns an interest in a partnership which in turn owns an interest in an oil and gas large partnership, it is responsible for providing the management of the electing large partnership information regarding its status as a disqualified person and details regarding its indirect interest in the electing large partnership.

Under the House bill, an oil and gas large partnership computes its deduction for oil and gas depletion under the general statutory rules (subject to certain exceptions described below) under the assumptions that the partnership is the taxpayer and that it qualifies for the percentage depletion deduction. The amount of the depletion deduction, as well as other oil and gas related items, generally are reported to each partner (other than to partners who are disqualified persons) as components of that partner's distributive share of taxable income or loss from passive loss limitation activities. The House bill provides that in computing the partnership's oil and gas percentage depletion deduction, the 1,000-barrel-per-day limitation does not apply. In addition, an oil and gas large partnership is allowed to compute percentage depletion under the bill without applying the 65-percent-of-taxable-income limitation under section 613A(d)(1).

As under present law, an election to deduct IDCs under section 263(c) is made at the partnership level. Since the House bill treats those taxpayers required by the Code (sec. 291) to capitalize 30 percent of IDCs as disqualified persons, an oil and gas large partnership may pass through a full deduction of IDCs to its partners who are not disqualified persons. In contrast to present law, an oil and gas large partnership also has the responsibility with respect to its partners who are not disqualified persons for making an election under section 59(e) to capitalize and amortize certain specified IDCs. Partners who are disqualified persons are permitted to make their own separate section 59(e) elections under the House bill.

Consistent with the general reporting regime for electing large partnerships, the House bill provides that a single AMT adjustment (under either corporate or non-corporate principles, as the case may be) is made and reported to the partners (other than disqualified persons) of an oil and gas large partnership as a separate item. This separately-reported item is affected by the limitation on the repeal of the tax preference for excess IDCs. For purposes of computing this limitation, the bill treats an oil and gas large partnership as the taxpayer. Thus, the limitation on repeal of the IDC preference is applied at the partnership level and is based on the cumulative reduction in the partnership's alternative minimum taxable income resulting from repeal of that preference.

The House bill provides that in making partnership-level computations, any item of income, gain, loss, deduction, or credit attributable to a partner who is a disqualified person is disregarded. For example, in computing the partnership's net income from oil and gas for purposes of determining the IDC preference (if any) to be reported to partners who are not disqualified persons as part of the AMT adjustment, disqualified persons' distributive shares of the partnership's net income from oil and gas are not to be taken into account.

Regulatory authority

The Secretary of the Treasury is granted authority to prescribe such regulations as may be appropriate to carry out the purposes of the provisions.

Effective date

The provisions generally apply to partnership taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

b. Simplified audit procedures for electing large partnerships (sec. 1222 of the House bill and sec. 1022 of the Senate amendment)

Present Law

In general

Prior to 1982, regardless of the size of a partnership, adjustments to a partnership's items of income, gain, loss, deduction, or credit had to be made in separate proceedings with respect to each partner individually. Because a large partnership sometimes had many partners located in different audit districts, adjustments to items of income, gains, losses, deductions, or credits of the partnership had to be made in numerous actions in several jurisdictions, sometimes with conflicting outcomes.

The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") established unified audit rules applicable to all but certain small (10 or fewer partners) partnerships. These rules require the tax treatment of all "partnership items" to be determined at the partnership, rather than the partner, level. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, as provided by regulations.

Under the TEFRA rules, a partner must report all partnership items consistently with the partnership return or must notify the IRS of any inconsistency. If a partner fails to report any partnership item consistently with the partnership return, the IRS may make a computational adjustment and immediately assess any additional tax that results.

Administrative proceedings

Under the TEFRA rules, a partner must report all partnership items consistently with the partnership return or must notify the IRS of any inconsistency. If a partner fails to report any partnership item consistently with the partnership return, the IRS may make a computational adjustment and immediately assess any additional tax that results.

The IRS may challenge the reporting position of a partnership by conducting a single administrative proceeding to resolve the issue with respect to all partners. But the IRS must still assess any resulting deficiency against each of the taxpayers who were partners in the year in which the understatement of tax liability arose.

Any partner of a partnership can request an administrative adjustment or a refund for his own separate tax liability. Any partner also has the right to participate in partnership-level administrative proceedings. A settlement agreement with respect to partnership items binds all parties to the settlement.

Tax Matters Partner

The TEFRA rules establish the "Tax Matters Partner" as the primary representative of a partnership in dealings with the IRS. The Tax Matters Partner is a general partner designated by the partnership or, in the absence of designation, the general partner with the largest profits interest at the close of the taxable year. If no Tax Matters Partner is designated, and it is impractical to apply the largest profits interest rule, the IRS may select any partner as the Tax Matters Partner.

Notice requirements

The IRS generally is required to give notice of the beginning of partnership-level administrative proceedings and any resulting administrative adjustment to all partners whose names and addresses are furnished to the IRS. For partnerships with more than 100 partners, however, the IRS generally is not required to give notice to any partner whose profits interest is less than one percent.

Adjudication of disputes concerning partnership items

After the IRS makes an administrative adjustment, the Tax Matters Partner (and, in limited circumstances, certain other partners) may file a petition for readjustment of partnership items in the Tax Court, the district court in which the partnership's principal place of business is located, or the Claims Court.

Statute of limitations

The IRS generally cannot adjust a partnership item for a partnership taxable year if more than 3 years have elapsed since the later of the filing of the partnership return

or the last day for the filing of the partnership return.

House Bill

The House bill creates a new audit system for electing large partnerships. The provision defines "electing large partnership" the same way for audit and reporting purposes (generally, any partnership that elects under the reporting provisions, if the number of partners in the preceding taxable year is 100 or more).

As under present law, electing large partnerships and their partners are subject to unified audit rules. Thus, the tax treatment of "partnership items" are determined at the partnership, rather than the partner, level. The term "partnership items" is defined as under present law.

Unlike present law, however, partnership adjustments generally will flow through to the partners for the year in which the adjustment takes effect. Thus, the current-year partners' share of current-year partnership items of income, gains, losses, deductions, or credits will be adjusted to reflect partnership adjustments that take effect in that year. The adjustments generally will not affect prior-year returns of any partners (except in the case of changes to any partner's distributive shares).

In lieu of flowing an adjustment through to its partners, the partnership may elect to pay an imputed underpayment. The imputed underpayment generally is calculated by netting the adjustments to the income and loss items of the partnership and multiplying that amount by the highest tax rate (whether individual or corporate; currently, the top individual rate of 39.6 percent). A partner may not file a claim for credit or refund of his allocable share of the payment. A partnership may make this election only if it meets requirements set forth in Treasury regulations designed to ensure payment (for example, in the case of a foreign partnership).

Regardless of whether a partnership adjustment flows through to the partners, an adjustment must be offset if it requires another adjustment in a year after the adjusted year and before the year the offsetted adjustment takes effect. For example, if a partnership expensed a $1,000 item in year 1, and it was determined in year 4 that the item should have been capitalized and amortized ratably over 10 years, the adjustment in year 4 would be $700, apart from any interest or penalty. (The $900 adjustment for the improper deduction would be offset by $200 of adjustments for amortization deductions.) The year 4 partners would be required to include an additional $700 in income for that year. The partnership may ratably amortize the remaining $700 of expenses in years 4–10.

In addition, the partnership, rather than the partners individually, generally is liable for any interest and penalties that result from a partnership adjustment. Interest is computed for the period beginning on the return due date for the adjusted year and ending on the earlier of the return due date for the partnership taxable year in which the adjustment takes effect or the date the partnership pays the imputed underpayment. Thus, in the above example, the partnership would be liable for 4 years' worth of interest (on a declining principal amount).

Penalties (such as the accuracy and fraud penalties) are determined on a year-by-year basis (without offsets) based on an imputed underpayment. All accuracy penalty criteria and waiver criteria (such as reasonable cause, substantial authority, etc.) are determined as if the partnership were a taxable individual. Accuracy and fraud penalties are assessed and accrue interest in the same manner as if asserted against a taxable individual.

Any payment (for Federal income taxes, interest, or penalties) that an electing large partnership is required to make is non-deductible.

If a partnership ceases to exist before a partnership adjustment takes effect, the former partners are required to take the adjustment into account, as provided by regulations. Regulations are also authorized to prevent abuse and to enforce efficiently the audit rules in circumstances that present special enforcement considerations (such as partnership bankruptcy).

Administrative proceedings

Under the electing large partnership audit rules, a partner is not permitted to report any partnership items inconsistently with the partnership return, even if the partner notifies the IRS of the inconsistency. The IRS may treat a partnership item that was reported inconsistently by a partner as a mathematical or clerical error and immediately assess any additional tax against that partner.

As under present law, the IRS may challenge the reporting position of a partnership by conducting a single administrative proceeding to resolve the issue with respect to all partners. Unlike under present law, however, partners will have no right individually to participate in settlement conferences or to request a refund.

Partnership representative

The House bill requires each electing large partnership to designate a partner or other person to act on its behalf. If an electing large partnership fails to designate such a person, the IRS is permitted to designate any one of the partners as the person authorized to act on the partnership's behalf. After the IRS's designation, an electing large partnership could still designate a replacement for the IRS-designated partner.

Notice requirements

Unlike under present law, the IRS is not required to give notice to individual partners of the commencement of an administrative proceeding or of a final adjustment. Instead, the IRS is authorized to send notice of a partnership adjustment to the partnership itself by certified or registered mail. The IRS could give proper notice by mailing the notice to the last known address of the partnership, even if the partnership had terminated its existence.

Adjudication of disputes concerning partnership items

As under present law, an administrative adjustment could be challenged in the Tax Court, the district court in which the partnership's principal place of business is located, or the Claims Court. However, only the partnership, and not partners individually, can petition for a readjustment of partnership items.

If a petition for readjustment of partnership items is filed by the partnership, the court with which the petition is filed will have jurisdiction to determine the tax treatment of 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. Thus, the court's jurisdiction is not limited to the items adjusted in the notice.

Statute of limitations

Absent an agreement to extend the statute of limitations, the IRS generally could not adjust a partnership item of an electing large partnership more than 3 years after the later of the filing of the partnership return or the last day for the filing of the partnership return. Special rules apply to false or fraudulent returns, a substantial omission of income, or the failure to file a return. The IRS would assess and collect any deficiency of a partner that arises from any adjustment to a partnership item subject to the limitations period on assessments and collection applicable to the year the adjustment takes effect (secs. 6248, 6501 and 6502).

Regulatory authority

The Secretary of the Treasury is granted authority to prescribe regulations as may be necessary to carry out the simplified audit procedure provisions, including regulations to prevent abuse of the provisions through manipulation. The regulations may include rules that address transfers of partnership interests, in anticipation of a partnership adjustment, to persons who are tax-favored (e.g., corporations with net operating losses, tax-exempt organizations, and foreign partners) or persons who are expected to be unable to pay tax (e.g., shell corporations). For example, if prior to the time a partnership adjustment takes effect, a taxable partner transfers a partnership interest to a nonresident alien to avoid the tax effect of the partnership adjustment, the rules may provide, among other things, that income related to the partnership adjustment is treated as effectively connected taxable income, that the partnership adjustment is treated as taking effect before the partnership interest was transferred, or that the former partner is treated as a current partner to whom the partnership adjustment is allocated.

Effective date

The provision applies to partnership taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with technical modifications.

c. Due date for furnishing information to partners of electing large partnerships (sec. 1223 of the House bill and sec. 1023 of the Senate amendment)

Present Law

A partnership required to file an income tax return with the Internal Revenue Service must also furnish an information return to each of its partners on or before the day on which the income tax return for the year is required to be filed, including extensions. Under regulations, a partnership must file its income tax return on or before the fifteenth day of the fourth month following the end of the partnership's taxable year (on or before April 15, for calendar year partnerships). This is the same deadline by which most individual partners must file their tax returns.

House Bill

The House bill provides that an electing large partnership must furnish information returns to partners by the first March 15 following the close of the partnership's taxable year. Electing large partnerships are those partnerships subject to the simplified reporting and audit rules (generally, any partnership that elects under the reporting provision, if the number of partners in the preceding taxable year is 100 or more).

The House bill also provides that, if the partnership is required to provide copies of

the information returns to the Internal Revenue Service on magnetic media, each schedule (such as each Schedule K–1) with respect to each partner is treated as a separate information return with respect to the corrective periods and penalties that are generally applicable to all information returns.

Effective date.—The provision is effective for partnership taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Partnership returns required on magnetic media (sec. 1224 of the House bill and sec. 1024 of the Senate amendment)

Present Law

Partnerships are permitted, but not required, to provide the tax return of the partnership (Form 1065), as well as copies of the schedules sent to each partner (Form K–1), to the Internal Revenue Service on magnetic media.

House Bill

The House bill provides generally that any partnership is required to provide the tax return of the partnership (Form 1065), as well as copies of the schedule sent to each partner (Form K–1), to the Internal Revenue Service on magnetic media. An exception is provided for partnerships with 100 or fewer partners.

Effective date.—The provision is effective for partnership taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Treatment of partnership items of individual retirement arrangements (sec. 1225 of the House bill and sec. 1025 of the Senate amendment)

Present Law

Return filing requirements

An individual retirement account ("IRA") is a trust which generally is exempt from taxation except for the taxes imposed on income from an unrelated trade or business. A fiduciary of a trust that is exempt from taxation (but subject to the taxes imposed on income from an unrelated trade or business) generally is required to file a return on behalf of the trust for a taxable year if the trust has gross income of $1,000 or more included in computing unrelated business taxable income for that year (Treas. Reg. sec. 1.6012–3(a)(5)).

Unrelated business taxable income is the gross income (including gross income from a partnership) derived by an exempt organization from an unrelated trade or business, less certain deductions which are directly connected with the carrying on of such trade or business (sec. 512(a)(1). In calculating unrelated business taxable income, exempt organizations (including IRAs) generally also are permitted a specific deduction of $1,000 (sec. 512(b)(12)).

Unified audits of partnerships

All but certain small partnerships are subject to unified audit rules established by the Tax Equity and Fiscal Responsibility Act of 1982. These rules require the tax treatment of all "partnership items" to be determined at the partnership, rather than the partner, level. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, including such items as gross income and deductions of the partnership.

House Bill

The House bill modifies the filing threshold for an IRA with an interest in a partnership that is subject to the partnership-level audit rules. A fiduciary of such an IRA could treat the trust's share of partnership taxable income as gross income, for purposes of determining whether the trust meets the $1,000 gross income filing threshold. A fiduciary of an IRA that receives taxable income from a partnership that is subject to partnership-level audit rules of less than $1,000 (before the $1,000 specific deduction) is not required to file an income tax return if the IRA does not have any other income from an unrelated trade or business.

Effective date.—The provision applies to taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Other partnership audit rules

a. Treatment of partnership items in deficiency proceedings (sec. 1231 of the House bill and sec. 1031 of the Senate amendment)

Present Law

Partnership proceedings under rules enacted in TEFRA[13] must be kept separate from deficiency proceedings involving the partners in their individual capacities. Prior to the Tax Court's opinion in *Munro* v. *Commissioner*, 92 T.C. 71 (1989), the IRS computed deficiencies by assuming that all items that were subject to the TEFRA partnership procedures were correctly reported on the taxpayer's return. However, where the losses claimed from TEFRA partnerships were so large that they offset any proposed adjustments to nonpartnership items, no deficiency could arise from a non-TEFRA proceeding, and if the partnership losses were subsequently disallowed in a partnership proceeding, the non-TEFRA adjustments might be uncollectible because of the expiration of the statute of limitations with respect to nonpartnership items.

Faced with this situation in *Munro*, the IRS issued a notice of deficiency to the taxpayer that presumptively disallowed the taxpayer's TEFRA partnership losses for computational purposes only. Although the Tax Court ruled that a deficiency existed and that the court had jurisdiction to hear the case, the court disapproved of the methodology used by the IRS to compute the deficiency. Specifically, the court held that partnership items (whether income, loss, deduction, or credit) included on a taxpayer's return must be completely ignored in determining whether a deficiency exists that is attributable to nonpartnership items.

House Bill

The House bill overrules *Munro* and allow the IRS to return to its prior practice of computing deficiencies by assuming that all TEFRA items whose treatment has not been finally determined had been correctly reported on the taxpayer's return. This eliminates the need to do special computations that involve the removal of TEFRA items from a taxpayer's return, and will restore to taxpayers a prepayment forum with respect to the TEFRA items. In addition, the provision provides a special rule to address the factual situation presented in *Munro*.

Specifically, the House bill provides a declaratory judgment procedure in the Tax Court for adjustments to an oversheltered return. An oversheltered return is a return that shows no taxable income and a net loss from TEFRA partnerships. In such a case, the IRS is authorized to issue a notice of adjustment with respect to non-TEFRA items, notwithstanding that no deficiency would result from the adjustment. However, the IRS could only issue such a notice if a deficiency would have arisen in the absence of the net loss from TEFRA partnerships.

The Tax Court is granted jurisdiction to determine the correctness of such an adjustment as well as to make a declaration with respect to any other item for the taxable year to which the notice of adjustment relates, except for partnership items and affected items which require partner-level determinations. No tax is due upon such a determination, but a decision of the Tax Court is treated as a final decision, permitting an appeal of the decision by either the taxpayer or the IRS. An adjustment determined to be correct would thus have the effect of increasing the taxable income that is deemed to have been reported on the taxpayer's return. If the taxpayer's partnership items were then adjusted in a subsequent proceeding, the IRS has preserved its ability to collect tax on any increased deficiency attributable to the nonpartnership items.

Alternatively, if the taxpayer chooses not to contest the notice of adjustment within the 90-day period, the bill provides that when the taxpayer's partnership items are finally determined, the taxpayer has the right to file a refund claim for tax attributable to the items adjusted by the earlier notice of adjustment for the taxable year. Although a refund claim is not generally permitted with respect to a deficiency arising from a TEFRA proceeding, such a rule is appropriate with respect to a defaulted notice of adjustment because taxpayers may not challenge such a notice when issued since it does not require the payment of additional tax.

In addition, the House bill incorporates a number of provisions intended to clarify the coordination between TEFRA audit proceedings and individual deficiency proceedings. Under these provisions, any adjustment with respect to a non-partnership item that caused an increase in tax liability with respect to a partnership item would be treated as a computational adjustment and assessed after the conclusion of the TEFRA proceeding. Accordingly, deficiency procedures do not apply with respect to this increase in tax liability, and the statute of limitations applicable to TEFRA proceedings are controlling.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

[13] Tax Equity and Fiscal Responsibility Act of 1982.

b. Partnership return to be determinative of audit procedures to be followed (sec. 1232 of the House bill and sec. 1032 of the Senate amendment)

Present Law

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item. Partners in the exempted partnerships are subject to regular deficiency procedures.

House Bill

The House bill permits the IRS to apply the TEFRA audit procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply. Similarly, the provision permits the IRS to apply the normal deficiency procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

c. Provisions relating to statute of limitations

i. Suspend statute when an untimely petition is filed (sec. 1233(a) of the House bill and sec. 1033(a) of the Senate amendment)

Present Law

In a deficiency case, section 6503(a) provides that if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, the period of limitations on assessment and collection is suspended until the decision of the Tax Court becomes final, and for 60 days thereafter. The counterpart to this provision with respect to TEFRA cases is contained in section 6229(d). That section provides that the period of limitations is suspended for the period during which an action may be brought under section 6226 and, if an action is brought during such period, until the decision of the court becomes final, and for 1 year thereafter. As a result of this difference in language, the running of the statute of limitations in a TEFRA case will only be tolled by the filing of a timely petition whereas in a deficiency case, the statute of limitations is tolled by the filing of any petition, regardless of whether the petition is timely.

House Bill

The House bill conforms the suspension rule for the filing of petitions in TEFRA cases with the rule under section 6503(a) pertaining to deficiency cases. Under the provision, the statute of limitations in TEFRA cases is suspended by the filing of any petition under section 6226, regardless of whether the petition is timely or valid, and the suspension will remain in effect until the decision of the court becomes final, and for one year thereafter. Hence, if the statute of limitations is open at the time that an untimely petition is filed, the limitations period would no longer continue to run and possibly expire while the action is pending before the court.

Effective date.—The provision is effective with respect to all cases in which the period of limitations has not expired under present law as of the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

ii. Suspend statute of limitations during bankruptcy proceedings (sec. 1233(b) of the House bill and sec. 1033(b) of the Senate amendment)

Present Law

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year after the date that the items become nonpartnership items. Section 6503(h) provides for the suspension of the limitations period during the pendency of a bankruptcy proceeding. However, this provision only applies to the limitations periods provided in sections 6501 and 6502.

Under present law, because the suspension provision in section 6503(h) applies only to the limitations periods provided in section 6501 and 6502, some uncertainty exists as to whether section 6503(h) applies to suspend the limitations period pertaining to converted items provided in section 6229(f) when a petition naming a partner as a debtor in a bankruptcy proceeding is filed. As a result, the limitations period provided in section 6229(f) may continue to run during the pendency of the bankruptcy proceeding, notwithstanding that the IRS is prohibited from making an assessment against the debtor because of the automatic stay provisions of the Bankruptcy Code.

House Bill

The House bill clarifies that the statute of limitations is suspended for a partner who is named in a bankruptcy petition. The suspension period is for the entire period during which the IRS is prohibited by reason of the bankruptcy proceeding from making an assessment, and for 60 days thereafter. The provision does not purport to create any inference as to the proper interpretation of present law.

Effective date.—The provision is effective with respect to all cases in which the period of limitations has not expired under present law as of the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

iii. Extend statute of limitations for bankrupt TMPs (sec. 1233(c) of the House bill and sec. 1033(c) of the Senate amendment)

Present Law

Section 6229(b)(1)(B) provides that the statute of limitations is extended with respect to all partners in the partnership by an agreement entered into between the tax matters partner (TMP) and the IRS. However, Temp. Treas. Reg. secs. 301.6231(a)(7)–1T(1)(4) and 301.6231(c)–7T(a) provide that upon the filing of a petition naming a partner as a debtor in a bankruptcy proceeding, that partner's partnership items convert to nonpartnership items, and if the debtor was the tax matters partner, such status terminates. These rules are necessary because of the automatic stay provision contained in 11 U.S.C. sec. 362(a)(8). As a result, if a consent to extend the statute of limitations is signed by a person who would be the TMP but for the fact that at the time that the agreement is executed the person was a debtor in a bankruptcy proceeding, the consent would not be binding on the other partners because the person signing the agreement was no longer the TMP at the time that the agreement was executed.

House Bill

The House bill provides that unless the IRS is notified of a bankruptcy proceeding in accordance with regulations, the IRS can rely on a statute extension signed by a person who is the tax matters partner but for the fact that said person was in bankruptcy at the time that the person signed the agreement. Statute extensions granted by a bankrupt TMP in these cases are binding on all of the partners in the partnership. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective date.—The provision is effective for extension agreements entered into after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Expansion of small partnership exception (sec. 1234 of the House bill and sec. 1034 of the Senate amendment)

Present Law

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item. Partners in the exempted partnerships are subject to regular deficiency procedures.

House Bill

The House bill permits a small partnership to have a C corporation as a partner or to specially allocate items without jeopardizing its exception from the TEFRA rules. However, the provision retains the prohibition of present law against having a flow-through entity (other than an estate of a deceased partner) as a partner for purposes of qualifying for the small partnership exception.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Exclusion of partial settlements from 1-year limitation on assessment (sec. 1235 of the House bill and sec. 1035 of the Senate amendment)

Present Law

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year

after the date that the items become nonpartnership items. Section 6231(b)(1)(C) provides that the partnership items of a partner for a partnership taxable year become nonpartnership items as of the date the partner enters into a settlement agreement with the IRS with respect to such items.

House Bill

The House bill provides that if a partner and the IRS enter into a settlement agreement with respect to some but not all of the partnership items in dispute for a partnership taxable year and other partnership items remain in dispute, the period for assessing any tax attributable to the settled items is determined as if such agreement had not been entered into. Consequently, the limitations period that is applicable to the last item to be resolved for the partnership taxable year is controlling with respect to all disputed partnership items for the partnership taxable year. The provision does not purport to create any inference as to the proper interpretation of present law.

Effective date.—The provision is effective for settlements entered into after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

F. Extension of time for filing a request for administrative adjustment (sec. 1236 of the House bill and sec. 1036 of the Senate amendment)

Present Law

If an agreement extending the statute is entered into with respect to a non-TEFRA statute of limitations, that agreement also extends the statute of limitations for filing refund claims (sec. 6511(c)). There is no comparable provision for extending the time for filing refund claims with respect to partnership items subject to the TEFRA partnership rules.

House Bill

The House bill provides that if a TEFRA statute extension agreement is entered into, that agreement also extends the statute of limitations for filing refund claims attributable to partnership items or affected items until 6 months after the expiration of the limitations period for assessments.

Effective date.—The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

G. Availability of innocent spouse relief in context of partnership proceedings (sec. 1237 of the House bill and sec. 1037 of the Senate amendment)

Present Law

In general, an innocent spouse may be relieved of liability for tax, penalties and interest if certain conditions are met (sec. 6013(e)). However, existing law does not provide the spouse of a partner in a TEFRA partnership with a judicial forum to raise the innocent spouse defense with respect to any tax or interest that relates to an investment in a TEFRA partnership.

House Bill

The House bill provides both a prepayment forum and a refund forum for raising the innocent spouse defense in TEFRA cases.

With respect to a prepayment forum, the provision provides that within 60 days of the date that a notice of computational adjustment relating to partnership items is mailed to the spouse of a partner, the spouse could request that the assessment be abated. Upon receipt of such a request, the assessment is abated and any reassessment will be subject to the deficiency procedures. If an abatement is requested, the statute of limitations does not expire before the date which is 60 days after the date of the abatement. If the spouse files a petition with the Tax Court, the Tax Court only has jurisdiction to determine whether the requirements of section 6013(e) have been satisfied. In making this determination, the treatment of the partnership items that gave rise to the liability in question is conclusive.

Alternatively, the House bill provides that the spouse of a partner could file a claim for refund to raise the innocent spouse defense. The claim has to be filed within 6 months from the date that the notice of computational adjustment is mailed to the spouse. If the claim is not allowed, the spouse could file a refund action. For purposes of any claim or suit under this provision, the treatment of the partnership items that gave rise to the liability in question is conclusive.

Effective date.—The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

H. Determination of penalties at partnership level (sec. 1238 of the House bill and sec. 1038 of the Senate amendment)

Present Law

Partnership items include only items that are required to be taken into account under the income tax subtitle. Penalties are not partnership items since they are contained in the procedure and administration subtitle. As a result, penalties may only be asserted against a partner through the application of the deficiency procedures following the completion of the partnership-level proceeding.

House Bill

The House bill provides that the partnership-level proceeding is to include a determination of the applicability of penalties at the partnership level. However, the provision allows partners to raise any partner-level defenses in a refund forum.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with technical modifications.

I. Provisions relating to Tax Court jurisdiction (sec. 1239 of the House bill and sec. 1039 of the Senate amendment)

Present Law

Improper assessment and collection activities by the IRS during the 150-day period for filing a petition or during the pendency of any Tax Court proceeding, "may be enjoined in the proper court." Present law may be unclear as to whether this includes the Tax Court.

For a partner other than the Tax Matters Partner to be eligible to file a petition for redetermination of partnership items in any court or to participate in an existing case, the period for assessing any tax attributable to the partnership items of that partner must not have expired. Since such a partner would only be treated as a party to the action if the statute of limitations with respect to them was still open, the law is unclear whether the partner would have standing to assert that the statute of limitations had expired with respect to them.

House Bill

The House bill clarifies that an action to enjoin premature assessments of deficiencies attributable to partnership items may be brought in the Tax Court. The provision also permits a partner to participate in an action or file a petition for the sole purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired for that person. Additionally, the provision clarifies that the Tax Court has overpayment jurisdiction with respect to affected items.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with technical modifications.

J. Treatment of premature petitions filed by notice partners or 5-percent groups (sec. 1240 of the House bill and sec. 1040 of the Senate amendment)

Present Law

The Tax Matters Partner is given the exclusive right to file a petition for a readjustment of partnership items within the 90-day period after the issuance of the notice of a final partnership administrative adjustment (FPAA). If the Tax Matters Partner does not file a petition within the 90-day period, certain other partners are permitted to file a petition within the 60-day period after the close of the 90-day period. There are ordering rules for determining which action goes forward and for dismissing other actions.

House Bill

The House bill treats premature petitions filed by certain partners within the 90-day period as being filed on the last day of the following 60-day period under specified circumstances, thus affording the partnership with an opportunity for judicial review that is not available under present law.

Effective date.—The provision is effective with respect to petitions filed after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

K. Bonds in case of appeals from certain proceedings (sec. 1241 of the House bill and sec. 1041 of the Senate amendment)

Present Law

A bond must be filed to stay the collection of deficiencies pending the appeal of the Tax

Court's decision in a TEFRA proceeding. The amount of the bond must be based on the court's estimate of the aggregate deficiencies of the partners.

House Bill

The House bill clarifies that the amount of the bond should be based on the Tax Court's estimate of the aggregate liability of the parties to the action (and not all of the partners in the partnership). For purposes of this provision, the amount of the bond could be estimated by applying the highest individual rate to the total adjustments determined by the Tax Court and doubling that amount to take into account interest and penalties.

Effective date.—The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

L. Suspension of interest where delay in computational adjustment resulting from certain settlements (sec. 1242 of the House bill and sec. 1042 of the Senate amendment)

Present Law

Interest on a deficiency generally is suspended when a taxpayer executes a settlement agreement with the IRS and waives the restrictions on assessments and collections, and the IRS does not issue a notice and demand for payment of such deficiency within 30 days. Interest on a deficiency that results from an adjustment of partnership items in TEFRA proceedings, however, is not suspended.

House Bill

The House bill suspends interest where there is a delay in making a computational adjustment relating to a TEFRA settlement.

Effective date.—The provision is effective with respect to adjustments relating to taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

M. Special rules for administrative adjustment requests with respect to bad debts or worthless securities (sec. 1243 of the House bill and sec. 1043 of the Senate amendment)

Present Law

The non-TEFRA statute of limitations for filing a claim for credit or refund generally is the later of (1) three years from the date the return in question was filed or (2) two years from the date the claimed tax was paid, whichever is later (sec. 6511(b)). However, an extended period of time, seven years from the date the return was due, is provided for filing a claim for refund of an overpayment resulting from a deduction for a worthless security or bad debt (sec. 6511(d)).

Under the TEFRA partnership rules, a request for administrative adjustment ("RAA") must be filed within three years after the later of (1) the date the partnership return was filed or (2) the due date of the partnership return (determined without regard to extensions) (sec. 6227(a)(1)). In addition, the request must be filed before a final partnership administrative adjustment ("FPAA") is mailed for the taxable year (sec. 6227(a)(2)). There is no special provision for extending the time for filing an RAA that relates to a deduction for a worthless security or an entirely worthless bad debt.

House Bill

The House bill extends the time for the filing of an RAA relating to the deduction by a partnership for a worthless security or bad debt. In these circumstances, in lieu of the three-year period provided in sec. 6227(a)(1), the period for filing an RAA is seven years from the date the partnership return was due with respect to which the request is made (determined without regard to extensions). The RAA is still required to be filed before the FPAA is mailed for the taxable year.

Effective date.—The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Closing of partnership taxable year with respect to deceased partner (sec. 1246 of the House bill and sec. 1046 of the Senate amendment)

Present Law

The partnership taxable year closes with respect to a partner whose entire interest is sold, exchanged, or liquidated. Such year, however, generally does not close upon the death of a partner. Thus, a decedent's entire share of items of income, gain, loss, deduction and credit for the partnership year in which death occurs is taxed to the estate or successor in interest rather than to the decedent on his or her final income tax return. See *Estate of Hesse* v. *Commissioner*, 74 T.C. 1307, 1311 (1980).

House Bill

The House bill provides that the taxable year of a partnership closes with respect to a partner whose entire interest in the partnership terminates, whether by death, liquidation or otherwise. The provision does not change present law with respect to the effect upon the partnership taxable year of a transfer of a partnership interest by a debtor to the debtor's estate (under Chapters 7 or 11 of Title 11, relating to bankruptcy).

Effective date.—Partnership taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

D. Modifications of Rules for Real Estate Investment Trusts (secs. 1251–1263 of the House bill and secs. 1051–1063 of the Senate amendment)

Present Law

Overview

In general, a real estate investment trust ("REIT") is an entity that receives most of its income from passive real estate related investments and that receives conduit treatment for income that is distributed to shareholders. If an entity meets the qualifications for REIT status, the portion of its income that is distributed to the investors each year generally is taxed to the investors without being subjected to a tax at the REIT level; the REIT generally is subject to a corporate tax only on the income that it retains and on certain income from property that qualifies as foreclosure property.

Election to be treated as a REIT

In order to qualify as a REIT, and thereby receive conduit treatment, an entity must elect REIT status. A newly-electing entity generally cannot have earnings and profits accumulated from any year in which the entity was in existence and not treated as a REIT (sec. 857(a)(3)). To satisfy this requirement, the entity must distribute, during its first REIT taxable year, any earnings and profits that were accumulated in non-REIT years. For this purpose, distributions by the entity generally are treated as being made from the most recently accumulated earnings and profits.

Taxation of REITs

Overview

In general, if an entity qualifies as a REIT by satisfying the various requirements described below, the entity is taxable as a corporation on its "real estate investment trust taxable income" ("REITTI"), and also is taxable on certain other amounts (sec. 857). REITTI is the taxable income of the REIT with certain adjustments (sec. 857(b)(2)). The most significant adjustment is a deduction for dividends paid. The allowance of this deduction is the mechanism by which the REIT becomes a conduit for income tax purposes.

Capital gains

A REIT that has a net capital gain for a taxable year generally is subject to tax on such capital gain under the capital gains tax regime generally applicable to corporations (sec. 857(b)(3)). However, a REIT may diminish or eliminate its tax liability attributable to such capital gain by paying a "capital gain dividend" to its shareholders (sec. 857(b)(3)(C)). A capital gain dividend is any dividend or part of a dividend that is designated by the payor REIT as a capital gain dividend in a written notice mailed to shareholders. Shareholders who receive capital gain dividends treat the amount of such dividends as long-term capital gain regardless of the holding period of their stock (sec. 857(b)(3)(C)).

A regulated investment company ("RIC"), but not a REIT, may elect to retain and pay income tax on net long-term capital gains it received during the tax year. If a RIC makes this election, the RIC shareholders must include in their income as long-term capital gains their proportionate share of these undistributed long-term capital gains as designated by the RIC. The shareholder is deemed to have paid the shareholder's share of the tax, which can be credited or refunded to the shareholder. Also, the basis of the shareholder's shares is increased by the amount of the undistributed long-term capital gains (less the amount of capital gains tax paid by the RIC) included in the shareholder's long-term capital gains.

Income from foreclosure property

In addition to tax on its REITTI, a REIT is subject to tax at the highest rate of tax paid by corporations on its net income from foreclosure property (sec. 857(b)(4)). Net income from foreclosure property is the excess of the sum of gains from foreclosure property that is held for sale to customers in the ordinary course of a trade or business and gross income from foreclosure property (other than income that otherwise would qualify under the 75-percent income test described below) over all allowable deductions directly connected with the production of such income.

Foreclosure property is any real property or personal property incident to such real

property that is acquired by a REIT as a result of default or imminent default on a lease of such property or indebtedness secured by such property, provided that (unless acquired as foreclosure property), such property was not held by the REIT for sale to customers (sec. 856(e)). A property generally may be treated as foreclosure property for a period of two years after the date the property is acquired by the REIT. The IRS may grant extensions of the period for treating the property as foreclosure property if the REIT establishes that an extension of the grace period is necessary for the orderly liquidation of the REIT's interest in the property. The grace period cannot be extended beyond six years from the date the property is acquired by the REIT.

Property will cease to be treated as foreclosure property if, after 90 days after the date of acquisition, the REIT operates the foreclosure property in a trade or business other than through an independent contractor from whom the REIT does not derive or receive any income (sec. 856(e)(4)(C)).

Income or loss from prohibited transactions

In general, a REIT must derive its income from passive sources and not engage in any active trade or business. Accordingly, in addition to the tax on its REITTI and on its net income from foreclosure property, a 100 percent tax is imposed on the net income of a REIT from "prohibited transactions" (sec. 857(b)(6)). A prohibited transaction is the sale or other disposition of property described in section 1221(1) of the Code (property held for sale in the ordinary course of a trade or business) other than foreclosure property. Thus, the 100 percent tax on prohibited transactions helps to ensure that the REIT is a passive entity and may not engage in ordinary retailing activities such as sales to customers of condominium units or subdivided lots in a development project. A safe harbor is provided for certain sales that otherwise might be considered prohibited transactions (sec. 857(b)(6)(C)). The safe harbor is limited to seven or fewer sales a year or, alternatively, any number of sales provided that the aggregate adjusted basis of the property sold does not exceed 10 percent of the aggregate basis of all the REIT's assets at the beginning of the REIT's taxable year.

Requirements for REIT status

A REIT must satisfy four tests on a year-by-year basis: organizational structure, source of income, nature of assets, and distribution of income. These tests are intended to allow conduit treatment in circumstances in which a corporate tax otherwise would be imposed, only if there really is a pooling of investment arrangement that is evidenced by its organizational structure, if its investments are basically in real estate assets, and if its income is passive income from real estate investment, as contrasted with income from the operation of business involving real estate. In addition, substantially all of the entity's income must be passed through to its shareholders on a current basis.

Organizational structure requirements

To qualify as a REIT, an entity must be for its entire taxable year a corporation or an unincorporated trust or association that would be taxable as a domestic corporation but for the REIT provisions, and must be managed by one or more trustees (sec. 856(a)). The beneficial ownership of the entity must be evidenced by transferable shares or certificates of ownership. Except for the first taxable year for which an entity elects to be a REIT, the beneficial ownership of the entity must be held by 100 or more persons, and the entity may not be so closely held by individuals that it would be treated as a personal holding company if all its adjusted gross income constituted personal holding company income. A REIT is disqualified for any year in which it does not comply with regulations to ascertain the actual ownership of the REIT's outstanding shares. Treasury regulations require that the entity request information from certain shareholders regarding shares directly or indirectly owned by them.

Income requirements

Overview

In order for an entity to qualify as a REIT, at least 95 percent of its gross income generally must be derived from certain passive sources (the "95-percent test"). In addition, at least 75 percent of its income generally must be from certain real estate sources (the "75-percent test"), including rents from real property.

In addition, less than 30 percent of the entity's gross income may be derived from gain from the sale or other disposition of stock or securities held for less than one year, real property held less than four years (other than foreclosure property, or property subject to an involuntary conversion within the meaning of sec. 1033), and property that is sold or disposed of in a prohibited transaction (sec. 856(c)(4)).

Definition of rents from real property

For purposes of the income requirements, rents from real property generally include: (1) rents from interests in real property; (2) charges for services customarily rendered or furnished in connection with the rental of real property, whether or not such charges are separately stated; and (3) rent attributable to personal property that is leased under or in connection with a lease of real property, but only if the rent attributable to such personal property does not exceed 15 percent of the total rent for the year under the lease (sec. 856(d)(1)).

Services provided to tenants are regarded as customary if, in the geographic market within which the building is located, tenants in buildings that are of a similar class (for example, luxury apartment buildings) are customarily provided with the service. The furnishing of water, heat, light, and air conditioning, the cleaning of windows, public entrances, exits, and lobbies, the performance of general maintenance, and of janitorial and cleaning services, the collection of trash, the furnishing of elevator services, telephone answering services, incidental storage space, laundry equipment, watchman or guard service, parking facilities and swimming pool facilities are examples of services that are customarily furnished to tenants of a particular class of buildings in many geographical marketing areas (Treas. Reg. sec. 1.856–4(b)).

Exclusion of rents from related tenants

Amounts are not treated as qualified rent if they are received from corporate or noncorporate tenants in which the REIT, directly or indirectly, has an ownership interest of 10 percent or more (sec. 856(d)(2)(B)).

Exclusion of rents where services to tenants are performed by related contractors

Where a REIT furnishes or renders services to the tenants, amounts received or accrued with respect to such property generally are not treated as qualifying rents unless the services are furnished through an independent contractor (sec. 856(d)(2)(C)). A REIT may furnish or render a service directly, however, if the service would not generate unrelated business taxable income under section 512(b)(3) if provided by an organization described in section 511(a)(2). In general, an independent contractor is a person who does not own more than a 35 percent interest in the REIT (sec. 856(d)(3)(A)), and in which no more than a 35 percent interest is held by persons with a 35 percent or greater interest in the REIT (sec. 856(d)(3)(B)).

Constructive ownership rules involving corporations

For purposes of determining the REIT's ownership interest in a tenant and whether a contractor is independent, the attribution rules of section 318 apply, except that 10 percent is substituted for 50 percent where it appears in subparagraph (C) of section 318(a)(2) and 318(a)(3) (sec. 856(d)(5)). Thus, under section 318(a)(2)(C) (as so modified), if 10 or more percent of a REIT or other corporation is owned, directly or indirectly, by or for a person, that person is treated as owning that person's proportionate share of any stock owned directly or indirectly by that corporation.

Constructive ownership rules involving partnerships

Under section 318, stock owned, directly or indirectly, by or for a partnership is considered owned proportionately by its partners (sec. 318(a)(2)(A)). In addition, stock owned, directly or indirectly, by or for a partner is considered owned by the partnership (sec. 318(a)(3)(A)). However, stock constructively owned by a partnership is not considered as owned for purposes of being constructively owned by partners (sec. 318(a)(5)(C)). The following examples illustrate the application of these provisions for purposes of the related tenant and independent contractor rules.

Constructive ownership of tenant

If a REIT owns a 10 percent or greater interest in a person that is a tenant of the REIT, rents paid by that person to the REIT are not qualifying rents to the REIT (sec. 856(d)(2)(B)). Example #1.—If 10 percent or more of a REIT's shares are owned by a partnership and a partner owning a one-percent interest in that partnership also owns a 10-percent or greater interest in a person that is a tenant of the REIT, rents paid by the tenant to the REIT are not qualifying rents to the REIT; the 10-percent or greater interest in the tenant is considered owned by the partnership (sec. 318(a)(3)(A)) and in turn by the REIT (secs. 318(a)(3)(C) and 856(d)(5)). Example #2.—If a REIT owns a 30-percent interest in a partnership that in turn owns a 40-percent interest in a person that is a tenant of the REIT, rents paid by that person to the REIT are not qualifying rents to the REIT because the REIT is considered to own more than 10 percent of the tenant (sec. 318(a)(2)(A)). Example #3.—If 10 percent or more of a REIT's shares are owned by persons who are 50-percent partners in a partnership whose other partners own the entirety of the interests in a tenant of the REIT, none of the interests in the tenant are considered owned by the partners who own interests in the REIT (sec. 318(a)(5)(C)).

Constructive ownership of contractor

If a person providing services to tenants of the REIT owns a greater-than-35-percent interest in the REIT, or if another person owns a greater-than-35-percent interest in both the REIT and a person providing services, amounts received or accrued by the REIT with respect to the property are not qualifying rents because the service provider does not qualify as an independent contractor (sec. 856(d)(3)). Example #4.—If more than 35

percent of a REIT's shares are owned by a partnership and a partner owning a one-percent interest in that partnership also owns a greater-than-35-percent interest in a contractor, that person will not be considered an independent contractor because the partnership owns more than 35 percent of the REIT's shares and will also be considered to own a greater-than-35-percent interest in the contractor (sec. 318(a)(3)A)). Example #5.—If more than 35 percent of a REIT's shares are owned by a person who owns a one-percent interest in a partnership and another one-percent partner in that partnership owns more than 35 percent of the interests in a contractor, the independent contractor definition will not be met because the partnership will be considered to own more than 35 percent interests in both the REIT and the contractor (sec. 318 (a)(3)(A)).

Hedging instruments

Interest rate swaps or cap agreements that protect a REIT from interest rate fluctuations on variable rate debt incurred to acquire or carry real property are treated as securities under the 30-percent test and payments under these agreements are treated as qualifying under the 95-percent test (sec. 856(c)(6)(G)).

Treatment of shared appreciation mortgages

For purposes of the income requirements for qualification as a REIT, and for purposes of the prohibited transaction provisions, any income derived from a "shared appreciation provision" is treated as gain recognized on the sale of the "secured property." For these purposes, a shared appreciation provision is any provision that is in connection with an obligation that is held by the REIT and secured by an interest in real property, which provision entitles the REIT to receive a specified portion of any gain realized on the sale or exchange of such real property (or of any gain that would be realized if the property were sold on a specified date). Secured property for these purposes means the real property that secures the obligation that has the shared appreciation provision.

In addition, for purposes of the income requirements for qualification as a REIT, and for purposes of the prohibited transactions provisions, the REIT is treated as holding the secured property for the period during which it held the shared appreciation provision (or, if shorter, the period during which the secured property was held by the person holding such property), and the secured property is treated as property described in section 1221(1) if it is such property in the hands of the obligor on the obligation to which the shared appreciation provision relates (or if it would be such property if held by the REIT). For purposes of the prohibited transaction safe harbor, the REIT is treated as having sold the secured property at the time that it recognizes income on account of the shared appreciation provision, and any expenditures made by the holder of the secured property are treated as made by the REIT.

Asset requirements

To satisfy the asset requirements to qualify for treatment as a REIT, at the close of each quarter of its taxable year, an entity must have at least 75 percent of the value of its assets invested in real estate assets, cash and cash items, and government securities (sec. 856(c)(5)(A)). Moreover, not more than 25 percent of the value of the entity's assets can be invested in securities of any one issuer (other than government securities and other securities described in the preceding sentence). Further, these securities may not comprise more than five percent of the entity's assets or more than 10 percent of the outstanding voting securities of such issuer (sec. 856(c)(5)(B)). The term real estate assets is defined to mean real property (including interests in real property and mortgages on real property) and interests in REITs (sec. 856(c)(6)(B)).

REIT subsidiaries

Under present law, all the assets, liabilities, and items of income, deduction, and credit of a "qualified REIT subsidiary" are treated as the assets, liabilities, and respective items of the REIT that owns the stock of the qualified REIT subsidiary. A subsidiary of a REIT is a qualified REIT subsidiary if and only if 100 percent of the subsidiary's stock is owned by the REIT at all times that the subsidiary is in existence. If at any time the REIT ceases to own 100 percent of the stock of the subsidiary, or if the REIT ceases to qualify for (or revokes an election of) REIT status, such subsidiary is treated as a new corporation that acquired all of its assets in exchange for its stock (and assumption of liabilities) immediately before the time that the REIT ceased to own 100 percent of the subsidiary's stock, or ceased to be a REIT as the case may be.

Distribution requirements

To satisfy the distribution requirement, a REIT must distribute as dividends to its shareholders during the taxable year an amount equal to or exceeding (i) the sum of 95 percent of its REITTI other than net capital gain income and 95 percent of the excess of its net income from foreclosure property over the tax imposed on that income minus (ii) certain excess noncash income. Excess noncash items include (1) the excess of the amounts that the REIT is required to include in income under section 467 with respect to certain rental agreements involving deferred rents, over the amounts that the REIT otherwise would recognize under its regular method of accounting, (2) in the case of a REIT using the cash method of accounting, the excess of the amount of original issue discount and coupon interest that the REIT is required to take into account with respect to a loan to which section 1274 applies, over the amount of money and fair market value of other property received with respect to the loan, and (3) income arising from the disposition of a real estate asset in certain transactions that failed to qualify as like-kind exchanges under section 1031.

House Bill

Overview

The House bill modifies many of the provisions relating to the requirements for qualification as, and the taxation of, a REIT. In particular, the modifications relate to the general requirements for qualification as a REIT, the taxation of a REIT, the income requirements for qualification as a REIT, and certain other provisions.

Alterative penalty for failure to make requests of shareholders (sec. 1251 of the House bill)

The House bill replaces the rule that disqualifies a REIT for any year in which the REIT failed to comply with Treasury regulations to ascertain its ownership, with an intermediate penalty for failing to do so. The penalty is $25,000 ($50,000 for intentional violations) for any year in which the REIT did not comply with the ownership regulations. The REIT also is required, when requested by the IRS, to send curative demand letters.

In addition, a REIT that complied with the Treasury regulations for ascertaining its ownership, and which did not know, or have reason to know, that it was so closely held as to be classified as a personal holding company, is treated as meeting the requirement that it not be a personal holding company.

De minimis rule for tenant service income (sec. 1252 of the House bill)

The House bill permits a REIT to render a de minimis amount of impermissible services to tenants, or in connection with the management of property, and still treat amounts received with respect to that property as rent. The value of the impermissible services may not exceed one percent of the gross income from the property. For these purposes, the services may not be valued at less than 150 percent of the REIT's direct cost of the services.

Attribution rules applicable to tenant ownership (sec. 1253 of the House bill)

The House bill modifies the application the rule attributing ownership from partners to partnerships (sec. 318(a)(3)(A)) for purposes of defining non-qualifying rent from related persons (sec. 856(d)(2)), so that attribution occurs only when a partner owns directly or indirectly a 25-percent or greater interest in the partnership. Thus, a REIT and a tenant will not be treated as related (and, therefore, rents paid by the tenant to the REIT will not be treated as non-qualifying rents) if the REIT's shares are owned by a partnership and a partner owning a directly and indirectly less-than-25-percent interest in that partnership also owns an interest in the tenant. The related tenant rule (sec. 856(d)(2)(B)) also will not be violated where owners of the REIT and owners of the tenant are partners in a partnership and either the owners of the REIT or the owners of the tenant are directly and indirectly less-than-25-percent partners in the partnership.

Credit for tax paid by REIT on retained capital gains (sec. 1254 of the House bill)

The House bill permits a REIT to elect to retain and pay income tax on net long-term capital gains it received during the tax year, just as a RIC is permitted under present law. Thus, if a REIT made this election, the REIT shareholders would include in their income as long-term capital gains their proportionate share of the undistributed long-term capital gains as designated by the REIT. The shareholder would be deemed to have paid the shareholder's share of the tax, which would be credited or refunded to the shareholder. Also, the basis of the shareholder's shares would be increased by the amount of the undistributed long-term capital gains (less the amount of capital gains tax paid by the REIT) included in the shareholder's long-term capital gains.

Repeal of 30-percent gross income requirement (sec. 1255 of the House bill)

The House bill repeals the rule that requires less than 30 percent of a REIT's gross income be derived from gain from the sale or other disposition of stock or securities held for less than one year, certain real property held less than four years, and property that is sold or disposed of in a prohibited transaction.

Modification of earnings and profits for determining whether REIT has earnings and profits from non-REIT year (sec. 1256 of the House bill)

The House bill changes the ordering rule for purposes of the requirement that newly-electing REITs distribute earnings and profits that were accumulated in non-REIT years. Distributions of accumulated earnings and profits generally are treated as made from the entity's earliest accumulated earnings and profits, rather than the most recently accumulated earnings and profits.

These distributions are not treated as distributions for purposes of calculating the dividends paid deduction.

Treatment of foreclosure property (sec. 1257 of the House bill)

The House bill lengthens the original grace period for foreclosure property until the last day of the third full taxable year following the election. The grace period also could be extended for an additional three years by filing a request to the IRS. A REIT could revoke an election to treat property as foreclosure property for any taxable year by filing a revocation on or before its due date for filing its tax return.

In addition, the House bill conforms the definition of independent contractor for purposes of the foreclosure property rule (sec. 856(e)(4)(C)) to the definition of independent contractor for purposes of the general rules (sec. 856(d)(2)(C)).

Payments under hedging instruments (sec. 1258 of the House bill)

The House bill treats income from all hedges that reduce the interest rate risk of REIT liabilities, not just from interest rate swaps and caps, as qualifying income under the 95-percent test. Thus, payments to a REIT under an interest rate swap, cap agreement, option, futures contract, forward rate agreement or any similar financial instrument entered into by the REIT to hedge its indebtedness incurred or to be incurred (and any gain from the sale or other disposition of these instruments) are treated as qualifying income for purposes of the 95-percent test.

Excess noncash income (sec. 1259 of the House bill)

The House bill (1) expands the class of excess noncash items that are not subject to the distribution requirement to include income from the cancellation of indebtedness and (2) extends the treatment of original issue discount and coupon interest as excess noncash items to REITs that use an accrual method of taxation.

Prohibited transaction safe harbor (sec. 1260 of the House bill)

The House bill excludes from the prohibited sales rules property that was involuntarily converted.

Shared appreciation mortgages (sec. 1261 of the House bill)

The House bill provides that interest received on a shared appreciation mortgage is not subject to the tax on prohibited transactions where the property subject to the mortgage is sold within four years of the REIT's acquisition of the mortgage pursuant to a bankruptcy plan of the mortgagor unless the REIT acquired the mortgage knew or had reason to know that the property subject to the mortgage would be sold in a bankruptcy proceeding.

Wholly-owned REIT subsidiaries (sec. 1262 of the House bill)

The House bill permits any corporation wholly-owned by a REIT to be treated as a qualified subsidiary, regardless of whether the corporation had always been owned by the REIT. Where the REIT acquired an existing corporation, any such corporation is treated as being liquidated as of the time of acquisition by the REIT and then reincorporated (thus, any of the subsidiary's pre-REIT built-in gain would be subject to tax under the normal rules of sec. 337). In addition, any pre-REIT earnings and profits of the subsidiary must be distributed before the end of the REIT's taxable year.

Effective date

The House bill is effective for taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment is identical to the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. In addition, the conference agreement extends, to the definition of an independent contractor under section 856(d)(3), the modification to the attribution to partnerships of section 318(a)(3)(A) so that attribution occurs only when a partner owns a 25-percent or greater interest in the partnership. Thus, a person providing services will not fail to be an independent contractor (and, therefore, amounts received or accrued by the REIT with respect to the property will not be treated as nonqualifying rents) where the REIT's shares are owned by a partnership and a partner owning a directly and indirectly a less-than-25-percent interest in the partnership also owns an interest in a contractor. Similarly, a contractor will not fail to be an independent contractor where owners of the REIT and owners of the contractor are partners in a partnership and either the owners of the REIT or owners of the tenant are directly and indirectly less-than-25-percent partners in the partnership.

Effective date.—The conference agreement is effective for taxable years beginning after the date of enactment.

E. Repeal the "Short-Short" Test for Regulated Investment Companies (sec. 1271 of the House bill and sec. 1071 of the Senate amendment)

Present Law

To qualify as a regulated investment company ("RIC"), a company must derive less than 30 percent of its gross income from the sale or other disposition of stock or securities held for less than 3 months (the "30-percent test" or "short-short rule").

House Bill

The 30-percent test (or short-short rule) is repealed effective for taxable years ending after the date of enactment.

Senate Amendment

The 30-percent test (or short-short rule) is repealed effective for taxable years beginning after the December 31, 1997.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment effective for taxable years beginning after the date of enactment.

F. Taxpayer Protections

1. Provide reasonable cause exception for additional penalties (sec. 1281 of the House bill and sec. 1081 of the Senate amendment)

Present Law

Many penalties in the Code may be waived if the taxpayer establishes reasonable cause. For example, the accuracy-related penalty (sec. 6662) may be waived with respect to any item if the taxpayer establishes reasonable cause for his treatment of the item and that he acted in good faith (sec. 6664(c)).

House Bill

The House bill provides that the following penalties may be waived if the failure is shown to be due to reasonable cause and not willful neglect:

(1) the penalty for failure to make a report in connection with deductible employee contributions to a retirement savings plan (sec. 6652(g));

(2) the penalty for failure to make a report as to certain small business stock (sec. 6652(k));

(3) the penalty for failure of a foreign corporation to file a return of personal holding company tax (sec. 6683); and

(4) the penalty for failure to make required payments for entities electing not to have the required taxable year (sec. 7519).

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Clarification of period for filing claims for refunds (sec. 1282 of the House bill and sec. 1082 of the Senate amendment)

Present Law

The Code contains a series of limitations on tax refunds. Section 6511 of the Code provides both a limitation on the time period in which a claim for refund can be made (section 6511(a)) and a limitation on the amount that can be allowed as a refund (section 6511(b)). Section 6511(a) provides the general rule that a claim for refund must be filed within 3 years of the date of the return or 2 years of the date of payment of the taxes at issue, whichever is later. Section 6511(b) limits the refund amount that can be covered: if a return was filed, a taxpayer can recover amounts paid within 2 years before the claim. Section 6512(b)(3) incorporates these rules where taxpayers who challenge deficiency notices in Tax Court are found to be entitled to refunds.

In *Commissioner* v. *Lundy*, 116 S. Ct. 647 (1996), the taxpayer had not filed a return, but received a notice of deficiency within 3 years after the date the return was due and challenged the proposed deficiency in Tax Court. The Supreme Court held that the taxpayer could not recover overpayments attributable to withholding during the tax year, because no return was filed and the 2-year "look back" rule applied. Since overwithheld amounts are deemed paid as of the date the taxpayer's return was first due (i.e., more than 2 years before the notice of deficiency was issued), such overpayments could not be recovered. By contrast, if the same taxpayer had filed a return on the date the notice of deficiency was issued, and then claimed a refund, the 3-year "look back" rule would apply, and the taxpayer could have obtained a refund of the overwithheld amounts.

House Bill

The House bill permits taxpayers who initially fail to file a return, but who receive a notice of deficiency and file suit to contest it in Tax Court during the third year after the return due date, to obtain a refund of excessive amounts paid within the 3-year period prior to the date of the deficiency notice.

Effective date.—The provision applies to claims for refund with respect to tax years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Repeal of authority to disclose whether a prospective juror has been audited (sec. 1283 of the House bill and sec. 1083 of the Senate amendment)

Present Law

In connection with a civil or criminal tax proceeding to which the United States is a

party, the Secretary must disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject of an audit or other tax investigation by the Internal Revenue Service (sec. 6103(h)(5)).

This disclosure requirement, as it has been interpreted by several recent court decisions, has created significant difficulties in the civil and criminal tax litigation process. First, the litigation process can be substantially slowed. It can take the Secretary a considerable period of time to compile the information necessary for a response (some courts have required searches going back as far as 25 years). Second, providing early release of the list of potential jurors to defendants (which several recent court decisions have required, to permit defendants to obtain disclosure of the information from the Secretary) can provide an opportunity for harassment and intimidation of potential jurors in organized crime, drug, and some tax protester cases. Third, significant judicial resources have been expended in interpreting this procedural requirement that might better be spent resolving substantive disputes. Fourth, differing judicial interpretations of this provision have caused confusion. In some instances, defendants convicted of criminal tax offenses have obtained reversals of those convictions because of failures to comply fully with this provision.

House Bill

The House bill repeals the requirement that the Secretary disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject of an audit or other tax investigation by the Internal Revenue Service.

Effective date.—The provision is effective for judicial proceedings commenced after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Clarify statute of limitations for items from pass-through entities (sec. 1284 of the House bill and sec. 1084 of the Senate amendment)

Present Law

Pass-through entities (such as S corporations, partnerships, and certain trusts) generally are not subject to income tax on their taxable income. Instead, these entities file information returns and the entities' shareholders (or beneficial owners) report their pro rata share of the gross income and are liable for any taxes due.

Some believe that, prior to 1993, it may have been unclear as to whether the statute of limitations for adjustments that arise from distributions from pass-through entities should be applied at the entity or individual level (i.e., whether the 3-year statute of limitations for assessments runs from the time that the entity files its information return or from the time that a shareholder timely files his or her income tax return). In 1993, the Supreme Court held that the limitations period for assessing the income tax liability of an S corporation shareholder runs from the date the shareholder's return is filed (*Bufferd* v. *Comm.*, 113 S. Ct. 927 (1993)).

House Bill

The House bill clarifies that the return that starts the running of the statute of limitations for a taxpayer is the return of the taxpayer and not the return of another person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. Awarding of administrative costs and attorneys fees (sec. 1285 of the House bill)

Present Law

Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding.

No time limit is specified for the taxpayer to apply to the IRS for an award of administrative costs. In addition, no time limit is specified for a taxpayer to appeal to the Tax Court an IRS decision denying an award of administrative costs. Finally, the procedural rules for adjudicating a denial of administrative costs are unclear.

House Bill

The House bill provides that a taxpayer who seeks an award of administrative costs must apply for such costs within 90 days of the date on which the taxpayer was determined to be a prevailing party. The House bill also provides that a taxpayer who seeks to appeal an IRS denial of an administrative cost award must petition the Tax Court within 90 days after the date that the IRS mails the denial notice.

The House bill clarifies that dispositions by the Tax Court of petitions relating only to administrative costs are to be reviewed in the same manner as other decisions of the Tax Court.

Effective date.—The provision is effective with respect to costs incurred in civil actions or proceedings commenced after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

6. Prohibition on browsing (secs. 1286 and 1287 of the House bill and secs. 1085 and 1086 of the Senate amendment)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized willful disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

There is no explicit criminal penalty in the Internal Revenue Code for unauthorized inspection (absent subsequent disclosure) of tax returns and return information. Such inspection is, however, explicitly prohibited by the Internal Revenue Service ("IRS").[14] In a recent case, an individual was convicted of violating the Federal wire fraud statute (18 U.S.C. 1343 and 1346) and a Federal computer fraud statute (18 U.S.C. 1030) for unauthorized inspection. However, the U.S. First Circuit Court of Appeals overturned this conviction.[15] Unauthorized inspection of information of any department or agency of the United States (including the IRS) via computer was made a crime under 18 U.S.C. 1030 by the Economic Espionage Act of 1996.[16] This provision does not apply to unauthorized inspection of paper documents.

House Bill

Criminal penalties

The House bill creates a new criminal penalty in the Internal Revenue Code. The penalty is imposed for willful inspection (except as authorized by the Code) of any tax return or return information by any Federal employee or IRS contractor. The penalty also applies to willful inspection (except as authorized) by any State employee or other person who acquired the tax return or return information under specific provisions of section 6103. Upon conviction, the penalty is a fine in any amount not exceeding $1,000,[17] or imprisonment of not more than 1 year, or both, together with the costs of prosecution. In addition, upon conviction, an officer or employee of the United States would be dismissed from office or discharged from employment.

The Congress views any unauthorized inspection of tax returns or return information as a very serious offense; this new criminal penalty reflects that view. The Congress also believes that unauthorized inspection warrants very serious personnel sanctions against IRS employees who engage in unauthorized inspection, and that it is appropriate to fire employees who do this.

Civil damages

The House bill amends the provision providing for civil damages for unauthorized disclosure by also providing for civil damages for unauthorized inspection. Damages are available for unauthorized inspection that occurs either knowingly or by reason of negligence. Accidental or inadvertent inspection that may occur (such as, for example, by making an error in typing in a TIN) would not be subject to damages because it would not meet this standard. The House bill also provides that no damages are available to a taxpayer if that taxpayer requested the inspection or disclosure.

The House bill also requires that, if any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of section 7213(a) or (b), section 7213A (as added by the bill), or 18 USC section 1030(a)(2)(B), the Secretary notify that taxpayer as soon as practicable of the inspection or disclosure.

Effective date.—The provision is effective for violations occurring on or after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement does not include these provisions, because they are identical to the provisions of H.R. 1226, which passed

[14] IRS Declaration of Privacy Principles, May 9, 1994.

[15] *U.S.* v. *Czubinski*, DTR 2/25/97, p. K-2.

[16] P.L. 104-294, sec. 201 (October 11, 1996).

[17] Pursuant to 18 U.S.C. sec. 3571 (added by the Sentencing Reform Act of 1984), the amount of the fine is not more than the greater of the amount specified in this new Code section or $100,000.

the House on April 15, 1997, and which passed the Senate on July 23, 1997, clearing the measure for the President's signature.

XIII. ESTATE, GIFT, AND TRUST SIMPLIFICATION PROVISIONS

1. Eliminate gift tax filing requirements for gifts to charities (sec. 1301 of the House bill and sec. 1101 of the Senate amendment)

Present Law

A gift tax generally is imposed on lifetime transfers of property by gift (sec. 2501). In computing the amount of taxable gifts made during a calendar year, a taxpayer generally may deduct the amount of any gifts made to a charity (sec. 2522). Generally, this charitable gift deduction is available for outright gifts to charity, as well as gifts of certain partial interests in property (such as a remainder interest). A gift of a partial interest in property must be in a prescribed form in order to qualify for the deduction.

Individuals who make gifts in excess of $10,000 to any one donee during the calendar year generally are required to file a gift tax return (sec. 6019). This filing requirement applies to all gifts, whether charitable or noncharitable, and whether or not the gift qualifies for a gift tax charitable deduction. Thus, under current law, a gift tax return is required to be filed for gifts to charity in excess of $10,000, even though no gift tax is payable on the transfer.

House Bill

The House bill provides that gifts to charity are not subject to the gift tax filing requirements of section 6019, as long as the entire value of the transferred property qualifies for the gift tax charitable deduction under section 2522. The filing requirements for gifts of partial interests in property remain unchanged.

Effective date.—The provision is effective for gifts made after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with a technical clarification that the property given to charity must be the donor's entire interest in the property.

2. Clarification of waiver of certain rights of recovery (sec. 1302 of the House bill and sec. 1102 of the Senate amendment)

Present Law

For estate and gift tax purposes, a marital deduction is allowed for qualified terminable interest property (QTIP). Such property generally is included in the surviving spouse's gross estate upon his or her death. The surviving spouse's estate is entitled to recover the portion of the estate tax attributable to inclusion of QTIP from the person receiving the property, unless the spouse directs otherwise by will (sec. 2207A). For this purpose, a will provision specifying that all taxes shall be paid by the estate is sufficient to waive the right of recovery.

A decedent's gross estate includes the value of previously transferred property in which the decedent retains enjoyment or the right to income (sec. 2036). The estate is entitled to recover from the person receiving the property a portion of the estate tax attributable to the inclusion (sec. 2207B). This right may be waived only by a provision in the will (or revocable trust) specifically referring to section 2207B.

House Bill

The House bill provides that the right of recovery with respect to QTIP is waived only to the extent that language in the decedent's will or revocable trust specifically so indicates (e.g., by a specific reference to QTIP, the QTIP trust, section 2044, or section 2207A). Thus, a general provision specifying that all taxes be paid by the estate is no longer sufficient to waive the right of recovery.

The House bill also provides that the right of contribution for property over which the decedent retained enjoyment or the right to income is waived by a specific indication in the decedent's will or revocable trust, but specific reference to section 2207B is no longer required.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Transitional rule under section 2056A (sec. 1303 of the House bill and sec. 1103 of the Senate amendment)

Present Law

A "marital deduction" generally is allowed for estate and gift tax purposes for the value of property passing to a spouse. The Technical and Miscellaneous Revenue Act of 1988 ("TAMRA") denied the marital deduction for property passing to an alien spouse outside a qualified domestic trust ("QDT"). An estate tax generally is imposed on corpus distributions from a QDT.

TAMRA defined a QDT as a trust that, among other things, required all trustees be U.S. citizens or domestic corporations. This provision was modified in the Omnibus Budget Reconciliation Acts of 1989 and 1990 to require that at least one trustee be a U.S. citizen or domestic corporation and that no corpus distribution be made unless such trustee has the right to withhold any estate tax imposed on the distribution (the "withholding requirement").

House Bill

The House bill provides that certain trusts created before the enactment of the Omnibus Budget Reconciliation Act of 1990 are treated as satisfying the withholding requirement if the governing instruments require that all trustees be U.S. citizens or domestic corporations.

Effective date.—The provision applies as if included in the Omnibus Budget Reconciliation Act of 1990.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Clarifications relating to disclaimers (sec. 1304 of the House bill)

Present Law

Historically, there must be acceptance of a gift in order for the gift to be completed under State law and there is no taxable gift for Federal gift tax purposes unless there is a completed gift. Most States have rules that provide that, where there is a disclaimer of a gift, the property passes to the person who is entitled to the property had the disclaiming party died before the purported transfer.

In the Tax Reform Act of 1976, Congress provided a uniform disclaimer rule (sec. 2518) that specified how and when a disclaimer under State law must be made in order to be effective for Federal transfer tax purposes. Under section 2518, a State law type disclaimer is effective for Federal transfer tax purposes if it is an irrevocable and unqualified refusal to accept an interest in property and certain other requirements are satisfied. One of these other requirements is that the disclaimer generally must be made in writing not later than nine months after the transfer creating the interest occurs. Section 2518 is not currently effective for Federal tax purposes other than transfer taxes.

In 1981, Congress added a rule to section 2518 that allowed certain transfers of property to be treated as a qualified disclaimer. In order to qualify, these transfer-type disclaimers must be a written transfer of the disclaimant's "entire interest in the property" to persons who would have received the property had there been a valid disclaimer under State law (sec. 2518(c)(3)). Like other disclaimers, the transfer-type disclaimer generally must be made within nine months of the transfer creating the interest.

House Bill

The House bill allows a transfer-type disclaimer of an "undivided portion" of the disclaimant transferor's interest in property to qualify under section 2518. Also, the House bill allows a spouse to make a qualified transfer-type disclaimer where the disclaimed property is transferred to a trust in which the disclaimant spouse has an interest (e.g., a credit shelter trust). Further, the House bill provides that a qualified disclaimer for transfer tax purposes under section 2518 also is effective for Federal income tax purposes (e.g., disclaimers of interests in annuities and income in respect of a decedent).

None of the foregoing provisions are intended to create an inference regarding the Federal tax treatment of disclaimers under present law.

Effective date.—The provision applies to disclaimers made after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

5. Amend "5 or 5 power" (sec. 1305 of the House bill)

Present Law

The exercise or release of a general power of appointment generally is considered a gift by the person holding the power (sec. 2514(b)). A special rule, however, provides that the lapse of a power of appointment during the life of the person holding the power is considered a release (and thus a taxable gift) only to the extent that the value of the property over which the power lapsed exceeds the greater of $5,000 or five percent ("5 or 5 power") of the value of the assets of the trust (sec. 2514(e)). A similar provision applies for purposes of estate taxation (sec. 2041(b)(2)).

House Bill

The House bill increases the limitations in sections 2514(e) and 2041(b)(2) to the greater of $10,000 or 5 percent.

Effective date.—The provision applies to lapses occurring in taxable years beginning after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

6. Treatment for estate tax purposes of short-term obligations held by nonresident aliens (sec. 1306 of the House bill and sec. 1104 of the Senate amendment)

Present Law

The United States imposes estate tax on assets of noncitizen nondomiciliaries that were situated in the United States at the time of the individual's death. Debt obligations of a U.S. person, the United States, a political subdivision of a State, or the District of Columbia are considered property located within the United States if held by a nonresident not a citizen of the United States (sec. 2014(c)).

Special rules apply to treat certain bank deposits and debt instruments the income from which qualifies for the bank deposit interest exemption and the portfolio interest exemption as property from without the United States despite the fact that such items are obligations of a U.S. person, the United States, a political subdivision of a State, or the District of Columbia (sec. 2105(b)). Income from such items is exempt from U.S. income tax in the hands of the nonresident recipient (secs. 871(h) and 871(i)(2)(A)). The effect of these special rules is to exclude these items from the U.S. gross estate of a nonresident not a citizen of the United States. However, because of an amendment to section 871(h) made by the Tax Reform Act of 1986, these special rules no longer cover obligations that generate short-term OID income despite the fact that such income is exempt from U.S. income tax in the hands of the nonresident recipient (sec. 871(g)(1)(B)(i)).

House Bill

The House bill provides that any debt obligation, the income from which would be eligible for the exemption for short-term OID under section 871(g)(1)(B)(i) if such income were received by the decedent on the date of his death, is treated as property located outside of the United States in determining the U.S. estate tax liability of a nonresident not a U.S. citizen. No inference is intended with respect to the estate tax treatment of such obligations under present law.

Effective date.—The provision is effective for estates of decedents dying after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

7. Certain revocable trusts treated as part of estate (sec. 1307 of the House bill)

Present Law

Both estates and revocable inter vivos trusts can function to settle the affairs of a decedent and distribute assets to heirs. In the case of revocable inter vivos trusts, the grantor transfers property into a trust which is revocable during his or her lifetime. Upon the grantor's death, the power to revoke ceases and the trustee then performs the settlement functions typically performed by the executor of an estate. While both estates and revocable trusts perform essentially the same function after the testator or grantor's death, there are a number of ways in which an estate and a revocable trust operate differently. First, there can be only one estate per decedent while there can be more than one revocable trust. Second, estates are in existence only for a reasonable period of administration; revocable trusts can perform the same settlement functions as an estate, but may continue in existence thereafter as testamentary trusts.

Numerous differences presently exist between the income tax treatment of estates and revocable trusts, including: (1) estates are allowed a charitable deduction for amounts permanently set aside for charitable purposes while post death revocable trusts are allowed a charitable deduction only for amounts paid to charities; (2) the active participation requirement the passive loss rules under section 469 is waived in the case of estates (but not revocable trusts) for two years after the owner's death; and (3) estates (but not revocable trusts) can qualify for section 194 amortization of reforestation expenditures.

House Bill

The House bill provides an irrevocable election to treat a qualified revocable trust as part of the decedent's estate for Federal income tax purposes. This elective treatment is effective from the date of the decedent's death until two years after his or her death (if no estate tax return is required) or, if later, six months after the final determination of estate tax liability (if an estate tax return is required). The election must be made by both the executor of the decedent's estate (if any) and the trustee of the revocable trust no later than the time required for filing the income tax return of the estate for its first taxable year, taking into account any extensions. A conforming change is made to section 2652(b) for generation-skipping transfer tax purposes.

For this purpose, a qualified revocable trust is any trust (or portion thereof) which was treated under section 676 as owned by the decedent with respect to whom the election is being made, by reason of a power in the grantor (i.e., trusts that are treated as owned by the decedent solely by reason of a power in a nonadverse party would not qualify).

The separate share rule (described below) generally will apply when a qualified revocable trust is treated as part of the decedent's estate.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

8. Distributions during first 65 days of taxable year of estate (sec. 1308 of the House bill and sec. 1105 of the Senate amendment)

Present Law

In general, trusts and estates are treated as conduits for Federal income tax purposes; income received by a trust or estate that is distributed to a beneficiary in the trust or estate's taxable year "ending with or within" the taxable year of the beneficiary is taxable to the beneficiary in that year; income that is retained by the trust or estate is initially taxable to the trust or estate. In the case of distributions of previously accumulated income by trusts (but not estates), there may be additional tax under the so-called "throwback" rules if the beneficiary to whom the distributions were made has marginal rates higher than those of the trust. Under the "65-day rule," a trust may elect to treat distributions paid within 65 days after the close of its taxable year as paid on the last day of its taxable year. The 65-day rule is not applicable to estates.

House Bill

The House bill extends application of the 65-day rule to distributions by estates. Thus, an executor can elect to treat distributions paid by the estate within 65 days after the close of the estate's taxable year as having been paid on the last day of such taxable year.

Effective date.—The provision applies to taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

9. Separate share rules available to estates (sec. 1309 of the House bill and sec. 1106 of the Senate amendment)

Present Law

Trusts with more than one beneficiary must use the "separate share" rule in order to provide different tax treatment of distributions to different beneficiaries to reflect the income earned by different shares of the trust's corpus.[18] Treasury regulations provide that "[t]he application of the separate share rule * * * will generally depend upon whether distributions of the trust are to be made in substantially the same manner as if separate trusts had been created. * * * Separate share treatment will not be applied to a trust or portion of a trust subject to a power to distribute, apportion, or accumulate income or distribute corpus to or for the use of one or more beneficiaries within a group or class of beneficiaries, unless the payment of income, accumulated income, or corpus of a share of one beneficiary cannot affect the proportionate share of income, accumulated income, or corpus of any shares of the other beneficiaries, or unless substantially proper adjustment must thereafter be made under the governing instrument so that substantially separate and independent shares exist." (Treas. Reg. sec. 1.663(c)-3). The separate share rule presently does not apply to estates.

House Bill

The House bill extends the application of the separate share rule to estates. There are separate shares in an estate when the governing instrument of the estate (e.g., the will and applicable local law) creates separate economic interests in one beneficiary or class of beneficiaries such that the economic interests of those beneficiaries (e.g., rights to income or gains from specified items of property) are not affected by economic interests accruing to another separate beneficiary or class of beneficiaries. For example, a separate share in an estate would exist where the decedent's will provides that all of the shares of a closely-held corporation are devised to one beneficiary and that any dividends paid to the estate by that corporation should be paid only to that beneficiary and any such dividends would not affect any other amounts which that beneficiary would receive under the will. As in the case of trusts, the application of the separate share rule is mandatory where separate shares exist.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

[18] Application of the separate share rule is not elective; it is mandatory if there are separate shares in the trust.

10. Executor of estate and beneficiaries treated as related persons for disallowance of losses (sec. 1310 of the House bill and sec. 1107 of the Senate amendment)

Present Law

Section 267 disallows a deduction for any loss on the sale of an asset to a person related to the taxpayer. For the purposes of section 267, the following parties are related persons: (1) a trust and the trust's grantor, (2) two trusts with the same grantor, (3) a trust and a beneficiary of the trust, (4) a trust and a beneficiary of another trust, if both trusts have the same grantor, and (5) a trust and a corporation the stock of which is more than 50 percent owned by the trust or the trust's grantor.

Section 1239 disallows capital gain treatment on the sale of depreciable property to a related person. For purposes of section 1239, a trust and any beneficiary of the trust are treated as related persons, unless the beneficiary's interest is a remote contingent interest.

Neither section 267 or section 1239 presently treat an estate and a beneficiary of the estate as related persons.

House Bill

Under the House bill, an estate and a beneficiary of that estate are treated as related persons for purposes of sections 267 and 1239, except in the case of a sale or exchange in satisfaction of a pecuniary bequest.

Effective date.—The provision applies to taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

11. Limitation on taxable year of estates (sec. 1311 of the House bill)

Present Law

The taxability of distributions from a trust or estate is based on the amount of income received by the trust or estate in the trust or estate's taxable year "ending with or within" the taxable year of the beneficiary (typically a calendar year). Trusts are required to use a calendar year and, consequently, income of a trust that is distributed to a calendar-year beneficiary in the year earned is taxed to the beneficiary in the year earned. Estates, on the other hand, are allowed to use any fiscal year. Consequently, in the case of estates, the taxation of distributions to a calendar-year beneficiary in up to the last 11 months of the calendar year can be deferred until the next taxable year depending upon the fiscal year selected.

House Bill

The House bill limits the taxable year of an estate to a year ending on October 31, November 30, or December 31.[19] Thus, the maximum deferral allowable to a calendar-year beneficiary is with respect to distributions made in the last two months of the calendar year.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

[19] If an election is made to treat a revocable trust as part of the estate under section 14601 of the bill, such trust would switch to the taxable year of the estate during the period that the election was effective.

12. Simplified taxation of earnings of pre-need funeral trusts (sec. 1312 of the House bill and sec. 1108 of the Senate amendment)

Present Law

A pre-need funeral trust is an arrangement where an individual purchases funeral services or merchandise from a funeral home for the benefit of a specified person in advance of that person's death. (The beneficiary may be either the purchaser or another person.) The purchaser enters into a contract with the provider of such services or merchandise whereby the purchaser selects the services or merchandise to be provided upon the death of the beneficiary, and agrees to pay for them in advance of the beneficiary's death. Such amounts (or a portion thereof) are held in trust during the beneficiary's lifetime and are paid to the seller upon the beneficiary's death.

Under present law, pre-need funeral trusts generally are treated as grantor trusts, and the annual income earned by such trusts is taxed to the purchaser/grantor of the trust. Rev. Rul. 87-127. Any amount received from the trust by the seller (as payment for services or merchandise) is includible in the gross income of the seller.

House Bill

The House bill allows the trustee of a pre-need funeral trust to elect special tax treatment for such a trust, to the extent the trust would otherwise be treated as a grantor trust. A qualified funeral trust is defined as one which meets the following requirements: (1) the trust arises as the result of a contract between a person engaged in the trade or business of providing funeral or burial services or merchandise and one or more individuals to have such services or property provided upon such individuals' death; (2) the only beneficiaries of the trust are individuals who have entered into contracts to have such services or merchandise provided upon their death; (3) the only contributions to the trust are contributions by or for the benefit of the trust beneficiaries; (4) the trust's only purpose is to hold and invest funds that will be used to make payments for funeral or burial services or merchandise for the trust beneficiaries; and (5) the trust has not accepted contributions totaling more than $7,000 by or for the benefit of any individual. For this purpose, "contributions" include all amounts transferred to the trust, regardless of how denominated in the contract. Contributions do not, however, include income or gain earned with respect to property in the trust. For purposes of applying the $7,000 limit, if a purchaser has more than one contract with a single trustee (or related trustees), all such trusts are treated as one trust. Similarly, if the Secretary of Treasury determines that a purchaser has entered into separate contracts with unrelated trustees to avoid the $7,000 limit described above, the Secretary may require that such trusts be treated as one trust. For contracts entered into after 1998, the $7,000 limit is indexed annually for inflation.

The trustee's election to have this provision apply to a qualified funeral trust is to be made separately with respect to each purchaser's trust. It is anticipated that the Department of Treasury will issue prompt guidance with respect to the simplified reporting requirements so that if the election is made, a single annual trust return may be filed by the trustee, separately listing the amount of income earned with respect to each purchaser. If the election is made, the trust is not treated as a grantor trust and the amount of tax paid with respect to each purchaser's trust is determined in accordance with the income tax rate schedule generally applicable to estates and trusts (Code sec. 1(e)), but no deduction is allowed under section 642(b). The tax on the annual earnings of the trust is payable by the trustee.

As under present law, amounts received from the trust by the seller are treated as payments for services and merchandise and are includible in the gross income of the seller. No gain or loss is recognized to the beneficiary of the trust for payments from the trust to the beneficiary upon cancellation of the contract, and the beneficiary takes a carryover basis in any assets received from the trust upon cancellation.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

Senate Agreement

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with modifications that would (1) allow the provision to be applied to contracts purchased by one individual to have funeral or burial services or merchandise provided for another individual upon that individual's death (to the extent that such arrangements would otherwise be treated as grantor trusts), and (2) allow the election to be made for taxable years ending after the date of enactment.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

13. Adjustments for gifts within 3 years of decedent's death (sec. 1313 of the House bill and sec. 1109 of the Senate amendment)

Present Law

The first $10,000 of gifts of present interests to each donee during any one calendar year are excluded from Federal gift tax.

The value of the gross estate includes the value of any previously transferred property if the decedent retained the power to revoke the transfer (sec. 2038). The gross estate also includes the value of any property with respect to which such power is relinquished during the three years before death (sec. 2035). There has been significant litigation as to whether these rules require that certain transfers made from a revocable trust within three years of death be includible in the gross estate. See, e.g., *Jalkut Estate* v. *Commissioner*, 96 T.C. 675 (1991) (transfers from revocable trust includible in gross estate); *McNeely* v. *Commissioner*, 16 F.3d 303 (8th Cir. 1994) (transfers from revocable trust not includible in gross estate); *Kisling* v. *Commissioner*, 32 F.3d 1222 (8th Cir. 1994) (acq.) (transfers from revocable trust not includible in gross estate).

House Bill

The House bill codifies the rule set forth in the *McNeely* and *Kisling* cases to provide that a transfer from a revocable trust (i.e., a trust described under section 676) is treated as if made directly by the grantor. Thus, an annual exclusion gift from such a trust is not included in the gross estate.

The House bill also revises section 2035 to improve its clarity.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The

provision is not intended to modify the result reached in the *Kisling* case.

14. Clarify relationship between community property rights and retirement benefits (sec. 1314 of the House bill and sec. 1110 of the Senate amendment)

Present Law

Community property

Under State community property laws, each spouse owns an undivided one-half interest in each community property asset. In community property jurisdictions, a nonparticipant spouse may be treated as having a vested community property interest in either his or her spouse's qualified plan, individual retirement arrangement ("IRA"), or simplified employee pension ("SEP") plan.

Transfer tax treatment of qualified plans

In the Retirement Equity Act of 1984 ("REA"), qualified retirement plans were required to provide automatic survivor benefits (1) in the case of a participant who retires under the plan, in the form of a qualified joint and survivor annuity, and (2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, in the form of a preretirement survivor annuity. A participant generally is permitted to waive such annuities, provided he or she obtains the written consent of his or her spouse.

The Tax Reform Act of 1986 repealed the estate tax exclusion, formerly contained in sections 2039(c) and 2039(d), for certain interests in qualified plans owned by a nonparticipant spouse attributable to community property laws and made certain other changes to conform the transfer tax treatment of qualified and nonqualified plans.

As a result of these changes made by REA and the Tax Reform Act of 1986, the transfer tax treatment of married couples residing in a community property State is unclear where either spouse is covered by a qualified plan.

House Bill

The House bill clarifies that the marital deduction is available with respect to a nonparticipant spouse's interest in an annuity attributable to community property laws where he or she predeceases the participant spouse. Under the House bill, the nonparticipant spouse's interest in an annuity arising under the community property laws of a State that passes to the surviving participant spouse may qualify for treatment as QTIP under section 2056(b)(7).

The provision is not intended to create an inference regarding the treatment under present law of a transfer to a surviving spouse of the decedent spouse's interest in an annuity arising under community property laws.

Effective date.—The provision applies to decedents dying, or waivers, transfers and disclaimers made, after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The provision is not intended to modify the result of the Supreme Court's decision in *Boggs* v. *Boggs*, 117 S.Ct. 1754 (1997).

15. Treatment under qualified domestic trust rules of forms of ownership which are not trusts (sec. 1315 of the House bill and sec. 1111 of the Senate amendment)

Present Law

A marital deduction generally is allowed for estate and gift tax purposes for the value of property passing to a spouse. The marital deduction is not available for property passing to an alien spouse outside a qualified domestic trust ("QDT"). An estate tax generally is imposed on corpus distributions from a QDT.

Trusts are not permitted in some countries (e.g., many civil law countries).[20] As a result, it is not possible to create a QDT in those countries.

House Bill

The House bill provides the Treasury Department with regulatory authority to treat as trusts legal arrangements that have substantially the same effect as a trust. It is anticipated that such regulations, if any, would only permit a marital deduction with respect to non-trust arrangements under which the U.S. would retain jurisdiction and adequate security to impose U.S. transfer tax on transfers by the surviving spouse of the property transferred by the decedent. Possible arrangements could include the adoption of a bilateral treaty that provides for the collection of U.S. transfer tax from the noncitizen surviving spouse or a closing agreement process under which the surviving spouse waives treaty benefits, allows the U.S. to retain taxing jurisdiction and provides adequate security with respect to such transfer taxes.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

16. Opportunity to correct certain failures under section 2032A (sec. 1316 of the House bill and sec. 1112 of the Senate amendment)

Present Law

For estate tax purposes, an executor may elect to value certain real property used in farming or other closely held business operations at its current use value rather than its highest and best use (sec. 2032A). A written agreement signed by each person with an interest in the property must be filed with the election.

In 1984, section 2032A was amended to provide that if an executor makes a timely election that substantially complies with Treasury regulations, but fails to provide all required information or the signatures of all persons required to enter into the agreement, the executor may supply the missing information within a reasonable period of time (not exceeding 90 days) after notification by the Treasury Department.

Treasury regulations require that a notice of election and certain information be filed with the Federal estate tax return (Treas. Reg. sec. 20.2032A–8). The administrative policy of the Treasury Department is to disallow current use valuation elections unless the required information is supplied.

House Bill

The House bill extends the procedures allowing subsequent submission of information to any executor who makes the election and submits the recapture agreement, without regard to compliance with the Treasury regulations. Thus, the House bill allows the current use valuation election if the executor supplies the required information within a reasonable period of time (not exceeding 90 days) after notification by the IRS. During that time period, the House bill also allows the addition of signatures to a previously filed agreement.

The Committee report on the House bill indicates that the Treasury Department has taken an unnecessarily restrictive view of the 1984 amendment to section 2032A and intends no inference that the Treasury Department lacks the power, under the law in effect prior to the date of enactment, to correct the situation addressed by this provision. The House bill intends that, with respect to technically defective 2032A elections made prior to the date of enactment, prior law should be applied in a manner consistent with the provision.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

17. Authority to waive requirement of U.S. trustee for qualified domestic trusts (sec. 1317 of the House bill and sec. 1113 of the Senate amendment)

Present Law

In order for a trust to be a QDT, a U.S. trustee must have the power to approve all corpus distributions from the trust. In some countries, trusts cannot have any U.S. trustees. As a result, trusts established in those countries cannot qualify as a QDT.

House Bill

In order to permit the establishment of a QDT in those situations where a country prohibits a trust from having a U.S. trustee, the House bill provides the Treasury Department with regulatory authority to waive the requirement that a QDT have a U.S. trustee. It is anticipated that such regulations, if any, provide an alternative mechanism under which the U.S. would retain jurisdiction and adequate security to impose U.S. transfer tax on transfers by the surviving spouse of the property transferred by the decedent.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

XIV. EXCISE TAX AND OTHER SIMPLIFICATION PROVISIONS

A. Excise Tax Simplification Provisions

1. Increase de minimis limit for after-market alterations subject to heavy truck and luxury automobile excise taxes (sec. 1401 of the House bill and sec. 1201 of the Senate amendment)

Present Law

An excise tax is imposed on retail sales of truck chassis and truck bodies suitable for use in a vehicle with a gross vehicle weight of over 33,000 pounds. The tax is equal to 12 percent of the retail sales price. An excise tax also is imposed on retail sales of luxury automobiles. The tax currently is equal to 8 percent of the amount by which the retail sales price exceeds an inflation-adjusted base. (The rate is reduced by 1 percentage point per year through 2002, and the tax is not imposed after 2002.) Anti-abuse rules prevent the avoidance of these taxes through

[20] Note that in some civil law States (e.g., Louisiana), an entity similar to a trust, called a usufruct, exists.

separate purchases of major component parts. With certain exceptions, tax at the rate applicable to the vehicle is imposed on the subsequent installation of parts and accessories within six months after purchase of a taxable vehicle. The exceptions include a *de minimis* exception for parts and accessories with an aggregate price that does not exceed $200 (or such other amount as Treasury may by regulation prescribe).

House Bill

The tax on subsequent installation of parts and accessories does not apply to parts and accessories with an aggregate price that does not exceed $1,000. Parts and accessories installed on a vehicle on or before that date are taken into account in determining whether the $1,000 threshold is exceeded. If the aggregate price of the pre-effective date parts and accessories does not exceed $200, they are not to be subject to tax unless the aggregate price of all additions exceeds $1,000.

Effective date.—The increase in the threshold for taxing after-market additions under the heavy truck and luxury car excise taxes is effective on January 1, 1998.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Simplification of excise taxes on distilled spirits, wine, and beer (secs. 1411–1422 of the House bill and secs. 1211–1222 of the Senate amendment)

Present Law

Imported distilled spirits returned to plant.—Excise tax that has been paid on domestic distilled spirits is credited or refunded if the spirits are later returned to bonded premises. Tax is imposed on imported bottled spirits when they are withdrawn from customs custody, but the tax is not refunded or credited if the spirits are later returned to bonded premises.

Cancellation of export bonds.—An exporter that withdraws distilled spirits from bonded warehouses for export or transportation to a customs bonded warehouse without the payment of tax must furnish a bond to cover the withdrawal. The required bonds are canceled "on the submission of such evidence, records, and certification indicating exportation as the Secretary may by regulations prescribe."

Location of records of distilled spirits plant.—Proprietors of distilled spirits plants are required to maintain records and reports relating to their production, storage, denaturation, and processing activities on the premises where the operations covered by the record are carried on.

Transfers from brewery to distilled spirits plant.—A distilled spirits plant may receive on its bonded premises beer to be used in the production of distilled spirits only if the beer is produced on contiguous brewery premises.

Sign not required for wholesale dealers.—Wholesale liquor dealers are required to post a sign identifying the firm as such. Failure to do so may subject the wholesaler dealer to a penalty.

Refund on returns of merchantable wine.—Excise tax paid on domestic wine that is returned to bond as unmerchantable is refunded or credited, and the wine is once again treated as wine in bond on the premises of a bonded wine cellar.

Increased sugar limits for certain wine.—Natural wines may be sweetened to correct high acid content. For most wines, however, sugar cannot constitute more than 35 percent (by volume) of the combined sugar and juice used to produce the wine. Up to 60 percent sugar may be used in wine made from loganberries, currants, and gooseberries. If the amount of sugar used exceeds the applicable limitation, the wine must be labeled "substandard."

Beer withdrawn for embassy use.—Imported beer to be used for the family and official use of representatives of foreign governments or public international organizations may be withdrawn from customs bonded warehouses without payment of excise tax. No similar exemption applies to domestic beer withdrawn from a brewery or entered into a bonded customs warehouse for the same authorized use.

Beer withdrawn for destruction.—Removals of beer from a brewery are exempt from tax if the removal is for export, because the beer is unfit for beverage use, for laboratory analysis, research, development and testing, for the brewer's personal or family use, or as supplies for certain vessels and aircraft.

Drawback on exported beer.—A domestic producer that exports beer may recover the tax (receive a "drawback") found to have been paid on the exported beer upon the "submission of such evidence, records and certificates indicating exportation" required by regulations.

Imported beer transferred in bulk to brewery and imported wine transferred in bulk to wineries.—Imported beer and wine are subject to tax when removed from customs custody.

House Bill

Imported distilled spirits returned to plant.—Refunds or credits of the tax are available for imported bottled spirits that are returned to distilled spirits plants.

Cancellation of export bonds.—The certification requirement are relaxed to allow the bonds to be canceled if there is such proof of exportation as the Secretary may require.

Location of records of distilled spirits plant.—Records and reports are permitted to be maintained elsewhere other than on the plant premises

Transfers from brewery to distilled spirits plant.—Beer may be brought from any brewery for use in the production of spirits. Such beer is exempt from excise tax, subject to Treasury regulations.

Sign not required for wholesale dealers.—The requirement that a sign be posted is repealed.

Refund on returns of merchantable wine.—A refund or credit is available in the case of all domestic wine returned to bond, whether or not unmerchantable.

Increased sugar limits for certain wine.—Up to 60 percent sugar is permitted in any wine made from juice, such as cranberry or plum juice, with an acid content of 20 or more parts per thousand.

Beer withdrawn for embassy use.—Subject to Treasury's regulatory authority, an exemption similar to that currently available for imported beer is provided for domestic beer.

Beer withdrawn for destruction.—An exemption from tax is added for removals for destruction, subject to Treasury regulations.

Drawback on exported beer.—The certification requirement is relaxed to allow a drawback of tax paid if there is such proof of exportation as the Secretary may be regulations require.

Imported beer transferred in bulk to brewery and imported wine transferred in bulk to wineries.—Subject to Treasury regulations, beer and wine imported in bulk may be withdrawn from customs custody and transferred in bulk to a brewery (beer) or a winery (wine) without payment of tax. The proprietor of the brewery to which the beer is transferred or of the winery to which the wine is transferred is liable for the tax imposed on the withdrawal from customs custody and the importer is relieved of liability.

Effective date.—The provision to repeal the requirement that wholesale liquor dealers post a sign outside their place of business takes effect on the date of enactment. The other provisions take effect on the first day of the calendar quarter that begins at least 90 days after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with a modification delaying the effective date of certain provisions from the first day of the calendar quarter that begins at least 90 days after the date of enactment to the first day of the quarter beginning at least 180 days after such date.

3. Authority for Internal Revenue Service to grant exemptions from excise tax registration requirements (sec. 1431 of the House bill and sec. 1231 of the Senate amendment)

Present Law

The Code exempts certain types of sales (e.g., sales for use in further manufacture, sales for export, and sales for use by a State or local government or a nonprofit educational organization) from excise taxes imposed on manufacturers and retailers. These exemptions generally apply only if the seller, the purchaser, and any person to whom the article is resold by the purchaser (the second purchaser) are registered with the Internal Revenue Service. The IRS can waive the registration requirement for the purchaser and second purchaser in some but not all cases.

House Bill

The IRS is authorized to waive the registration requirement for purchasers and second purchasers in all cases.

Effective date.—The provision applies to sales made pursuant to waivers issued after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Repeal of expired excise tax provisions (sec. 1432 of the House bill and sec. 1232 of the Senate amendment)

Present Law

The Code includes a provision relating to a temporary reduction in the tax on piggyback trailers sold before July 18, 1985, and provisions relating to the tax on the removal of hard minerals from the deep seabed before June 28, 1990.

An excise tax is imposed on the sale or use by the manufacturer or importer of certain ozone-depleting chemicals (sec. 4681). The amount of the tax generally is determined by multiplying the base tax amount applicable for the calendar year by an ozone-depleting factor assigned to each taxable chemical. The base tax amount was $5.80 per pound in 1996 and will increase by 45 cents per pound per year thereafter. The Code contains provisions for special rates of tax applicable to years before 1996 (e.g., sec. 4282(g)(1), (2), (3), and (5)).

House Bill

These provisions are repealed, as "deadwood".

Effective date.—The provisions are effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. Modifications to excise tax on certain arrows (sec. 1233 of the Senate amendment)

Present Law

An 11-percent manufacturer's excise tax is imposed on bows having a draw weight of more than 10 pounds and on arrows that either are greater than 18 inches in length or are suitable for use with a taxable bow. The tax is imposed on the manufacturer's sales price of the completed arrow.

House Bill

No provision.

Senate Amendment

The current excise tax on arrows tax is replaced with a manufacturer's excise tax on the four component parts of the arrow: shafts, points, nocks, and vanes. The tax rate is increased to 12.4 percent of the value of each of these four components to offset the reduction in aggregate value subjected to tax compared to present-law valuation of the completed arrow.

Effective date.—The provision is to be effective for arrow components sold after September 30, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Modifications to heavy highway vehicle retail excise tax (sec. 1234 of the Senate amendment)

Present Law

A 12-percent retail excise tax is imposed on certain heavy highway trucks and trailers, and on highway tractors. Small trucks (those with a gross vehicle weight not over 33,000 pounds) and lighter trailers (those with a gross vehicle weight not over 26,000 pounds) are exempt from the tax. The tax applies to the first retail sale of a new or remanufactured vehicle. The determination under present law of whether a particular modification to an existing vehicle constitutes remanufacture (taxable) or a repair (nontaxable) is factual and generally is based on whether the function of the vehicle is changed or, in the case of worn vehicles, whether the cost of the modification exceeds 75 percent of the value of the modified vehicle.

No tax is imposed on trucks, tractors, and trailers when they are sold for resale or long-term lease, if the purchaser is registered with the Treasury Department. In such cases, purchasers are liable for the tax when the vehicle is sold or leased. The tax is based on the sales price in the transaction to which it applies.

House Bill

No provision.

Senate Amendment

The Senate amendment makes two changes to the heavy vehicle excise tax:

(1) Clarification is provided that the 75-percent-of-value threshold applies in determining whether repairs to a wrecked vehicle constitute remanufacture; and

(2) The registration requirement currently applicable to certain sales of trucks, tractors, and trailers for resale is replaced with a certification requirement.

Effective date.—The provision is effective after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

7. Treatment of skydiving flights as noncommercial aviation (sec. 1235 of the Senate amendment)

Present Law

Commercial passenger aviation, or air transportation for which a fare is charged, is subject to a 10-percent ad valorem excise tax for the Airport and Airway Trust Fund. Noncommercial aviation, or air transportation which is not "for hire," is subject to a fuels tax for the Trust Fund. In the case of skydiving flights, questions have arisen as to when the flight is commercial aviation subject to the ticket tax and when it is noncommercial aviation subject to the fuels tax. In general, if instruction is offered, the flight is noncommercial aviation. Otherwise, the flight is treated as commercial aviation. Many skydiving flights carry both persons receiving instruction and others not receiving instruction.

House Bill

No provision.

Senate Amendment

The Senate amendment specifies that flights which are exclusively dedicated to skydiving are taxed as noncommercial aviation flights, regardless of whether instruction is offered to any of the passengers.

Effective date.—The provision is effective for flights beginning after September 30, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

8. Eliminate double taxation of certain aviation fuels sold to producers by "fixed base operators" (sec. 1236 of the Senate amendment)

Present Law

Section 4091 imposes a tax on the sale of aviation fuel by any producer (defined to include a wholesale distributor). Fuel sold at many rural airports is sold by retail dealers who do not qualify as wholesale distributors. This fuel is purchased by the retailers tax-paid. In certain instances, fuel which has been purchased tax-paid by a retailer will be re-sold to a producer, e.g., to enable the producer to serve one of its customers at the airport. When this fuel is resold at retail by the producer, a second tax is imposed. The Code contains no provision allowing a refund of the first tax in such cases.

House Bill

No provision.

Senate Amendment

The Senate amendment permits a refund of the tax previously paid on aviation fuel when a registered producer acquires the fuel.

Effective date.—The provision is effective for fuel sold after September 30, 1997.

Conference Agreement

The conference agreement follows the Senate amendment, with a clarification that the provision applies to tax-paid fuel purchased by registered producers after September 30, 1997.

B. Tax-Exempt Bond Provisions

Overview

Interest on State and local government bonds generally is excluded from gross income for purposes of the regular individual and corporate income taxes if the proceeds of the bonds are used to finance direct activities of these governmental units (Code sec. 103).

Unlike the interest on governmental bonds, described above, interest on private activity bonds generally is taxable. A private activity bond is a bond issued by a State or local governmental unit acting as a conduit to provide financing for private parties in a manner violating either (1) a private business use and payment test or (2) a private loan restriction. However, interest on private activity bonds is not taxable if (1) the financed activity is specified in the Code and (2) at least 95 percent of the net proceeds of the bond issue is used to finance the specified activity.

Issuers of State and local government bonds must satisfy numerous other requirements, including arbitrage restrictions (for all such bonds) and annual State volume limitations (for most private activity bonds) for the interest on these bonds to be excluded from gross income.

1. Repeal of $100,000 limitation on unspent proceeds under 1-year exception from rebate (sec. 1441 of the House bill and sec. 1241 of the Senate amendment)

Present Law

Subject to limited exceptions, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. No rebate is required if the gross proceeds of an issue are spent for the governmental purpose of the borrowing within six months after issuance.

This six-month exception is deemed to be satisfied by issuers of governmental bonds (other than tax and revenue anticipation notes) and qualified 501(c)(3) bonds if (1) all proceeds other than an amount not exceeding the lesser of 5 percent or $100,000 are so spent within six months and (2) the remaining proceeds are spent within one year after the bonds are issued.

House Bill

Under the House bill, the $100,000 limit on proceeds that may remain unspent after six months for certain governmental and qualified 501(c)(3) bonds otherwise exempt from the rebate requirement is deleted. Thus, if at least 95 percent of the proceeds of these bonds is spent within six months after their issuance, and the remainder is spent within one year, the six-month exception is deemed to be satisfied.

Effective date.—The provision applies to bonds issued after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Exception from rebate for earnings on bona fide debt service fund under construction bond rules (sec. 1442 of the House bill and sec. 1242 of the Senate amendment)

Present Law

In general, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. An exception is provided for certain construction bond issues if the bonds are governmental bonds, qualified 501(c)(3) bonds, or exempt-facility private activity bonds for governmentally-owned property.

This exception is satisfied only if the available construction proceeds of the issue are spent at minimum specified rates during the 24-month period after the bonds are issued. The exception does not apply to bond proceeds invested after the 24-month expenditure period as part of a reasonably required reserve or replacement fund, a bona fide debt service fund, or to certain other investments (e.g., sinking funds). Issuers of these construction bonds also may elect to comply with a penalty regime in lieu of rebating arbitrage profits if they fail to satisfy the exception's spending requirements.

House Bill

The House bill exempts earnings on bond proceeds invested in bona fide debt service funds from the arbitrage rebate requirement and the penalty requirement of the 24-month exception if the spending requirements of that exception are otherwise satisfied.

Effective date.—The provision applies to bonds issued after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Repeal of debt service-based limitation on investment in certain nonpurpose investments (sec. 1443 of the House bill and sec. 1243 of the Senate amendment)

Present Law

Issuers of all tax-exempt bonds generally are subject to two sets of restrictions on investment of their bond proceeds to limit arbitrage profits. The first set requires that tax-exempt bond proceeds be invested at a yield that is not materially higher (generally defined as 0.125 percentage points) than the bond yield ("yield restrictions"). Exceptions are provided to this restriction for investments during any of several "temporary periods" pending use of the proceeds and, throughout the term of the issue, for proceeds invested as part of a reasonably required reserve or replacement fund or a "minor" portion of the issue proceeds.

Except for temporary periods and amounts held pending use to pay current debt service, present law also limits the amount of the proceeds of private activity bonds (other than qualified 501(c)(3) bonds) that may be invested at materially higher yields at any time during a bond year to 150 percent of the debt service for that bond year. This restriction affects primarily investments in reasonably required reserve or replacement funds. Present law further restricts the amount of proceeds from the sale of bonds that may be invested in these reserve funds to ten percent of such proceeds.

The second set of restrictions requires generally that all arbitrage profits earned on investments unrelated to the governmental purpose of the borrowing be rebated to the Federal Government ("arbitrage rebate"). Arbitrage profits include all earnings (in excess of bond yield) derived from the investment of bond proceeds (and subsequent earnings on any such earnings).

House Bill

The House bill repeals the 150-percent of debt service yield restriction.

Effective date.— The provision applies to bonds issued after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Repeal of expired provisions relating to student loan bonds (sec. 1444 of the House bill and sec. 1244 of the Senate amendment)

Present Law

Present law includes two special exceptions to the arbitrage rebate and pooled financing temporary period rules for certain qualified student loan bonds. These exceptions applied only to bonds issued before January 1, 1989.

House Bill

These special exceptions are deleted as "deadwood."

Effective date.—The provision applies to bonds issued after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

C. Tax Court Procedures

1. Overpayment determinations of Tax Court (sec. 1451 of the House bill and sec. 1251 of the Senate amendment)

Present Law

The Tax Court may order the refund of an overpayment determined by the Court, plus interest, if the IRS fails to refund such overpayment and interest within 120 days after the Court's decision becomes final. Whether such an order is appealable is uncertain.

In addition, it is unclear whether the Tax Court has jurisdiction over the validity or merits of certain credits or offsets (e.g., providing for collection of student loans, child support, etc.) made by the IRS that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

House Bill

The House bill clarifies that an order to refund an overpayment is appealable in the same manner as a decision of the Tax Court. The House bill also clarifies that the Tax Court does not have jurisdiction over the validity or merits of the credits or offsets that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Redetermination of interest pursuant to motion (sec. 1452 of the House bill and sec. 1252 of the Senate amendment)

Present Law

A taxpayer may seek a redetermination of interest after certain decisions of the Tax Court have become final by filing a petition with the Tax Court. It would be beneficial to taxpayers if a proceeding for a redetermination of interest supplemented the original deficiency action brought by the taxpayer to redetermine the deficiency determination of the IRS. A motion, rather than a petition, is a more appropriate pleading for relief in these cases.

House Bill

The House bill provides that a taxpayer must file a "motion" (rather than a "petition") to seek a redetermination of interest in the Tax Court. The House bill also clarifies that the Tax Court's jurisdiction to redetermine the amount of interest under section 7481(c) does not depend on whether the interest is underpayment interest or overpayment interest.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. In clarifying the Tax Court's jurisdiction over interest determinations, the conferees do not intend to limit any other remedies that taxpayers may currently have with respect to such determinations, including in particular refund proceedings relating solely to the amount of interest due.

3. Application of net worth requirement for awards of litigation costs (sec. 1453 of the House bill and sec. 1253 of the Senate amendment)

Present Law

Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding. A person who substantially prevails must meet certain net worth requirements to be eligible for an award of administrative or litigation costs. In general, only an individual whose net worth does not exceed $2,000,000 is eligible for an award, and only a corporation or partnership whose net worth does not exceed $7,000,000 is eligible for an award. (The net worth determination with respect to a partnership or S corporation applies to all actions that are in substance partnership actions or S corporation actions, including unified entity-level proceedings under sections 6226 or 6228, that are nominally brought in the name of a partner or a shareholder.)

House Bill

The House bill provides that the net worth limitations currently applicable to individuals also apply to estates and trusts. The House bill also provides that individuals who file a joint tax return shall be treated as one individual for purposes of computing the net worth limitations. Consequently, the net worth of both spouses is aggregated for purposes of this computation. An exception to this rule is provided in the case of a spouse otherwise qualifying for innocent spouse relief.

Effective date.—The provision applies to proceedings commenced after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill with respect to estates and trusts. The Senate amendment provides that individuals who file a joint return are treated as separate individuals (resulting in a net worth limitation of $4,000,000 for individuals who file a joint return).

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with respect to estates and trusts. The conference agreement follows the Senate amendment with respect to individuals.

4. Tax Court jurisdiction for determination of employment status (sec. 1454 of the House bill and sec. 1254 of the Senate amendment)

Present Law

The Tax Court is a court of limited jurisdiction, established under Article I of the

Constitution. The Tax Court only has the jurisdiction that is expressly conferred on it by statute (sec. 7442).

House Bill

The House bill provides that, in connection with the audit of any person, if there is an actual controversy involving a determination by the IRS as part of an examination that (1) one or more individuals performing services for that person are employees of that person or (2) that person is not entitled to relief under section 530 of the Revenue Act of 1978, the Tax Court would have jurisdiction to determine whether the IRS is correct. For example, one way the IRS could make the required determination is through a mechanism similar to the employment tax early referral procedures.[21]

The House bill provides for de novo review (rather than review of the administrative record). Assessment and collection of the tax would be suspended while the matter is pending in the Tax Court. Any determination by the Tax Court would have the force and effect of a decision of the Tax Court and would be reviewable as such; accordingly, it would be binding on the parties. Awards of costs and certain fees (pursuant to sec. 7430) would be available to eligible taxpayers with respect to Tax Court determinations pursuant to this proposal. The House bill also provides a number of procedural rules to incorporate this new jurisdiction within the existing procedures applicable in the Tax Court.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, with technical modifications.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with additional technical modifications.

D. Other Provisions

1. Due date for first quarter estimated tax payments by private foundations (sec. 1461 of the House bill and sec. 1261 of the Senate amendment)

Present Law

Under section 4940, tax-exempt private foundations generally are required to pay an excise tax equal to two percent of their net investment income for the taxable year. Under section 6655(g)(3), private foundations are required to pay estimated tax with respect to their excise tax liability under section 4940 (as well as any unrelated business income tax (UBIT) liability under section 511).[22] Section 6655(c) provides that this estimated tax is payable in quarterly installments and that, for calendar-year foundations, the first quarterly installment is due on April 15th. Under section 6655(I), foundations with taxable years other than the calendar year must make their quarterly estimated tax payments no later than the dates in their fiscal years that correspond to the dates applicable to calendar-year foundations.

House Bill

The House bill amends section 6655(g)(3) to provide that a calendar-year foundation's first-quarter estimated tax payment is due on May 15th (which is the same day that its annual return, Form 990-PF, for the preceding year is due). As a result of the operation of present-law section 6655(I), fiscal-year foundations will be required to make their first-quarter estimated tax payment no later than the 15th day of the fifth month of their taxable year.

Effective date.—The provision applies to taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Withholding of Commonwealth income taxes from the wages of Federal employees (sec. 1462 of the House bill and sec. 1262 of the Senate amendment)

Present Law

If State law provides generally for the withholding of State income taxes from the wages of employees in a State, the Secretary of the Treasury shall (upon the request of the State) enter into an agreement with the State providing for the withholding of State income taxes from the wages of Federal employees in the State. For this purpose, a State is a State, territory, or possession of the United States. The Court of Appeals for the Federal Circuit recently held in *Romero* v. *United States* (38 F.3d 1204 (1994)) that Puerto Rico was not encompassed within this definition; consequently, the court invalidated an agreement between the Secretary of the Treasury and Puerto Rico that provided for the withholding of Puerto Rico income taxes from the wages of Federal employees.

House Bill

The House bill makes any Commonwealth eligible to enter into an agreement with the Secretary of the Treasury that would provide for income tax withholding from the wages of Federal employees.

Effective date.—The provision is effective January 1, 1998.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Certain notices disregarded under provision increasing interest rate on large corporate underpayments (sec. 1463 of the House bill and sec. 1263 of the Senate amendment)

Present Law

The interest rate on a large corporate underpayment of tax is the Federal short-term rate plus five percentage points. A large corporate underpayment is any underpayment by a subchapter C corporation of any tax imposed for any taxable period, if the amount of such underpayment for such period exceeds $100,000. The large corporate underpayment rate generally applies to periods beginning 30 days after the earlier of the date on which the first letter of proposed deficiency, a statutory notice of deficiency, or a nondeficiency letter or notice of assessment or proposed assessment is sent. For this purpose, a letter or notice is disregarded if the taxpayer makes a payment equal to the amount shown on the letter or notice within that 30 day period.

House Bill

The House bill provides that, for purposes of determining the period to which the large corporate underpayment rate applies, any letter or notice is disregarded if the amount of the deficiency, proposed deficiency, assessment, or proposed assessment set forth in the letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax).

Effective date.—The provision is effective for purposes of determining interest for periods after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

XV. PENSION AND EMPLOYEE BENEFIT PROVISIONS

A. Miscellaneous Provisions Relating to Pensions and Other Benefits

1. Cash or deferred arrangements for irrigation and drainage entities (sec. 911 of the House bill)

Present Law

Under present law, taxable and tax-exempt employers may maintain qualified cash or deferred arrangements. State and local government organizations generally are prohibited from establishing qualified cash or deferred arrangements ("section 401(k) plans"). This prohibition does not apply to qualified cash or deferred arrangements adopted by a State or local government before May 6, 1986.

Mutual irrigation or ditch companies are exempt from tax if at least 85 percent of the income of the company consists of amounts collected from members for the sole purpose of meeting losses and expenses.

House Bill

Under the House bill, mutual irrigation or ditch companies and districts organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation or drainage (or a national association of such organizations) are permitted to maintain qualified cash or deferred arrangements, even if the company or district is a State or local government organization.

Effective date.—The provision is effective with respect to years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

2. Permanent moratorium on application of nondiscrimination rules to State and local governmental plans (sec. 912 of the House bill and sec. 1308 of the Senate amendment)

Present Law

Under present law, the rules applicable to governmental plans require that such plans satisfy certain nondiscrimination and minimum participation rules. In general, the rules require that a plan not discriminate in favor of highly compensated employees with regard to the contribution and benefits provided under the plan, participation in the plan, coverage under the plan, and compensation taken into account under the plan. Nondiscrimination rules apply to all governmental plans, qualified retirement plans (including cash or deferred arrangements (sec. 401(k) plans) in effect before May 6, 1986), and annuity plans (sec. 403(b) plans). Elective deferrals under section 401(k) plans are required to satisfy a special nondiscrimination

[21] See Announcement 96-13 and Announcement 97-52.

[22] Generally, the amount of the first quarter payment must be at least 25 percent of the lesser of (1) the preceding year's tax liability, as shown on the foundation's Form 990-PF, or (2) 95 percent of the foundation's current-year tax liability.

test called the average deferral percentage ("ADP") test. Employer matching and after-tax employee contributions are subject to a similar test called the average contribution percentage ("ACP") test.

For purposes of satisfying the nondiscrimination rules, the Internal Revenue Service has issued several Notices which extended the effective date for compliance for governmental plans. Governmental plans will be required to comply with the nondiscrimination rules beginning with plan years beginning on or after the later of January 1, 1999, or 90 days after the opening of the first legislative session beginning on or after January 1, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously. For plan years beginning before the extended effective date, governmental plans are deemed to satisfy the nondiscrimination requirements.

House Bill

The House bill provides that State and local governmental plans are exempt from the nondiscrimination and minimum participation rules.

Effective date.—Taxable years beginning on or after the date of enactment. A governmental plan is treated as satisfying the coverage and nondiscrimination tests for taxable years beginning before the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment and clarifies that the exemption from the nondiscrimination and participation rules includes exemption from the ACP and ADP tests. The conference agreement provides that a cash or deferred arrangement under a governmental plan is treated as a qualified cash or deferred arrangement even though the ADP test is not in fact satisfied. Thus, for example, elective contributions made by a government employer on behalf of an employee are not treated as distributed or made available to the employee (in accordance with section 402(e)(3) of the Code).

Effective date.—Same as the House bill and Senate amendment.

3. Treatment of certain disability payments to public safety employees (sec. 913 of the House bill and sec. 785 of the Senate amendment)

Present Law

Under present law, amounts received under a workmen's compensation act as compensation for personal injuries or sickness incurred in the course of employment are excluded from gross income. Compensation received under a workmen's compensation act by the survivors of a deceased employee also are excluded from gross income. Nonoccupational death and disability benefits are not excludable from income as workmen's compensation benefits.

House Bill

Under the House bill, certain payments made on behalf of full-time employees of any police or fire department organized and operated by a State (or any political subdivision, agency, or instrumentality thereof) are excludable from income. The House bill applies to payments made on account of heart disease or hypertension of the employee and that were received in 1989, 1990, 1991 pursuant to a State law as amended on May 19, 1992, which irrebuttably presumed that heart disease and hypertension are work-related illnesses, but only for employees separating from service before July 1, 1992. Claims for refund or credit for overpayment of tax resulting from the provision may be filed up to 1 year after the date of enactment, without regard to the otherwise applicable statute of limitations.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except that the provision applies to amounts payable under a State law (as in existence on July 1, 1992) which irrebuttably presumed that heart disease and hypertension are work-related illnesses, but only for employees separating from service before such date.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill.

4. Portability of permissive service credit under governmental pension plans (sec. 914 of the House bill)

Present Law

Under present law, limits are imposed on the contributions and benefits under qualified pension plans (Code sec. 415). Certain special rules apply in the case of State and local governmental plans.

In the case of a defined contribution plan, the limit on annual additions is the lesser of $30,000 or 25 percent of compensation. Annual additions include employer contributions, as well as after-tax employee contributions. In the case of a defined benefit pension plan, the limit on the annual retirement benefit is the lesser of (1) 100 percent of compensation or (2) $125,000 (indexed for inflation). The 100 percent of compensation limitation does not apply in the case of State and local governmental pension plans.

Amounts contributed by employees to a State or local governmental plan are treated as made by the employer if the employer "picks up" the contribution.

House Bill

Under the House bill, in applying the defined benefit pension plan limit, the annual benefit under a State or local governmental plan includes the accrued benefit derived from contributions to purchase permissive service credit. Such contributions are not taken into account in determining annual additions.

Permissive service credit means credit for a period of service recognized by the governmental plan if the employee contributes to the plan an amount (as determined by the plan) which does not exceed the amount necessary to fund the accrued benefit attributable to such period of service.

The House bill does not affect the treatment of "pick up" contributions.

Effective date.—The provision is effective with respect to years beginning after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with modifications. Under the conference agreement, contributions by a participant in a State or local governmental plan to purchase permissive service credits are subject to one of two limits. Either (1) the accrued benefit derived from all contributions to purchase permissive service credit must be taken into account in determining whether the defined benefit pension plan limit is satisfied, or (2) all such contributions must be taken into account in determining whether the $30,000 limit on annual additions is met for the year (taking into account any other annual additions of the participant). Under the first alternative, a plan will not fail to satisfy the reduced defined benefit pension plan limit that applies in the case of early retirement due to the accrued benefit derived from the purchase of permissive service credits. These limits may be applied on a participant-by-participant basis. That is, contributions to purchase permissive service credits by all participants in the same plan do not have to satisfy the same limit.

Under the conference agreement, permissive service credit is defined as under the House bill. Thus, it is credit for a period of service that is recognized by the governmental plan only if the employee voluntarily contributes to the plan an amount (as determined by the plan) which does not exceed the amount necessary to fund the benefit attributable to the period of service and which is in addition to the regular employee contributions, if any, under the plan. Section 415 is violated if more than 5 years of permissive service credit is purchased for "nonqualified service". In addition, section 415 is violated if nonqualified service is taken into account for an employee who has less than 5 years of participation under the plan. Nonqualified service is service other than service (1) as a Federal, State, or local government employee, (2) as an employee of an association representing Federal, State or local government employees, (3) as an employee of an educational institution which provides elementary or secondary education, or (4) for military service. Service under (1), (2) or (3) is not qualified if it enables a participant to receive a retirement benefit for the same service under more than one plan.

The conference agreement provides that in the case of any repayment of contributions and earnings to a governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan (or another plan maintained by a State or local government employer within the same State) any such repayment shall not be taken into account for purposes of section 415 and service credit obtained as a result of the repayment shall not be considered permissive service credit.

The provision is not intended to affect the application of "pick up" contributions to purchase permissive service credit or the treatment of pick up contributions under section 415. The provision does not apply to purchases of service credit for qualified military service under the rules relating to veterans" reemployment rights (sec. 414(u)).

Effective date.—In general, the conference agreement is effective with respect to contributions to purchase permissive service credits made in years beginning after December 31, 1997.

The conference agreement provides a transition rule for plans that provided for the purchase of permissive service credit prior to enactment of this Act. Under this rule, the defined contribution limits will not reduce the amount of permissive service credit of an eligible participant allowed under the terms of the plan as in effect on the date of enactment. For this purpose an eligible participant is an individual who first became a participant in the plan before the first plan year beginning after the last day of the calendar year in which the next regular session (following the date of the enactment of this Act) of the governing body with authority to amend the plan ends.

5. Gratuitous transfers for the benefit of employees (sec. 915 of the House bill)

Present Law

An employee stock ownership plan ("ESOP") is a qualified stock bonus plan or a combination stock bonus and money purchase pension plan under which employer securities are held for the benefit of employees.

A deduction is allowed for Federal estate tax purposes for transfers by a decedent to charitable, religious, scientific, etc. organizations. In the case of a transfer of a remainder interest to a charity, the remainder interest must be in a charitable remainder trust. A charitable remainder trust generally is a trust that is required to pay, no less often than annually, a fixed dollar amount (charitable remainder annuity trust) or a fixed percentage of the fair market value of the trust's assets determined at least annually (charitable remainder unitrust) to noncharitable beneficiaries, and the remainder of the trust (i.e., after termination of the annuity or unitrust amounts) to a charitable, religious, scientific, etc. organization.

House Bill

The House bill permits certain limited transfers of qualified employer securities by charitable remainder trusts to ESOPs without adversely affecting the status of the charitable remainder trusts. As a result, the bill provides that a qualified gratuitous transfer of employer securities to an ESOP is deductible from the gross estate of a decedent under Code section 2055 to the extent of the present value of the remainder interest. In addition, an ESOP will not fail to be a qualified plan because it complies with the requirements with respect to a qualified gratuitous transfer.

In order for a transfer of securities to be a qualified gratuitous transfer, a number of requirements must be satisfied, including the following: (1) the securities transferred to the ESOP must previously have passed from the decedent to a charitable remainder trust; (2) at the time of the transfer to the ESOP, family members of the decedent own (directly or indirectly) no more than 10 percent of the value of the outstanding stock of the company; (3) immediately after the transfer to the ESOP, the ESOP owns at least 60 percent of the value of outstanding stock of the company; and (4) the plan meets certain requirements. The provision applies in cases in which the ESOPs was in existence on August 1, 1996 and the decedent dies on or before December 31, 1998.

Effective date.—The provision is effective with respect to transfers to an ESOP after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

6. Treatment of certain transportation on noncommercially operated aircraft as a fringe benefit (sec. 916 of the House bill)

Present Law

Under present law, the value of an employer-provided flight taken for personal purposes is generally includible in income. However, under a special rule in regulations, the value of a personal flight is deemed to be zero (and, therefore, there is no income inclusion) if at least 50 percent of the regular passenger seating capacity of the aircraft is occupied by individuals whose flights are primarily for the employer's business (and therefore, excludable from income).

House Bill

Under the House bill, the value of air transportation for personal purposes is excludable from income if the flight is made in the ordinary course of the trade or business of an employer and the flight would have been made whether or not the employee was transported on the flight, and the employer incurs no substantial additional cost (including foregone revenue) in providing the flight to the employee.

Effective date.—The provision is effective for transportation services provided after December 31, 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

7. Clarification of certain rules relating to ESOPs of S corporations (sec. 918 of the House bill and sec. 1309 of the Senate amendment)

Present Law

Under present law, an S corporation can have no more than 75 shareholders. For taxable years beginning after December 31, 1997, certain tax-exempt organizations, including employee stock ownership plans ("ESOPs") can be a shareholder of an S corporation.

ESOPs are generally required to make distributions in the form of employer securities. If the employer securities are not readily tradable, the employee has a right to require the employer to buy the securities. In the case of an employer whose bylaws or charter restricts ownership of substantially all employer securities to employees or a pension plan, the plan may provide that benefits are distributed in the form of cash. Such a plan may distribute employer securities, if the employee has a right to require the employer to purchase the securities.

ESOPs are subject to certain prohibited transaction rules under the Internal Revenue Code and title I of the Employee Retirement Income Security Act ("ERISA") which are designed to prohibit certain transactions between the plan and certain persons close to the plan. A number of statutory exceptions are provided to the prohibited transaction rules. These statutory exceptions do not apply to any transaction in which a plan (directly or indirectly) (1) lends any part of the assets of the plan to, (2) pays any compensation for personal services rendered to the plan to, or (3) acquires for the plan any property from or sells any property to a shareholder employee of an S corporation, a member of the family of such a shareholder employee, or a corporation controlled by the shareholder employee. An administrative exception from the prohibited transactions rules may be obtained from the Secretary of Labor, even if a statutory exception does not apply.

House Bill

The House bill provides that ESOPs of S corporations may distribute cash to plan participants as long as the employee has a right to require the employer to purchase employer securities (as under the present-law rules). In addition, the House bill extends the Code's statutory exceptions to certain prohibited transactions rules to shareholder employees of S corporations.

Effective date.—The provision is effective for taxable years beginning after December 31, 1997.

Senate Amendment

The Senate amendment is the same as the House bill with respect to the provision that permits ESOPs of S corporations to distribute stock in certain cases.

The Senate amendment provides that the sale of stock by a shareholder employee of an S corporation is not a prohibited transaction under the Code or ERISA.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with respect to the provision permitting ESOPs maintained by S corporations to distribute employer securities in certain circumstances.

The conference agreement follows the Senate amendment with respect to the provision relating to prohibited transaction rules, as modified. Under the conference agreement, the statutory exceptions do not fail to apply merely because a transaction involves the sale of employer securities to an ESOP maintained by an S corporation by a shareholder employee, a family member of the shareholder employee, or a corporation controlled by the shareholder employee. Thus, the statutory exemptions for such a transaction (including the exemption for a loan to the ESOP to acquire employer securities in connection with such a sale or a guarantee of such a loan) apply.

Effective date.—Same as the House bill and the Senate amendment.

8. Repeal application of UBIT to ESOPs of S corporations (sec. 716 of the Senate amendment)

Present Law

Under present law, for taxable years beginning after December 31, 1997, certain tax-exempt organizations, including employee stock ownership plans ("ESOPs") can be a shareholder of an S corporation. Items of income or loss of the S corporation will flow through to qualified tax-exempt shareholders as unrelated business taxable income ("UBTI"), regardless of the source of the income.

House Bill

No provision.

Senate Amendment

The Senate amendment repeals the provision treating items of income or loss of an S corporation as unrelated business taxable income in the case of an employee stock ownership plan that is an S corporation shareholder.

Effective date.—Taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment, and clarifies that the repeal of the provision treating items of income or loss of an S corporation as unrelated business taxable income applies only with respect to employer securities held by an employee stock ownership plan (as defined in section 4975(e)(7) of the Code) maintained by an S corporation.

9. Treatment of multiemployer plans under section 415 (sec. 711 of the Senate amendment)

Present Law

Present law imposes limits on contributions and benefits under qualified plans based on the type of plan. In the case of defined benefit pension plans, the limit on the annual retirement benefit is the lesser of (1) 100 percent of compensation or (2) $125,000 (indexed for inflation).

House Bill

No provision.

Senate Amendment

The Senate amendment eliminates the application of the 100 percent of compensation limitation for multiemployer defined benefit pension plans. Such plans would only be subject to the dollar limitation.

Effective date.—The provision is effective for years beginning after December 31, 1997.

Conference Agreement

The conference agreement does not include the Senate amendment.

10. Modification of partial termination rules (sec. 712 of the Senate amendment)

Present Law

Under the Internal Revenue Code, pension plan benefits are required to become fully vested upon termination or partial termination of the plan. The plan document is required to contain a provision reflecting this rule. Under section 552 of the Deficit Reduction Act of 1984 ("DEFRA"), for purposes of this rule, a partial termination is treated as not occurring if (1) the partial termination is a result of a decline in plan participation which occurs by reason of the completion of the Trans-Alaska Oil Pipeline construction project and occurred after December 31, 1975, and before January 1, 1980, with respect to participants employed in Alaska; (2) no discrimination occurred with respect to the partial termination; and (3) it is established to the satisfaction of the Secretary of the Treasury that the benefits of the provision will not accrue to the employers under the plan.

House Bill

No provision.

Senate Amendment

The Senate amendment clarifies that section 552 of DEFRA applies for the Code, any other provision of law, and any plan or trust provision.

Effective date.—The provision is effective as if included in section 552 of DEFRA.

Conference Agreement

The conference agreement does not include the Senate amendment.

11. Increase in full funding limit (sec. 713 of the Senate amendment)

Present Law

Under present law, defined benefit pension plans are subject to minimum funding requirements. In addition, there is a maximum limit on contributions that can be made to a plan, called the full funding limit. The full funding limit is the lesser of a plan's accrued liability and 150 percent of current liability. In general, current liability is all liabilities to plan participants and beneficiaries. Current liability represents benefits accrued to date, whereas the accrued liability full funding limit is based on projected benefits. Under IRS rules, amounts that cannot be contributed because of the current liability full funding limit are amortized over 10 years.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the 150-percent of full funding limit as follows: 155 percent for plan years beginning in 1999 or 2000, 160 percent for plan years beginning in 2001 or 2002, 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2005 and thereafter.

In addition, under the provision, amounts that cannot be contributed due to the current liability full funding limit are amortized over 20 years. Amounts that could not be contributed because of such full funding limit and that have not been amortized as of the last day of the plan year beginning in 1998 are amortized over this 20-year period.

Effective date.—Plan years beginning after December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, with the modification that, with respect to amortization bases remaining at the end of the 1998 plan year, the 20-year amortization period is reduced by the number of years since the amortization base had been established. The conference agreement also clarifies that no amortization is required with respect to funding methods that do not provide for amortization bases.

12. Spousal consent required for distributions from section 401(k) plans (sec. 714 of the Senate amendment)

Present Law

Under present law, pension plans that provide automatic survivor benefits (i.e., joint and survivor annuities and preretirement survivor annuities) require spousal consent to the payment of a participant's benefit in a form other than a survivor annuity. A qualified cash or deferred arrangement (a "section 401(k) plan") is not subject to the automatic survivor benefit rules if the plan provides that the spouse of a participant is the beneficiary of the participant's entire account under the plan, the participant's benefit is not paid in the form of an annuity, and the participant's account does not include amounts transferred from another plan that was subject to the automatic survivor benefit rules. In general, spousal consent is not required for an involuntary cash-out of a participant's benefit or distributions made to satisfy the minimum distribution rules.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that written spousal consent is required for all distributions, including plan loans, from plans containing a qualified cash or deferred arrangement. As under present law, spousal consent is not required for an involuntary cash-out or a participant's benefit or for the payment of distributions required under the minimum distribution rules. If spousal consent is not obtained, the benefit must be distributed in equal periodic payments over the life (or life expectancy) of the participant, the lives (or life expectancies) of the participant and beneficiary, or over a period of 10 years or more. A plan which complies with the spousal consent requirement will not be treated as failing to satisfy the anti-cutback rules related to optional forms of benefit.

Effective date.—The provision is effective for plan years beginning after December 31, 1998.

Conference Agreement

The conference agreement does not include the Senate amendment.

13. Contributions on behalf of a minister to a church plan (sec. 715 of the Senate amendment)

Present Law

Under present law, contributions made to retirement plans by ministers who are self-employed are deductible to the extent such contributions do no exceed certain limitations applicable to retirement plans. These limitations include the limit on elective deferrals, the exclusion allowance, and the limit on annual additions to a retirement plan.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that in the case of a contribution made on behalf of a minister who is self-employed to a church plan, the contribution is excludable from the income of the minister to the extent that the contribution would be excludable if the minister were an employee of a church and the contribution were made to the plan.

Effective date.—The provision is effective for years beginning after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment. The provision does not alter present law under which amounts contributed for a minister in connection with section 403(b), either by the minister's actual employer or by any church or convention or association of churches that is treated as the minister's employer under section 414(e), are excluded from the minister's income, and amounts contributed in accordance with section 403(b) by the minister (whether the minister is an employee or is self employed) are deductible by the minister as provided in section 404 taking into account the other special rules of section 414(e).

14. Exclusion of ministers from discrimination testing of certain non-church retirement plans (sec. 715 of the Senate amendment)

Present Law

Under present law, ministers who are employed by an organization other than a church are treated as if employed by the church and may participate in the retirement plan sponsored by the church. If the organization also sponsors a retirement plan, such plan does not have to include the ministers as employees for purposes of satisfying the nondiscrimination rules applicable to qualified plans provided the organization is not eligible to participate in the church plan.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that if a minister is employed by an organization other than a church and the organization is not otherwise participating in the church plan, then the minister does not have to be included as an employee under the retirement plan of the organization for purposes of the nondiscrimination rules.

Effective date.—The provision is effective for years beginning after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

15. Diversification in section 401(k) plan investments (sec. 717 of the Senate amendment)

Present Law

The Employee Retirement Income Security Act of 1974, as amended ("ERISA") prohibits certain employee benefit plans from investing more than 10 percent of the plan's assets in the securities and real property of the employer who sponsors the plan. The 10 percent limitation does not apply to "eligible individual account plans" that specifically authorize such investments. Generally, eligible individual account plans are defined contribution plans, including plans containing a cash or deferred arrangement ("401(k) plans"). The assets of such plans may be invested in employer securities and

real property without regard to the 10-percent limitation.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the term "eligible individual account plan" does not include the portion of a plan that consists of elective deferrals (and earnings on the elective deferrals) made under section 401(k) if elective deferrals equal to more than 1 percent of a participant's compensation are required to be invested in employer securities at the direction of a person other than the participant. Such portion of the plan is treated as a separate plan subject to the 10-percent limitation on investment in employer securities and real property.

The Senate amendment does not apply to an individual account plan if the value of the assets of all individual account plans maintained by the employer does not exceed 10 percent of the value of the assets of all pension plans maintained by the employer. The Senate amendment does not apply to an employee stock ownership plan as defined in sections 409(a) and 4975(e)(7) of the Internal Revenue Code.

Effective date.—The provision is effective with respect to employer securities and employer real property acquired after the beginning of the first plan year beginning after the 90th day after the date of enactment. The provision does not apply to employer securities and real property acquired pursuant to a binding written contract to acquire such securities or real property in effect on the date of enactment and at all times thereafter.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications. The conference agreement clarifies that the provision applies if elective deferrals equal to more than 1 percent of an employee's eligible compensation are required to be invested in employer securities and employer real property. Eligible compensation is compensation that is eligible to be deferred. As under the Senate amendment, if the 1 percent threshold is exceeded, then the portion of the plan that consists of elective deferrals (and earnings thereon) is still treated as an individual account plan as long as elective deferrals (and earnings thereon) are not required to be invested in employer securities and employer real property.

The conference agreement provides that multiemployer plans are not taken into account in determining whether the value of the assets of all individual account plans maintained by the employer does not exceed 10 percent of the value of the assets of all pension plans maintained by the employer. The conference agreement provides that the provision does not apply to an employee stock ownership plan as defined in section 4975(e)(7) of the Internal Revenue Code.

Effective date.—Under the conference agreement, the provision is effective with respect to elective deferrals in plan years beginning after December 31, 1998 (and earnings thereon). The provision does not apply with respect to earnings on elective deferrals for years beginning before January 1, 1999.

16. Removal of dollar limitation on benefit payments from a defined benefit plan for police and fire employees (sec. 786 of the Senate amendment)

Present Law

Under present law, limits are imposed on the contributions and benefits under qualified pension plans. Certain special rules apply in the case of State and local governmental plans.

In the case of a defined benefit pension plan, the limit on the annual retirement benefit is the lesser of (1) 100 percent of compensation or (2) $125,000 (for 1997, indexed for inflation). The 100 percent of compensation limitation does not apply in the case of State and local governmental pension plans. In general, the dollar limit is reduced if benefits begin before social security retirement age and increased if benefits begin after social security retirement age. In the case of State and local government plans, the dollar limit is not reduced unless benefits begin before age 62 and in any case is not less than $75,000, and the dollar limit is increased if benefits begin after age 65. In the case of certain police and fire department employees, the dollar limit cannot be reduced below $50,000 (indexed), regardless of the age at which benefits commence.[1]

House Bill

No provision.

Senate Amendment

The dollar limit on defined benefit plans does not apply to individuals who receive the special rule for certain police and fire department employees under present law.

Effective date.—Years beginning after December 31, 1996.

Conference Agreement

The conference agreement follows the Senate amendment, with the clarification that the exception from the dollar limit for police and fire department employees only applies to the reduction for early retirement benefits. Thus, the defined benefit plan dollar limit continues to apply, but is not reduced in the case of early retirement. As under present law, the dollar limit is increased for such employees if benefits begin after age 65.

Effective date.—Same as the Senate amendment.

17. Church plan exception to prohibition on discrimination against individuals based on health status

Present Law

Under the Health Insurance Portability and Accountability Act ("HIPAA"), group health plans generally may not establish rules for eligibility based on any of the following factors relating to an individual or a dependent of the individual: (1) health status, (2) medical condition, (3) claims experience, (4) receipt of health care, (5) medical history, (6) genetic information, (7) evidence of insurability, or (8) disability. In addition, a group health plan may not charge an individual a greater premium based on any of such factors.

A excise tax is imposed on the failure of a group plan to satisfy the nondiscrimination rule. In general, the excise tax is imposed on the employer sponsoring the plan and is equal to $100 per day per individual as long as the plan is not in compliance.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that certain church plans are not treated as violating the nondiscrimination requirement merely because the plan requires evidence of good health in order for an individual to enroll in the plan for (1) individuals who are employees of employers with 10 or fewer and for self-employed individuals or (2) any individual who enrolls after the first 90 days of eligibility under the plan. The provision applies to a church plan for a year if the plan included such provisions requiring evidence of good health on July 15, 1997, and at all times thereafter before the beginning of the year.

Effective date.—The provision is effective as if included in HIPAA.

18. Newborns' and mothers' health protection; mental health parity

Present Law

The Newborns' and Mothers' Health Protection Act of 1996 amended the Employee Retirement Income Security Act ("ERISA") and the Public Health Service Act to impose certain requirements on group health plans with respect to coverage of newborns and mothers, including a requirement that a group health plan cannot restrict benefits for a hospital stay in connection with childbirth for the mother or newborn to less than 48 hours following a normal vaginal delivery or less than 96 hours following a cesarean section. These provisions are effective with respect to plan years beginning on or after January 1, 1998.

The Mental Health Parity Act of 1996 amended ERISA and the Public Health Service Act to provide that group health plans that provide both medical and surgical benefits and mental health benefits cannot impose limits on mental health benefits that are not imposed on substantially all medical and surgical benefits. The provisions of the Mental Health Parity Act are effective with respect to plan years beginning on or after January 1, 1998, but do not apply to benefits for services furnished on or after September 30, 2001.

The Internal Revenue Code requires that group health plans meet certain requirements with respect to limitations on exclusions of preexisting conditions and that group health plans not discriminate against individuals based on health status. An excise tax of $100 per day during the period of noncompliance is imposed on the employer sponsoring the plan if the plan fails to meet these requirements. The maximum tax that can be imposed during a taxable year cannot exceed the lesser of 10 percent of the employer's group health plan expenses for the prior year or $500,000. No tax is imposed if the Secretary determines that the employer did not know, and exercising reasonable diligence would not have known, that the failure existed.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement incorporates into the Internal Revenue Code the provisions of the Newborns' and Mothers' Health Protection Act of 1996 and the Mental Health Parity Act of 1996 relating to group health plans. Failures to comply with such provisions are subject to the present-law excise tax applicable to failures to comply with present-law group health plan requirements.

Effective date.—The provisions are effective with respect to plan years beginning on or after January 1, 1998.

[1] This special rule applies to participants (1) in a defined benefit plan of a State or local government plan, and (2) with respect to whom the period of service taken into account in determining the amount of the benefit under such plan includes at least 15 years of service of the participant as (a) a full-time employee of a police or fire department organized by a State or political subdivision to provide police protection, firefighting services, or emergency medical services or (b) as a member of the Armed Services of the United States.

B. Pension Simplification Provisions

1. Matching contributions of self-employed individuals not treated as elective deferrals (sec. 1301 of the Senate amendment)

Present Law

A qualified cash or deferred arrangement (a "section 401(k) plan") is a type of tax-qualified pension plan under which employees can elect to make pre-tax contributions. An employee's annual elective contributions are subject to a dollar limit ($9,500 for 1997). Employers may make matching contributions based on employees' elective contributions. In the case of employees, such matching contributions are not subject to the $9,500 limit on elective contributions. Elective contributions are subject to a special nondiscrimination test called the average deferral percentage ("ADP") test. Matching contributions are subject to a similar nondiscrimination test called the average contributions percentage ("ACP") test. The employer may elect to treat certain matching contributions as elective contributions for purposes of the ACP test.

Under present law, matching contributions made for a self-employed individual are generally treated as additional elective contributions by the self-employed individual who receives the matching contribution. Accordingly, matching contributions for a self-employed individual are subject to the dollar limit on elective contributions (along with the individual's other elective deferrals) and are subject to the ACP test.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that matching contributions for self-employed individuals are treated the same as matching contributions for employees, i.e., they are not treated as elective contributions and are not subject to the elective contribution limits.

Effective date.—The provision is effective for years beginning after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment, and clarifies that the provision does not apply to qualified matching contributions that are treated as elective contributions for purposes of satisfying the ADP test.

Effective date.—Same as the Senate amendment, except that the conference agreement provides that the provision is effective for years beginning after December 31, 1996, in the case of SIMPLE retirement plans.

2. Contributions to IRAs through payroll deductions (sec. 1302 of the Senate amendment)

Present Law

Under present law, employer involvement in the establishment or maintenance of individual retirement arrangements ("IRAs") of its employees can result in the employer being considered to maintain a retirement plan for purposes of title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), thus subjecting the employer to ERISA's fiduciary rules.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that an employer that facilitates IRA contributions by its employees by establishing a system under which employees, through employer payroll deductions, may make contributions to IRAs will not be considered to sponsor a retirement plan subject to ERISA. Under the system, employees would be required to provide their employer with a contribution certificate which establishes the IRA and specifies the contribution amount to be deducted from the employee's wages and remitted to the employee's IRA. As under present law, the amount contributed through payroll deduction would be includible in the employee's gross income and wages for employment tax purposes, and deductible by the employee in accordance with the rules relating to IRAs.

The provision does not apply to an employee employed by an employer who maintains a tax-qualified retirement plan.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement does not include the Senate amendment. The conference agreement provides that employers that choose not to sponsor a retirement plan should be encouraged to set up a payroll deduction system to help employees save for retirement by making payroll deduction contributions to their IRAs. The Secretary of Treasury is encouraged to continue his efforts to publicize the availability of these payroll deduction IRAs.

3. Plans not disqualified merely by accepting rollover contributions (sec. 1303 of the Senate amendment)

Present Law

Under present law, a qualified retirement plan that accepts rollover contributions from other plans will not be disqualified because the plan making the distribution is, in fact, not qualified at the time of the distribution, if, prior to accepting the rollover, the receiving plan reasonably concluded that the distributing plan was qualified. The receiving plan can reasonably conclude that the distributing plan was qualified if, for example, prior to accepting the rollover, the distributing plan provided a statement that the distributing plan had a favorable determination letter issued by the Internal Revenue Service ("IRS"). The receiving plan is not required to verify this information.

House Bill

No provision.

Senate Amendment

The Senate amendment clarifies the circumstances under which a qualified plan could accept rollover contributions without jeopardizing its qualified status. Under the provision, if the trustee of the plan making the distribution verifies that the distributing plan is intended to be a qualified plan, the plan receiving the rollover will not be disqualified if the distributing plan was not in fact a qualified plan.

Effective date.—The Senate amendment is effective for rollover contributions made after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment, as modified. Under the conference agreement, the Secretary of the Treasury is directed to clarify that, under its regulations protecting plans from disqualification because they receive invalid rollover contributions, it is not necessary for a distributing plan to have a determination letter in order for the administrator of the receiving plan to reasonably conclude that a contribution is a valid rollover.

4. Modification of prohibition on assignment or alienation (sec. 1304 of the Senate amendment)

Present Law

Under present law, amounts held in a qualified retirement plan for the benefit of a participant are not, except in very limited circumstances, assignable or available to personal creditors of the participant. A plan may permit a participant, at such time as benefits under the plan are in pay status, to make a voluntary revocable assignment of an amount not in excess of 10-percent of any benefit payment, provided the purpose is not to defray plan administration costs. In addition, a plan may comply with a qualified domestic relations order issued by a state court requiring benefit payments to former spouses or other "alternate payees" even if the participant is not in pay status.

There is no specific exception from the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or the Internal Revenue Code which would permit the offset of a participant's benefit against the amount owed to a plan by the participant as a result of a breach of fiduciary duty to the plan or criminality involving the plan. Courts have been divided in their interpretation of the prohibition on assignment or alienation in these cases. Some courts have ruled that there is no exception in ERISA for the offset of a participant's benefit to make a plan whole in the case of a fiduciary breach. Other courts have reached a different result and permitted an offset of a participant's benefit for breach of fiduciary duties.

House Bill

No provision.

Senate Amendment

The Senate amendment permits a participant's benefit in a qualified plan to be reduced to satisfy liabilities of the participant to the plan due to (1) the participant is being convicted of committing a crime involving the plan, (2) a civil judgment (or consent order or decree) entered by a court in an action brought in connection with a violation of the fiduciary provisions of title I of ERISA, or (3) a settlement agreement between the Secretary of Labor or the Pension Benefit Guaranty Corporation and the participant in connection with a violation of the fiduciary provisions of ERISA. The court order establishing such liability must require that the participant's benefit in the plan be applied to satisfy the liability. If the participant is married at the time his or her benefit under the plan is offset to satisfy the liability, spousal consent to such offset would be required unless the spouse is also required to pay an amount to the plan in the judgment, order, decree or settlement or the judgment, order, decree or settlement provides a 50-percent survivor annuity for the spouse.

Effective date.—The Senate amendment is effective for judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment. The conference agreement clarifies that an offset is includible in income on the date of the offset.

5. Elimination of paperwork burdens on plans (sec. 1305 of the Senate amendment)

Present Law

Under present law, employers are required to prepare summary plan descriptions of employee benefit plans ("SPDs"), and summaries of material modifications to such

plans ("SMMs"). The SPDs and SMMs generally provide information concerning the benefits provided by the plan and the participants' rights and obligations under the plan. The SPDs and SMMs must be furnished to plan participants and beneficiaries and filed with the Secretary of Labor.

House Bill

No provision.

Senate Amendment

The Senate amendment eliminates the requirement that SPDs and SMMs be filed with the Secretary of Labor. Employers would be required to furnish these documents to the Secretary of Labor upon request. A civil penalty could be imposed by the Secretary of Labor on the plan administrator for failure to comply with such requests. The penalty would be up to $100 per day of failure, up to a maximum of $1,000 per request. No penalty would be imposed if the failure was due to matters reasonably outside the control of the plan administrator.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Modification of section 403(b) exclusion allowance to conform to section 415 modifications (sec. 1306 of the Senate amendment)

Present Law

Under present law, annual contributions to a section 403(b) annuity cannot exceed the exclusion allowance. In general, the exclusion allowance for a taxable year is the excess, if any, of (1) 20 percent of the employee's includible compensation multiplied by his or her years of service, over (2) the aggregate employer contributions for an annuity excludable for any prior taxable years.

Alternatively, an employee may elect to have the exclusion allowance determined under the rules relating to tax-qualified defined contribution plans (sec. 415). Tax-qualified defined contributions plans are subject to limitations on annual additions. In addition, for years beginning before January 1, 2000, an overall limit applies if an employee is a participant in both a defined contribution plan and defined benefit plan of the same employer (sec. 415(e)).

House Bill

No provision.

Senate Amendment

The provision conforms the section 403(b) exclusion allowance to the section 415 limits by providing that includible compensation includes elective deferrals (and similar pretax contributions) of the employee.

The Secretary of the Treasury is directed to revise the regulations regarding the exclusion allowance to reflect the fact that the overall limit on benefits and contributions is repealed (sec. 415(e)). The revised regulations are to be effective for limitation years beginning after December 31, 1999.

Effective date.—The modification to the definition of includible compensation is effective for years beginning after December 31, 1997. The direction to the Secretary is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with the clarification that the revised Treasury regulations are to be effective for years (rather than limitation years) beginning after December 31, 1999. In addition, the conference agreement clarifies that the revised regulations are to relate to the election to have the exclusion allowance determined under section 415.

7. New technologies in retirement plans (sec. 1307 of the Senate amendment)

Present Law

Under present law, it is not clear if sponsors of employee benefit plans may use new technologies (telephonic response systems, computers, E-mail) to satisfy the various ERISA requirements for notice, election, consent, recordkeeping, and participant disclosure.

House Bill

No provision.

Senate Amendment

The Senate amendment directs the Secretaries of the Treasury and Labor to issue guidance facilitating the use of new technology for plan purposes. The guidance is to be designed to (1) interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Internal Revenue Code of 1986 ("IRC") and the Employee Retirement Income Security Act of 1974, as amended ("ERISA") relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators while maintaining the protection of the rights of participants and beneficiaries, and (2) clarify the extent to which writing requirements under the IRC shall be interpreted to permit paperless transactions.

Effective date.—The provision is effective on the date of enactment and requires that the guidance be issued not later than December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment.

8. Modification of 10-percent tax on nondeductible contributions (sec. 1310 of the Senate amendment)

Present Law

Under present law, if an employer sponsors both a defined benefit plan and a defined contribution plan that covers some of the same employees, the total deduction for all plans for a plan year is generally limited to the greater of (1) 25 percent of compensation or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit plan for the year.

A 10-percent nondeductible excise tax is imposed on contributions that are not deductible. This excise tax does not apply to contributions to one or more defined contribution plans that are nondeductible because they exceed the combined plan deduction limit to the extent such contributions do not exceed 6 percent of compensation in the year for which the contribution is made.

House Bill

No provision.

Senate Amendment

The Senate amendment adds an additional exception to the 10-percent excise tax on nondeductible contributions. Under the provision, the excise tax does not apply to contributions to one or more defined contribution plans that are not deductible because they exceed the combined plan deduction limit to the extent such contributions do not exceed the amount of the employer's matching contributions plus the elective deferral contributions to a section 401(k) plan.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

9. Modify funding requirements for certain plans (sec. 1311 of the Senate amendment)

Present Law

Under present law, defined benefit pension plans are required to meet certain minimum funding rules. Underfunded plans are required to satisfy certain faster funding requirements. In general, these additional requirements do not apply in the case of plans with a funded current liability percentage of at least 90 percent.

The Pension Benefit Guaranty Corporation ("PBGC") insures benefits under most defined benefit pension plans in the event the plan is terminated with insufficient assets to pay for plan benefits. The PBGC is funded in part by a flat-rate premium per plan participant, and a variable rate premium based on plan underfunding.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies the minimum funding requirements in the case of certain plans. The provision applies in the case of plans that (1) were not required to pay a variable rate PBGC premium for the plan year beginning in 1996, (2) do not, in plan years beginning after 1995 and before 2009, merge with another plan (other than a plan sponsored by an employer that was a member of the controlled group of the employer in 1996), and (3) are sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service.

The provision treats a plan to which it applies as having a funded current liability percentage of at least 90 percent for plan years beginning after 1996 and before 2005. For plan years beginning after 2004, the funded current liability percentage will be deemed to be at least 90 percent if the actual funded current liability percentage is at least at certain specified levels.

The relief from the minimum funding requirements applies for the plan year beginning in 2005, 2006, 2007, and 2008 only if contributions to the plan equal at least the expected increase in current liability due to benefits accruing during the plan year.

Effective date.—The provision is effective with respect to contributions due after December 31, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—The provision is effective with respect to plan years beginning after December 31, 1996.

10. Date for adoption of plan amendments

Present Law

Plan amendments to reflect amendments to the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that any amendments to a plan or annuity contract required to be made by the Act are not required to be made before the first day of the first plan year beginning on or after January 1, 1999. In the case of a governmental

plan, the date for amendments is extended to the first plan year beginning on or after January 1, 2001. The conference agreement also provides that if an amendment is made pursuant to the Act (whether or not the amendment is required) before the date for required plan amendments, the plan or contract is operated in a manner consistent with the amendment during a period and the amendment is effective retroactively to such period (1) the plan or contract will not fail to be treated as operated in accordance with its terms for such period merely because it is operated in a manner consistent with the amendment, and (2) the plan will not fail to meet the anti-cutback provisions applicable to qualified retirement plans by reason of such a plan amendment.

XVI. SENSE OF THE SENATE RESOLUTIONS

A. Sense of the Senate Regarding Reform of the Internal Revenue Code of 1986 (sec. 780 of the Senate amendment)

Present Law

The Federal Government imposes an individual income tax, a corporate income tax, a payroll tax collected from both employees and employers, certain excise taxes, and transfer taxes on certain transfers of wealth by gift or from an estate.

House Bill

No provision.

Senate Amendment

The Senate amendment provides a Sense of the Senate resolution that the Internal Revenue Code of 1986 needs broad-based reform, and that the President should submit a comprehensive proposal for reform.

Conference Agreement

The conference agreement does not include the Senate amendment.

B. Sense of the Senate Regarding Tax Treatment of Stock Options (sec. 781 of the Senate amendment)

Present Law

Under present law, an employer is generally entitled to a deduction with respect to stock options when the options are exercised by the employee. The deduction is generally the difference between the option price and the fair market value of the stock when the option is exercised.

House Bill

No provision.

Senate Amendment

The Senate amendment includes a Sense of the Senate resolution that finds that businesses can deduct the value of stock options as a business expense even though the options are not treated as an expense on the books of the business. It is the sense of the Senate that the Committee on Finance should hold hearings on the tax treatment of stock options.

Conference Agreement

The conference agreement does not include the Senate amendment.

C. Sense of the Senate Resolution Regarding Estate Taxes (sec. 782 of the Senate amendment)

Present Law

A gift tax is imposed on lifetime transfers by gift and an estate tax is imposed on transfers at death under a single unified graduated rate schedule that effectively begins at 37 percent and reaches 55 percent on cumulative taxable transfers over $3 million. A unified credit effectively exempts the first $600,000 in cumulative taxable transfers from estate and gift tax (sec. 2010).

An executor may elect to value certain qualified real property used in farming or another qualifying closely-held trade or business at its current use value, rather than its highest and best use value (up to a maximum reduction of $750,000). In addition, an executor may elect to pay the Federal estate tax attributable to a qualified closely-held business in installments over, at most, a 14-year period with a portion bearing 4-percent interest.

House Bill

No provision.

Senate Amendment

The Senate amendment provides a Sense of the Senate resolution that (1) estate tax relief provided by this bill is an important step that will enable more family-owned farms and small businesses to survive and continue to provide economic security and job creation in American communities and (2) Congress should eliminate the Federal estate tax liability for family-owned businesses by the end of 2002 on a deficit-neutral basis.

Conference Agreement

The conference agreement does not include the Senate amendment.

D. Sense of the Senate Regarding Who Should Benefit from Tax Cuts (sec. 791 of the Senate amendment)

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment includes a Sense of the Senate resolution that only those who pay Federal income taxes should benefit from the tax reduction provisions of the Act.

Conference Agreement

The conference agreement does not include the Senate amendment.

E. Sense of the Senate Regarding Self-Employment Taxes of Limited Partners (sec. 734 of the Senate amendment)

Present Law

Under the Self-Employment Contributions Act, taxes are imposed on an individual's net earnings from self employment. A limited partner's net earnings from self employment include guaranteed payments made to the individual for services actually rendered and do not include a limited partner's distributive share of the income or loss of the partnership. The Department of the Treasury has issued proposed regulations defining a limited partner for this purpose. These regulations provide, among other things, that an individual is not a limited partner if the individual participates in the partnership business for more than 500 hours during the taxable year. The regulations are proposed to be effective beginning with the individual's first taxable year beginning on or after the date the regulations are published as final regulations in the Federal Register.

House Bill

No provision.

Senate Amendment

It is the Sense of the Senate that the Department of the Treasury should withdraw the proposed regulations defining limited partner, and that the Congress should determine the tax law governing self-employment income.

Conference Agreement

The conference agreement provides that any regulations relating to the definition of a limited partner for self-employment tax purposes shall not be issued or effective before July 1, 1998.

XVII. TECHNICAL CORRECTIONS PROVISIONS

House Bill

The House bill contains technical, clerical, and conforming amendments to the Small Business Job Protection Act of 1996, the Health Insurance Portability and Accountability Act of 1996, the Taxpayer Bill of Rights 2, and other recently enacted tax legislation.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Senate amendment (1) does not contain the provision that defines the term "former reservations in Oklahoma" for purposes of section 168(j)(6) (relating to certain tax benefits provided with reference to activities occurring on Indian reservations) and (2) makes certain clarifications to the provisions relating to church plans included in the Small Business Job Protection Act of 1996.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. Thus, the conference agreement contains both the provision in the House bill relating to the definition of the term "former reservations in Oklahoma" and the provisions in the Senate amendment relating to church plans.

In addition, the conference agreement makes the following additions, modifications, and clarifications relating to technical correction provisions.

(1) The conference agreement amends section 205(c) of the Employee Retirement Income Security Act (as amended by the Small Business Job Protection Act of 1996) to clarify that the reference to "the Secretary" is to the Secretary of the Treasury.

(2) The conference agreement clarifies that, for purposes of the section 833 deduction, liabilities incurred during the taxable year under cost-plus contracts are added to claims incurred under section 833(b)(1)(A)(i). Similarly, for purposes of the section 833 deduction, expenses incurred during the taxable year in connection with cost-plus contracts are added to expenses incurred under section 833(b)(1)(A)(ii). The provision is effective as if included in the Tax Reform Act of 1986.

(3) The conference agreement provides that the technical correction provisions clarifying the phased reduction in luxury excise tax rates for automobiles will be effective for sales after the date of enactment of this Act.

(4) The conference agreement clarifies that, under the transition relief provided under the company-owned life insurance rule, the 4-out-of-7 rule and the single premium rule of present law are not to apply solely by reason of a lapse occurring after October 13, 1995, by reason of no additional premiums being received under the contract.

XVIII. OTHER TAX PROVISION

A. Estimated Tax Requirements of Individuals (sec. 311(d) of the House bill)

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax shown on the return of the individual for the preceding year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax shown on the return for the current year.

The 100 percent of last year's liability safe harbor is modified to be a 110 percent of last year's liability safe harbor for any individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year.

House Bill

The House bill changes the 110 percent of last year's liability safe harbor to be a 109 percent of last year's liability safe harbor for taxable years beginning in 1997 and a 105 percent of last year's liability safe harbor for taxable years beginning in 1998.

Senate Amendment

No provision.

Conference Agreement

The conference agreement changes the 110 percent of last year's liability safe harbor to be a 100 percent of last year's liability safe harbor for taxable years beginning in 1998, a 105 percent of last year's liability safe harbor for taxable years beginning in 1990, 2000, and 2001, and a 112 percent of last year's liability safe harbor for taxable years beginning in 2002. In addition, no estimated tax penalties will be imposed under section 6654 or 6655 for any period before January 1, 1998, for any payment the due date of which is before January 16, 1998, with respect to an underpayment to the extent the underpayment is created or increased by a provision of the Act.

XIX. TRADE PROVISIONS

A. Extension of Duty-Free Treatment Under the Generalized System of Preferences (sec. 971 of the House bill)

Present Law

Title V of the Trade Act of 1974, as amended (Generalized System of Preferences ("GSP")), grants authority to the President to provide duty-free treatment on imports of eligible articles from designated beneficiary developing countries, subject to specific conditions and limitations. To qualify for GSP privileges, each beneficiary country is subject to various mandatory and discretionary eligibility criteria. Import sensitive products are ineligible for GSP. The President's authority to grant GSP benefits expired on May 31, 1997.

House Bill

Under the House bill, the GSP program is reauthorized for two years, to expire on May 31, 1999. Refunds of any duty paid between May 31, 1997 and the date of enactment are provided upon request of the importer.

Effective date.—The provision is effective upon date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification to extend the GSP reauthorization through June 30, 1998.

B. Temporary Suspension of Vessel Repair Duty (sec. 972 of the House bill)

Present Law

Section 466 of the Tariff Act of 1930 establishes a 50-percent duty on repairs made outside the United States to U.S. flag vessels.

House Bill

The current 50-percent duty on repairs to U.S. flag vessels made in countries that are signatories to the OECD Shipbuilding Agreement is suspended for a one-year period.

Effective date.—The provision is effective with respect to repair activities occurring for a one-year period beginning on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

C. United States-Caribbean Basin Trade Partnership Act (secs. 981-988 of the House bill)

Present Law

The Caribbean Basin Initiative ("CBI") program was established by the Caribbean Basin Economic Recovery Act ("CBERA"), which was enacted on August 5, 1983. This legislation authorized the President to grant duty-free treatment to the imports of eligible articles from designated countries in the Caribbean Basin region. Certain products (textiles, apparel, canned tuna, petroleum and petroleum products, footwear, handbags, luggage, flatgoods, work gloves, leather wearing apparel, watches and watch parts) were excluded under the statute from eligibility for duty-free treatment.

CBI trade benefits were made permanent in 1990.

House Bill

The House bill amends the Caribbean Basin Economic Recovery Act to provide additional temporary transitional trade benefits to products that are excluded from eligibility for duty-free treatment under CBI. These products are provided tariff and quota treatment which is comparable to treatment accorded to like articles imported from Mexico under the North American Free Trade Agreement ("NAFTA") subject to certain rule-of-origin and customs requirements and other limitations. The President must review periodically country adherence to eligibility criteria, and consult with beneficiary countries about free trade agreement negotiations.

Effective date.—The provision is effective for one year beginning January 1, 1998.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

XX. LIMITED TAX BENEFITS SUBJECT TO THE LINE ITEM VETO ACT

The Line Item Veto Act amended the Congressional Budget and Impoundment Act of 1974 to grant the President the limited authority to cancel specific dollar amounts of discretionary budget authority, certain new direct spending, and limited tax benefits. The Line Item Veto Act provides that the Joint Committee on Taxation is required to examine any revenue or reconciliation bill or joint resolution that amends the Internal Revenue Code of 1986 prior to its filing by a conference committee in order to determine whether or not the bill or joint resolution contains any limited tax benefits and to provide a statement to the conference committee that either (1) identifies each limited tax benefit contained in the bill or resolution, or (2) states that the bill or resolution contains no limited tax benefits. The conferees determine whether or not to include the Joint Committee's statement in the conference report. If the conference report includes the information from the Joint Committee on Taxation identifying provisions that are limited tax benefits, then the President may cancel one or more of those, but only those, provisions that have been identified. If such a conference report contains a statement from the Joint Committee on Taxation that none of the provisions in the conference report are limited tax benefits, then the President has no authority to cancel any of the specific tax provisions, because there are no tax provisions that are eligible for cancellation under the Line Item Veto Act.

The conference report contains a list of provisions that have been identified by the Joint Committee on Taxation as limited tax benefits within the meaning of the Line Item Veto Act. These provisions are listed below

(1) Sec. 101(c) (relating to high risk pools permitted to cover dependents of high risk individuals)

(2) Sec. 222 (relating to limitation on qualified 501(c)(3) bonds other than hospital bonds)

(3) Sec. 224 (relating to contributions of computer technology and equipment for elementary or secondary school purposes)

(4) Sec. 312(a) (relating to treatment of remainder interests for purposes of provision relating to gain from sale of principal residence)

(5) Sec. 501(b) (relating to indexing of alternative valuation of certain farm, etc., real property)

(6) Sec. 504 (relating to extension of treatment of certain rents under section 2032A to lineal descendants)

(7) Sec. 505 (relating to clarification of judicial review of eligibility for extension of time for payment of estate tax)

(8) Sec. 508 (relating to treatment of land subject to qualified conservation easement)

(9) Sec. 511 (relating to expansion of exception from generation-skipping transfer tax for transfers to individuals with deceased parents)

(10) Sec. 601 (relating to the research tax credit)

(11) Sec. 602 (relating to contributions of stock to private foundations)

(12) Sec. 603 (relating to the work opportunity tax credit)

(13) Sec. 604 (relating to orphan drug tax credit)

(14) Sec. 701 (relating to incentives for revitalization of the District of Columbia) to the extent it amends the Internal Revenue Code of 1986 to create sections 1400 and 1400A (relating to tax-exempt economic development bonds)

(15) Sec. 701 (relating to incentives for revitalization of the District of Columbia) to the extent it amends the Internal Revenue Code of 1986 to create section 1400C (relating to first-time homebuyer credit for District of Columbia)

(16) Sec. 801 (relating to incentives for employing long-term family assistance recipients)

(17) Sec. 904(b) (relating to uniform rate of tax on vaccines) as it relates to any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens

(18) Sec. 904(b) (relating to uniform rate of tax on vaccines) as it relates to any vaccine against measles

(19) Sec. 904(b) (relating to uniform rate of tax on vaccines) as it relates to any vaccine against mumps

(20) Sec. 904(b) (relating to uniform rate of tax on vaccines) as it relates to any vaccine against rubella

(21) Sec. 905 (relating to operators of multiple retail gasoline outlets treated as wholesale distributors for refund purposes)

(22) Sec. 906 (relating to exemption of electric and other clean-fuel motor vehicles from luxury automobile classification)

(23) Sec. 907(a) (relating to rate of tax on liquified natural gas determined on basis of BTU equivalency with gasoline)

(24) Sec. 907(b) (relating to rate of tax on methanol from natural gas determined on basis of BTU equivalency with gasoline)

(25) Sec. 908 (relating to modification of tax treatment of hard cider)

(26) Sec. 914 (relating to mortgage financing for residences located in disaster areas)

(27) Sec. 962 (relating to assignment of workmen's compensation liability eligible for exclusion relating to personal injury liability assignments)

(28) Sec. 963 (relating to tax-exempt status for certain State worker's compensation act companies)

(29) Sec. 967 (relating to additional advance refunding of certain Virgin Island bonds)

(30) Sec. 968 (relating to nonrecognition of gain on sale of stock to certain farmers'' cooperatives)

(31) Sec. 971 (relating to exemption of the incremental cost of a clean fuel vehicle from the limits on depreciation for vehicles)

(32) Sec. 974 (relating to clarification of treatment of certain receivables purchased by cooperative hospital service organizations)

(33) Sec. 975 (relating to deduction in computing adjusted gross income for expenses in connection with service performed by certain officials) with respect to taxable years beginning before 1991

(34) Sec. 977 (relating to elective carryback of existing carryovers of National Railroad Passenger Corporation)

(35) Sec. 1005(b)(2)(B) (relating to transition rule for instruments described in a ruling request submitted to the Internal Revenue Service on or before June 8, 1997)

(36) Sec. 1005(b)(2)(C) (relating to transition rule for instruments described on or before June 8, 1997, in a public announcement or in a filing with the Securities and Exchange Commission) as it relates to a public announcement

(37) Sec. 1005(b)(2)(C) (relating to transition rule for instruments described on or before June 8, 1997, in a public announcement or in a filing with the Securities and Exchange Commission) as it relates to a filing with the Securities and Exchange Commission

(38) Sec. 1011(d)(2)(B) (relating to transition rule for distributions made pursuant to the terms of a tender offer outstanding on May 3, 1995)

(39) Sec. 1011(d)(3) (relating to transition rule for distributions made pursuant to the terms of a tender offer outstanding on September 13, 1995)

(40) Sec. 1012(d)(3)(B) (relating to transition rule for distributions pursuant to an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 described in a ruling request submitted to the Internal Revenue Service on or before April 16, 1997)

(41) Sec. 1012(d)(3)(C) (relating to transition rule for distributions pursuant to an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 described in a public announcement or filing with the Securities and Exchange Commission) as it relates to a public announcement

(42) Sec. 1012(d)(3)(C) (relating to transition rule for distributions pursuant to an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 described in a public announcement or filing with the Securities and Exchange Commission) as it relates to a filing with the Securities and Exchange Commission

(43) Sec. 1013(d)(2)(B) (relating to transition rule for distributions or acquisitions after June 8, 1997, described in a ruling request submitted to the Internal Revenue Service submitted on or before June 8, 1997)

(44) Sec. 1013(d)(2)(C) (relating to transition rule for distributions or acquisitions after June 8, 1997, described in a public announcement or filing with the Securities and Exchange Commission on or before June 8, 1997) as it relates to a public announcement

(45) Sec. 1013(d)(2)(C) (relating to transition rule for distributions or acquisitions after June 8, 1997, described in a public announcement or filing with the Securities and Exchange Commission on or before June 8, 1997) as it relates to a filing with the Securities and Exchange Commission

(46) Sec. 1014(f)(2)(B) (relating to transition rule for any transaction after June 8, 1997, if such transaction is described in a ruling request submitted to the Internal Revenue Service on or before June 8, 1997)

(47) Sec. 1014(f)(2)(C) (relating to transition rule for any transaction after June 8, 1997, if such transaction is described in a public announcement or filing with the Securities and Exchange Commission on or before June 8, 1997) as it relates to a public announcement

(48) Sec. 1014(f)(2)(C) (relating to transition rule for any transaction after June 8, 1997, if such transaction is described in a public announcement or filing with the Securities and Exchange Commission on or before June 8, 1997) as it relates to a filing with the Securities and Exchange Commission

(49) Sec. 1042(b) (relating to special rules for provision terminating certain exceptions from rules relating to exempt organizations which provide commercial-type insurance)

(50) Sec. 1081(a) (relating to termination of suspense accounts for family corporations required to use accrual accounting) as it relates to the repeal of Internal Revenue Code section 447(i)(3)

(51) Sec. 1089(b)(3) (relating to reformations)

(52) Sec. 1089(b)(5)(B)(i) (relating to persons under a mental disability)

(53) Sec.1171 (relating to treatment of computer software as FSC export property)

(54) Sec. 1175 (relating to exemption for active financing income)

(55) Sec. 1204 (relating to travel expenses of Federal employees doing criminal investigations)

(56) Sec. 1236 (relating to extension of time for filing a request for administrative adjustment)

(57) Sec. 1243 (relating to special rules for administrative adjustment request with respect to bad debts or worthless securities)

(58) Sec. 1251 (relating to clarification on limitation on maximum number of shareholders)

(59) Sec. 1253 (relating to attribution rules applicable to tenant ownership)

(60) Sec. 1256 relating to modification of earnings and profits rules for determining whether REIT has earnings and profits from non-REIT years)

(61) Sec. 1257 (relating to treatment of foreclosure property)

(62) Sec. 1261 (relating to shared appreciation mortgages)

(63) Sec. 1302 (relating to clarification of waiver of certain rights of recovery)

(64) Sec. 1303 (relating to transitional rule under section 2056A)

(65) Sec. 1304 (relating to treatment for estate tax purposes of short-term obligations held by nonresident alien)

(66) Sec. 1311 (relating to clarification of treatment of survivor annuities under qualified terminable interest rules)

(67) Sec. 1312 (relating to treatment of qualified domestic trust rules of forms of ownership which are not trusts)

(68) Sec. 1313 (relating to opportunity to correct failures under section 2032A)

(69) Sec. 1414 (relating to fermented material from any brewery may be received at a distilled spirits plant)

(70) Sec. 1417 (relating to use of additional ameliorating material in certain wines)

(71) Sec. 1418 (relating to domestically produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.)

(72) Sec. 1421 (relating to transfer to brewery of beer imported in bulk without payment of tax)

(73) Sec. 1422 (relating to transfer to bonded wine cellars of wine imported in bulk without payment of tax)

(74) Sec. 1506 (relating to clarification of certain rules relating to employee stock ownership plans of S corporations)

(75) Sec. 1507 (relating to modification of 10 percent tax for nondeductible contributions)

(76) Sec. 1523 (relating to repeal of application of unrelated business income tax to ESOPs)

(77) Sec. 1530 (relating to gratuitous transfers for the benefit of employees)

(78) Sec. 1532 (relating to special rules relating to church plans)

(79) Sec. 1604(c)(2) (relating to amendment related to Omnibus Budget Reconciliation Act of 1993)

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
I. Child and Dependent Care Tax Credits; Health Care for Children														
1. Tax credit for children under age 17 ($400 in 1998, and $500 thereafter; $75,000/$110,000 AGI phaseout for credit; nonrefundable for small families, refundable and limited to tax plus employee FICA minus EIC for large families [1 2].	1/1/98		−2,710	−18,119	−21,549	−21,401	−21,258	−20,901	−20,430	−19,702	−18,997	−18,317	−85,037	−183,384
2. Expand State high-risk pools to include spouses and children of high-risk individuals.	tyba 12/31/97		−1	−2	−2	−2	−2	−2	−2	−2	−2	−2	−8	−17
Subtotal of Child and Dependent Care Tax Credits; Health Care for Children.			2,711	−18,121	−21,551	−21,403	−21,260	−20,903	−20,432	−19,704	−18,999	−18,319	−85,045	−183,401

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
II. Education Tax Incentives														
A. Tax Benefits Relating to Education Expenses:														
1. Administration's HOPE credit for first 2 years; 100% credit for first $1,000 of eligible expenses; 50% credit for next $1,000; 20% credit for third and fourth year students for up to $5,000 of expenses; for years after 2002, expenses are increased to $10,000 (effective date of the 20% credit is 7/1/98); eligible expenses for HOPE credit are indexed in 2001; income limits for both credits indexed in 2001.	pma & tyba 12/31/97		−2,083	−6,469	−7,393	−7,907	−7,707	−8,620	−8,754	−8,893	−9,035	−9,180	−31,559	−76,041
2. Expand State-sponsored prepaid tuition and State savings programs to include room and board[3].	tyba 12/31/97		−36	−107	−118	−130	−143	−157	−173	−190	−209	−230	−533	−1,491
3. Student loan interest deduction: $1,000 above-the-line deduction in 1998, $1,500 in 1999, $2,000 in 2000, $2,500 in 2001 and thereafter; phaseout $40,000–$55,000 single filers ($60,000–$75,000 joint filers); income limits indexed beginning in 2003.	poida 12/31/97		−18	−69	−122	−204	−277	−308	−326	−346	−368	−391	−690	−2,429
4. Penalty-free withdrawals from all IRAs for undergraduate, post-secondary vocational, and graduate education expenses.	tyba 12/31/97		−78	−201	−181	−175	−177	−179	−182	−184	−186	−189	−812	−1,732
5. Education IRA—permit contributions to Education IRA for a child under age 18; annual contributions limited to $500 per child; impose phaseout range of $95,000–$110,000 for single filers and $150,000–$160,000 for joint filers[4].	tyba 12/31/97		−156	−644	−912	−1,060	−1,126	−1,448	−1,752	−2,054	−2,360	−2,680	−3,899	−14,193
B. Other Education-Related Tax Provisions:														
1. Extend employer-provided education assistance for undergraduates through 5/31/00 [1].	tyba 12/31/96		−534	−369	−250								−1,153	−1,153
2. Repeal $150 million limit on tax-exempt section 501(c)(3) bonds for new capital expenditures.	1/1/98		−6	−45	−75	−89	−99	−106	−115	−125	−138	−162	−315	−962
3. Enhanced deduction for corporate contributions of computer technology and equipment for grades K–12; sunset after 3 years.	tyba 12/31/97		−46	−48	−77	−49	−5	−1					−225	−227
4. Raise small issuer arbitrage rebate exception for governmental bonds used to finance education facilities from $5 million to $10 million.	bia 12/31/97		−1	−4	−7	−11	−14	−27	−30	−33	−36	−38	−36	−199
5. Treatment of cancellation of certain student loans; with modification.	Da DOE							Negligible Revenue Effect						
6. Tax credit for holders of qualified education bonds (limited to $400 million per year in loans; 2-year sunset.	oia 12/31/97		−8	−27	−43	−47	−47	−47	−47	−47	−47	−47	−172	−408
Subtotal of Education Tax Incentives			**−2,966**	**−7,983**	**−9,178**	**−9,672**	**−9,595**	**−10,893**	**−11,379**	**−11,872**	**−12,379**	**−12,917**	**−39,394**	**−98,835**
III. Savings and Investment Tax Incentives														
A. Individual Retirement Arrangements:														
1. IRA—Increase deductible IRA income limits by $10,000 for joint filers in 1998 ($5,000 for single filers in 1998) and by $1,000 per year through 2002; in 2003 increase to $40,000 for single filers and $60,000 for joint filers and by $5,000 per year thereafter until limits are $50,000–$60,000 for single filers and $80,000–$100,000 for joint filers (phase out range increases to $20,000 when lower limit reaches $100,000); penalty-free withdrawals for educational purposes and first-time home purchase only; create IRA PLUS; impose phase-out range of $95,000–$110,000 for single filers and $150,000–$160,000 for joint filers; impose $150,000–$160,000 income phase-out for spousal IRAs; provide that aggregate contributions to deductible and nondeductible retirement IRAs may not exceed $2,000.	tyba 12/31/97		−367	−345	86	−346	−860	−1,830	−3,292	−3,842	−4,424	−5,004	−1,832	−20,225
B. Capital Gains Provisions:														
1. Capital gains: (a) 20%/10% rate structure; (b) retain maximum 28% for collectibles; (c) section 1250 recapture at maximum of 25%; (d) symmetric AMT treatment; (e) exclusion for gain on personal residence (including remainder interests); (f) capital gains rate structure of 18%/8% for assets held more than 5 years after 2000, with mark-to-market in 2001; assets qualify for 8% in 2001 if held for 5 years regardless of when asset was acquired; (g) permit rollover of qualified small business stock if rolled over into another qualified small business stock within 60 days; and (h) retain 28%/15% rate structure for capital assets held more than 12 months but less than 18 months.	various	1,254	6,371	171	−2,954	−2,934	−1,785	−3,742	−3,981	−4,179	−4,424	−4,958	123	−21,161
Subtotal of Savings and Investment Tax Incentives.		**1,254**	**6,004**	**−174**	**−2,868**	**−3,280**	**−2,645**	**−5,572**	**−7,273**	**−8,021**	**−8,848**	**−9,962**	**−1,709**	**−41,386**

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
IV. Alternative Minimum Tax Provisions														
1. Exemption from alternative minimum tax for small corporations.	tyba 12/31/97		−97	−171	−131	−100	−77	−59	−45	−34	−26	−20	−577	−762
2. Conform AMT depreciation lives to the regular tax.	ppisa 12/31/98			−580	−1,653	−2,230	−2,358	−2,561	−2,622	−2,350	−2,044	−1,920	−6,821	−18,317
3. Reverse IRS position on AMT treatment of certain installment sales by farmers.	di tyba 12/31/87	−8	−157	−158	−167	−164	−157	−148	22	22	21	21	−811	−872
Subtotal of Alternative Minimum Tax Provisions.		−8	−254	−909	−1,951	−2,494	−2,592	−2,768	−2,645	−2,362	−2,049	−1,919	−8,209	−19,951
V. Estate, Gift and Generation-Skipping Tax Provisions														
A. Estate and Gift Tax Provisions:														
1. Increase unified estate and gift tax credit to $625,000 in 1998; $650,000 in 1999; $675,000 in 2000 and 2001; $700,000 in 2002 and 2003, $850,000 in 2004, $950,000 in 2005; $1 million in 2006 and thereafter; and index other provisions beginning in 1999; cap family owned business exclusion with unified credit at $1.3 million annually (exclude $675,000 in 1998, $650,000 in 1999, $625,000 in 2000, $625,000 in 2001, $600,000 in 2002 and 2003, $450,000 in 2004, $350,000 in 2005; $300,000 in 2006 and thereafter).	dda 12/31/97			−843	−1,259	−1,816	−2,013	−2,596	−2,997	−5,656	−7,279	−8,638	−5,931	−33,097
2. Reduce section 6601(j) interest rate to 2% for first $1 million of taxable closely-held business interests, remainder subject to tax at 45% of present-law interest rates, and all interest under section 6166 made nondeductible.	dda 12/31/97			−9	−17	−25	−33	−41	−47	−53	−58	−65	−84	−349
3. Provide up to $500,000 estate tax exclusion (phasein by $100,000 annually beginning in 1998) for treatment of land subject to a qualified conservation easement coordinated with exclusion of family farms (expanded treatment of land with severed mineral rights) and business relief used.	dda 12/31/97			−7	−15	−25	−35	−48	−51	−56	−60	−64	−82	−361
4. Extension of treatment of certain rents under section 2032A to lineal descendants.	roa 12/31/76		−25	−2	−2	−2	−2	−2	−2	−2	−2	−2	−33	−43
5. Clarification of judicial review of eligibility for extension of time for payment of estate tax.	dda DOE			−15	−15	−15	−15	−15	−15	−14	−12	−11	−60	−127
6. Gifts may not be revalued for estate tax purposes after expiration of statute of limitations.	gma DOE			−16	−18	−21	−26	−32	−38	−45	−53	−61	−81	−310
7. Repeal certain throwback rules applicable to domestic trusts; exclude pre-1984 multiple trusts from repeal.	tyba 12/31/97			−11	−11	−11	−11	−11	−11	−11	−11	−11	−44	−99
8. Estate tax relief for money going to ESOPs in existence on 8/1/96 and decedents dying before 1/1/99.	DOE		−8	−15									−23	−23
B. Generation-Skipping Tax Provision:														
1. Expand exception from generation-skipping transfer tax for transfers to individuals with deceased parents.	gsta 12/31/97			−4	−4	−4	−4	−4	−5	−5	−5	−6	−16	−41
Subtotal of Estate, Gift and Generation-Skipping Tax Provisions.			**−33**	**−922**	**−1341**	**−1919**	**−2139**	**−2749**	**−3166**	**−5842**	**−7480**	**−8858**	**−6354**	**−34450**
VI. Expiring Tax Provisions														
1. Research tax credit through 6/30/98.	6/1/97	−161	−820	−639	−294	−204	−123	−33					−2,241	−2,274
2. Contributions of appreciated stock to private foundations through 6/30/98.	6/1/97		−99	−9	−4								−112	−112
3. Extend a modified work opportunity tax credit through 6/30/98 [5]; include SSI recipients.	wpoifhma 9/30/97		−140	−131	−73	−28	−11	−2					−383	−385
4. Orphan drug tax credit (permanent)	6/1/97		−29	−28	−30	−32	−34	−35	−37	−39	−40	−42	−152	−346
Subtotal of Expiring Tax Provisions		**−161**	**−1,088**	**−807**	**−401**	**−264**	**−168**	**−70**	**−37**	**−39**	**−40**	**−42**	**−2,888**	**−3,117**
VII. District of Columbia Tax Incentives														
1. Designate existing D.C. enterprise community and census tracts with greater than 20% poverty (with revised residency requirement) as the D.C. Enterprise Zone, eligible for modified present-law empowerment zone incentives (20% wage credit, increased 179 expensing, and expanded tax-exempt financing); sunset 12/31/02.	1/1/98		−71	−110	−113	−118	−127	−45	3	2	(6)	−2	−539	−582
2. Provide 0% capital gains rate on enterprise zone business property in D.C. census tracts with greater than 10% poverty held for at least 5 years; sunset 12/31/02.	1/1/98		−1	−5	−12	−21	−33	−48	−85	−90	−99	−107	−73	−502
3. $5,000 tax credit for first-time homebuyer in D.C., with phaseout of $110,000–$130,000 for joint filers ($70,000–$90,000 for single filers), and sunset 12/31/00.	po/a DOE		−10	−21	−27	−16	(6)	(6)	(6)	(6)	(6)	(6)	−74	−74
Subtotal of District of Columbia Tax Incentives.			**−82**	**−136**	**−152**	**−155**	**−160**	**−93**	**−82**	**−88**	**−99**	**−109**	**−686**	**−1,158**

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
VIII. Welfare-to-Work Tax Credit														
Administration's welfare-to-work tax credit, as modified: (a) wage credit is 35% on first $10,000 of wages in the first year of employment, and 50% on $10,000 of wages in the second year of employment; (b) effective for hires made through 4/30/99.	**wpoifhma 12/31/97**		**−13**	**−31**	**−29**	**−15**	**−10**	**−4**	**−2**	**−1**			**−99**	**−106**
IX. Miscellaneous Provisions														
A. Excise Tax Provisions:														
1. Repeal excise tax on recreational motorboat diesel fuel.	1/1/98		−4	−5	−5	−1	−1	−1	−1	−1	−1	−1	−16	−22
2. Modify excise tax on imported halons	DOE	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	(7)	1	1
3. Transfer the 4.3 cents/gallon transportation motor fuels tax on highway motor fuels to the Highway Trust Fund.	10/1/97						No Revenue Effect							
4. Modify excise tax deposit rules for gasoline and special motor fuels, diesel fuel and kerosene, aviation fuels, and air cargo taxes to suspend deposits due 8/1/98 to 9/30/98 until 10/5/98.	DOE		−6,359	6,359										
5. Equalize the excise tax rates among alternative motor fuels except CNG.	DOE	−2	−15	−16	−16	−17	−18	−19	−20	−21	−22	−23	−82	−186
6. Treat certain gasoline retailers as wholesale distributors under gasoline tax refund rules.	DOE						Negligible Revenue Effect							
7. Reduce excise tax rate on draft cider to the small producer beer rate.	10/1/97		−1	−1	−1	−1	−1	−1	−1	−1	−1	−1	−3	−7
8. Require study on simplified collection of distilled spirits taxes.							No Revenue Effect							
9. Codify Bureau of Alcohol, Tobacco, and Firearms regulations on wine labeling; with modification.	DOE							No Revenue Effect						
10. Uniform excise tax on vaccines; add 3 new vaccines ($0.75 per dose).	10/1/97		−16	−15	−15	−15	−14	−14	−14	−14	−14	−14	−74	−146
B. Disaster Relief Provisions:														
1. Disaster losses—postponement of IRS deadlines and loss valuation; permit extension of statute of limitations.	aoty							Negligible Revenue Effect						
2. Modify tax treatment of livestock sold on account of certain weather-related conditions.	sea 12/31/96		−12	−2	−2	−2	−1	−1	−1	−1	−1	−1	−18	−23
3. Loosen mortgage revenue bond requirements in Presidentially declared disaster areas for 2 years; permit 2-year period to place mortgages.	(8)		−3	−7	−8	−8	−7	−6	−6	−5	−4	−4	−33	−58
4. Abatement of interest on underpayments by taxpayers in Presidentially declared disaster areas (1997 disaster areas only).	1/1/97	−5											−5	−5
C. Provisions Relating to Employment Taxes:														
1. Worker classification of securities brokers for income and employment tax purposes.	spa 12/31/97						Negligible Revenue Effect							
2. Impose moratorium on issuance of Treasury regulation relating to self-employment tax (SECA) thhrough 6/30/98.	DOE						No Revenue Effect							
3. SECA for insurance agents	pa 12/31/97						Negligible Revenue Effect							
D. Provisions Relating to Small Businesses:														
1. Delay penalties for failure to make payments through EFTPS until after 6/30/98.	DOE						No Revenue Effect							
2. Definition of principal place of business for home office deduction.	tyba 12/31/98			−119	−244	−253	−263	−274	−285	−295	−306	−318	−880	−2,358
3. Increase deduction for health insurance expenses of self-employed individuals: 50% in 2000 and 2001, 60% in 2002, 80% in 2003 through 2005; 90% in 2006, and 100% in 2007 and thereafter.	tyba 12/31/96				−39	−120	−224	−605	−882	−601	−404	−604	−383	−3,479
E. Other Provisions:														
1. Shrinkage allowance for inventory account.			−7	−21	−23	−25	−27	−29	−31	−33	−35	−37	−103	−268
2. Include liability to pay compensation under workmen's compensation acts within rules relating to certain personal liability assignments.	cfa DOE		−1	−2	−5	−8	−12	−17	−23	−29	−32	−36	−27	−164
3. Clarify tax-exempt status of certain State workmen's compensation funds.	tyba 12/31/97		(6)	(6)	−1	−1	−1	−1	−1	−1	−1	−1	−2	−6
4. Allow grandfathered publicly traded partnerships to elect to pay a publicly traded partnership tax; with technical modifications.	tyba 12/31/97						Revenue Neutral							
5. Exclusion from UBTI for certain corporate sponsorship payments, with technical clarification.	psora 12/31/97						Negligible Revenue Effect							
6. Allow timeshare associations to elect to be taxed as homeowner associations at 32% rate and modify definition of property for timeshares.	tyba 12/31/96		−1	−1	−1	−1	−2	−2	−2	−2	−2	−2	−7	−17
7. Deferral of gain on sales of stock in farm product refining firms to farm coops which supply the firm with raw farm products for refining.	sea 12/31/97		−2	−68	−5	−5	−4	−4	−4	−4	−4	−4	−84	−104
8. No information reporting on sales of principal residences less than $250,000 or $500,000 (married filing joint return).	DOE							Negligible Revenue Effect						

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
9. Increase the business meals deduction to 80% in 5% increments every other year for persons subject to Federal hours of service limitation, with clarification of section 119 meals.	tyba 12/31/97		−8	−17	−27	−37	−49	−62	−76	−91	−108	−125	−138	−600
10. Provide an above-the-line deduction for certain State and local official's expenses.	1/1/87		−10	−4	−4	−4	−5	−5	−6	−6	−7	−7	−27	−58
11. Raise the charitable mileage rate from 12 cents/mile to 14 cents/mile; no indexing.	tyba 12/31/97		−8	−56	−58	−61	−64	−68	−71	−75	−78	−82	−247	−621
12. Expense "Brownfields" redevelopment costs in empowerment zones, enterprise communities and EPA demonstration sites; add census tracts with greater than 20% poverty, 3-year sunset.	(9)		−57	−132	−165	−63	(7)	2	9	17	19	18	−417	−352
13. Administration's proposal to add 20 urban empowerment zones with modified incentives (including interaction with Conference Brownfields proposal.	DOE		−82	−121	−121	−99	−79	−56	−44	−41	−38	−25	−502	−706
14. Designate 2 supplemental empowerment zones as regular empowerment zones, with present-law incentives (phaseout of wage credit beginning in 2004).	1/1/00				−38	−86	−92	−98	−78	−53	−26	−13	−215	−483
15. Exemption for incremental cost of clean-fuel vehicle from luxury tax and limits on depreciation.	DOE	(6)	−1	−1	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	−2	−2
16. Exclude from gross income certain survivor benefits attributable to a public safety officer who is killed in the line of duty.	(10)		(6)	−1	−1	−1	−1	−1	−1	−1	−2	−2	−4	−12
17. Suspend 100% net income limitation with respect to percentage depletion on oil and gas property for marginal producers for 2 years.	tyba DOE		−21	−35	−14								−70	−70
18. Allow refunding of certain tax-exempt Virgin Islands bonds.	bia DOE		−2	−4	−5	−5	−5	−3	−1	−3	−4	−4	−21	−37
19. Purchasing of receivables by tax-exempt hospital cooperative service organizations.	tyba 12/31/96						Negligible Revenue Effect							
20. Modification of empowerment zone and enterprise community criteria in the event of future designations of additional zones and communities.	DOE						No Revenue Effect							
21. 3-year income averaging for farmers	tyba DOE ab 1/1/01	−1	−10	−53	−54	−50							−168	−168
22. Prior year estimated tax safe harbor (100% in 1998, 105% in 1999 through 2001, and 112% in 2002).			−7,400	4,000			4,400	−1,000					1,000	
23. Montana simplified tax and wage reporting system (5-year demonstration).						No Revenue Effect								
24. National Passenger Rail (Amtrak) NOL provision.	DOE		−1,162	−1,162									−2,323	−2,323
SUBTOTAL OF MISCELLANEOUS PROVISIONS.		**−8**	**−15,182**	**8,516**	**−852**	**−863**	**3,530**	**−2,265**	**−1,539**	**−1,261**	**−1,071**	**−1,286**	**−4,850**	**−12,274**
X. Revenue-Increase Provisions														
A. Financial Products:														
1. Require recognition of gain on certain appreciated positions in personal property, with technical modifications.	csa 6/8/97		367	121	68	73	79	85	94	111	118	127	708	1,243
2. Gains or losses from certain terminations with respect to property; with technical modification and effective date with modifications.	30da DOE		15	27	25	25	25	25	25	25	25	25	117	242
3. Determination of original issue discount where pooled debt obligations subject to acceleration..	tyba DOE		76	275	358	319	283	100	105	109	114	118	1,311	1,857
4. Denial of interest deduction on certain debt instruments.	iia 6/8/97		5	16	29	43	55	62	63	64	65	67	148	469
B. Corporate Organizations and Reorganizations:														
1. Tax treatment of certain extraordinary dividends.	da 9/13/95		44	−93	−54	−10	45	77	81	89	95	101	−68	375
2. Require gain recognition on certain distributions of controlled corporation stock (with modifications for intragroup distributions); with binding contract modification.	da 4/16/97		301	243	216	187	158	130	101	73	46	10	1,105	1,465
3. Tax treatment of redemptions involving related corporations.	da/a 6/8/97		10	10	5	5	5	5	5	5	5	5	35	60
4. Modify holding period for dividends-received deduction with 2-year transition period.	droaa 30da DOE		11	13	15	16	16	16	17	17	17	18	71	156
C. Other Corporate Provisions:														
1. Registration and other provisions relating to confidential corporate tax shelters.	tsoaiTg		15	37	38	39	41	42	43	44	46	47	170	392
2. Certain preferred stock treated as "boot," with clarification.	ta 6/8/97		35	37	39	41	43	10	10	11	11	12	194	248
D. Administrative Provisions:														
1. Reporting of certain payments made to attorneys.	pma 12/31/97			3	3	3	3	3	4	4	4	4	12	31
2. Decrease of threshold for reporting payments to corporations performing services for Federal agencies.	rd 90da DOE			7	8	9	10	11	11	12	12	13	34	93
3. Extend disclosure of tax return information for administration of certain Veterans' programs [12].	dma 9/30/98			22	27	31	36	36					116	152
4. Modify levy exemption and provide continuous levy on certain payments.	lia DOE		332	327	256	213	157	117	102	86	82	78	1,285	1,750
5. Consistency requirement for returns of beneficiaries of estates and trusts.	rfa DOE		3	3	3	3	3	3	4	4	4	4	15	34

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
E. Excise Tax Provisions:														
1. Extend and modify Airport Trust Fund excise taxes:.														
a. Extend domestic air passenger ticket tax: reduce tax rate from 10% to 9% of ticket price and impose an additional tax of $1.00 per flight segment for 10/1/97 through 9/30/98; 8% and $2.00/segment for 10/1/98 through 9/30/99; and 7.5% after 9/30/99 with additional tax of $2.25/segment for 10/1/99 through 12/31/99, $2.50/segment in 2000, $2.75/segment in 2001, and $3.00/segment in 2002, and in years thereafter index the $3.00/segment tax to changes in the CPI (first indexing adjustment on 1/1/03).	10/1/97		4,633	4,859	5,031	5,433	5,870	6,275	6,684	7,117	7,580	8,059	25,826	61,542
b. Modify airline ticket tax deposit rule to suspend deposits due 8/15/97 to 9/30/97 until 10/10/97, and suspend deposits due 8/15/98 to 9/30/98 until 10/5/98.	DOE	−1,017	−199	1,216										
c. Reduce air passenger ticket tax to 7.5% of ticket price (and omit segment tax) for flight segments to/ from certain rural airports [13].	10/1/97		−26	−27	−26	−27	−27	−28	−30	−31	−32	−33	−133	−289
d. Extend international departure tax: increase tax from $6.00 to $12/passenger, tax arrivals at the same rate, and index the $12 tax to changes in the CPI (first indexing adjustment on 1/1/99), but retain present-law $6.00/passenger departure tax for domestic flights to/from Alaska and Hawaii, and index the $6.00 departure tax to changes in the CPI (first indexing adjustment on 1/1/99).	10/1/97		788	879	948	1,026	1,114	1,209	1,307	1,411	1,526	1,653	4,754	11,859
e. Impose 7.5% tax rate on cash payments to airlines for air travel under credit card and similar programs.	10/1/97		65	73	77	82	87	92	98	104	110	116	384	904
f. Extend current air cargo excise tax.	10/1/97		304	347	377	409	443	481	522	567	615	667	1,880	4,732
g. Extend current taxes on noncommercial aviation gasoline and noncommercial jet fuel.	10/1/97		84	87	89	91	93	95	97	99	102	104	446	943
h. Dedicate 4.3 cents/gallon of tax on aviation fuel to the Airport and Airway Trust Fund.	10/1/97							No Revenue Effect						
2. Tax kerosene in the same manner as diesel fuel; modify to address home heating in Alaska.	7/1/98		44	43	49	46	44	43	44	47	49	52	226	461
3. Reinstate LUST excise tax and extend through 3/31/05.	10/1/97		129	129	128	129	131	134	136	67			645	983
4. Apply 3% telephone excise tax to certain prepaid phone cards, with technical modification.	DOE		19	28	38	49	60	71	83	101	113	124	193	684
5. Replace truck excise tax deduction for tire value with tax credit for excise tax paid on tires.	Sa 12/31/97		66	94	96	97	99	101	102	105	108	110	452	979
F. Provisions Relating to Tax-Exempt Organizations:														
1. Modify control test and include attribution rules to determine UBIT consequences of certain payments from subsidiaries of tax-exempt organizations.	tyba 12/31/98 & tyba 2ya DOE.		(7)	(7)	(7)	3	5	5	4	4	4	4	8	29
2. Repeal 1986 Act grandfather rules for pension business of TIAA-CREF and Mutual of America.	tyba 12/31/97		(7)	82	116	124	128	133	140	149	160	174	450	1,208
G. Foreign Provisions:														
1. Inclusion of income from notional principal contracts and stock lending transactions under subpart F.	tyba DOE		9	20	21	21	21	21	22	22	22	23	92	202
2. Further restrict like-kind exchanges involving foreign personal property.	Ta dofca		4	8	11	13	15	17	19	21	23	25	51	156
3. Impose holding period requirement for claiming foreign tax credits with respect to dividends.	dpoaa 30da DOE		23	48	50	53	56	58	61	64	68	71	230	552
4. Limitation on treaty benefits for payments to hybrid entities.	DOE		1	1	1	1	1	1	1	1	1	1	5	10
5. Interest on underpayment reduced by foreign tax credit carryback.	ftpoa tyba DOE		8	10	2	1	1	1	1	1	1	1	22	27
6. Determination of period of limitations relating to foreign tax credits.	ftpoa tyba DOE		1	2	1	1	1	1	1	1	1	1	6	11
7. Repeal special rule which permits certain companies to eliminate their AMT liability.	tyba DOE		2	5	5	5	5	5	5	5	5	5	22	47
H. Pension and Employee Benefit Provisions:														
1. Provide employers the option to offer tax-free employee parking or taxable cash compensation [14].	tyba 12/31/97		3	8	11	12	12	13	14	14	15	16	46	118
2. Repeal of 15% excess distribution and excess accumulation taxes.	tyba & dda 12/31/96		−18	−19	−7	18	18	16	16	14	13	11	−8	62
3. Increase in prohibited transactions excise tax.	ptoa DOE		2	4	4	4	4	4	4	4	4	4	14	34
4. Basis recovery method	aba 12/31/97		1	3	6	9	11	15	18	21	24	27	30	133

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
I. Other Revenue-Increase Provisions:														
1. Termination of suspense accounts for family farm corporations required to use accrual method of accounting ([15]).	([16])		29	33	35	36	37	39	40	41	43	44	170	377
2. 2-year carryback and 20-year carryforward for net operating losses with an exception related to Presidentially declared disaster areas.	NOLgi tyba DOE		42	303	361	256	179	136	112	100	93	90	1,141	1,672
3. Modification of treatment of company-owned life insurance—pro rata disallowance of interest on debt to fund life insurance.	cia 6/8/97		20	53	93	140	193	247	299	349	399	447	500	2,240
4. Modify the basis allocation rules for distributee partners, with technical modifications.	pda DOE		26	52	55	57	59	61	64	66	69	72	249	581
5. Eliminate the substantial appreciation requirement for inventory of a partnership, with technical modification and binding contract exception.	sepda DOE & efbcieo 6/8/97.		30	66	69	73	77	80	84	89	93	98	316	760
6. Earned income credit compliance provisions: deny eligibility for prior acts of recklessness; recertification required when EIC denied in past; and due diligence requirement for paid preparers.	tyba 12/31/96		([7])	18	25	24	21	21	21	21	21	21	88	193
7. For the purpose of the Earned Income Credit (EIC) phaseout, include in AGI nontaxable distributions of IRA, pensions, and annuities, and tax-exempt interest; and addback 75% of business losses ([17]).	tyba 12/31/97		([7])	72	75	79	85	89	92	94	99	102	312	788
8. Provide that workfare payments do not qualify as earned income for the purposes of the earned income credit.	DOE						Negligible Revenue Effect							
9. New EIC compliance proposals ([18]):														
a. Federal case register data	10/1/99					10	20	30	40	60	85	105	30	350
b. SSA parent SSNs	180da DOE			10	10	10	10	10	10	10	10	10	40	90
c. Additional appropriation for EIC enforcement.	DOE						No Revenue Effect							
10. Restrict income forecast method and allow 3-year MACRS for rent-to-own property; with clarification for home computers and cellular phones.	tyba DOE		29	41	62	78	38	27	25	17	17	18	248	352
11. Extend FUTA surtax and increase the statutory limit on the FUA Trust Fund from .25% of covered wages to .50% ([12]).	lpo/a 1/1/99			1,063	1,763	1,797	1,733	661	−73	−71	−74	−73	6,356	6,726
12. Limitation on charitable remainder trust annual payouts; require charitable remainders to have a minimum value of 10% of trust.	Ta 6/18/97		6	6	6	6	6	6	6	6	6	6	30	60
13. Limit carryback period for general business credits to 1 year; extend carryforward period to 20 years.	cai tyba 12/31		182	300	81	−60	−32	−9	5	15	21	25	471	527
14. Extend the 5-year time limit for taxing pre-contribution gain to 7 years and grandfather binding contracts in effect on 6/8/97.	pcpa dofca						2	10	11	11	12	12	2	58
15. Expansion of requirement that involuntarily converted property be replaced with property acquired from an unrelated person.	icoa dofca		1	4	6	8	11	13	15	17	19	21	30	115
16. Repeal installment sales grandfather rule tyb1ya DOE.				44	97	106	106	64	21	22	23	24	353	507
Subtotal of Revenue-Increase Provisions.			7,522	11,013	10,802	11,217	11,696	10,970	10,78	611,409	12,092	12,866	51,230	109,350
XI. Foreign Tax Provisions														
A. General Provisions:														
1. Simplify foreign tax credit limitation for individuals.	tyba 12/31/97		([19])	−1	−1	−1	−1	−1	−1	−1	−1	−1	−4	−9
2. Simplify translation of foreign taxes			([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])
3. Election to use simplified foreign tax credit limitation for alternative minimum tax purposes.	tyba 12/31/97		([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	−1	−2
4. Simplify treatment of personal transactions in foreign currency.	tyba 12/31/97		([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	([19])	−1	−2
5. Simplify foreign tax credit limitation for dividends from 10/50 companies to provide look-through starting in 2003.	tyba 12/31/02							−57	−241	−215	−227	−242		−982
B. General Provisions Affecting Treatment of Controlled Foreign Corporations.	various		−2	−5	−7	−9	−10	−10	−11	−12	−13	−14	−33	−93
C. Modification of Passive Foreign Investment Company Provisions to Eliminate Overlap With Subpart F and to Allow Mark-to-Market Election, and to Modify Asset Measurement Rule.	tyba 12/31/97		−24	−23	−24	−26	−27	−28	−29	−31	−33	−35	−124	−280
D. Simplify Formation and Operation of International Joint Ventures, with Technical Modifications.	various		([6])	([6])	−1	−1	−1	−1	−1	−1	−1	−2	−3	−9
E. Modification of Reporting Threshold for Stock Ownership of a Foreign Corporation.	1/1/98		([19])	−1	−2	−2	−2	−2	−2	−3	−3	−3	−7	−20
F. Other Foreign Simplification Provisions:														
1. Transition rule for certain trusts	aiii SBJPA		−1	−3	−5	−5	−5	−5	−5	−5	−5	−5	−19	−44
2. Simplify application of the stock and securities trading safe harbor.	tyba 12/31/97		([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])
3. Clarification of determination of foreign taxes deemed paid.	DOE		([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])
4. Clarification of foreign tax credit limitation for financial services income.	DOE		([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])	([6])
G. Other Foreign Provisions:														
1. Foreign sales corporation benefits for computer software.	gra 12/31/97		−27	−42	−146	−173	−180	−191	−202	−227	−252	−277	−568	−1,717

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
2. Increase dollar limitation on section 911 exclusion and index after 2007.	1/1/98		−15	−30	−50	−67	−82	−97	−103	−111	−119	−127	−244	−801
3. Exception from U.S. property definition under subpart F for certain securities positions.	tyba 12/31/97		−1	−2	−2	−2	−2	−2	−2	−2	−2	−2	−9	−19
4. Exemption from subpart F for active financing income.	tybi 1998		−23	−68	−3								−94	−94
5. Treat service income of nonresident alien individuals earned on foreign ships as foreign source income and disregard the U.S. presence of such individuals; with amendment to rule disregarding U.S. presence.	tyba 12/31/97		−2	−4	−3	−3	−3	−3	−3	−3	−3	−3	−15	−30
Subtotal of Foreign Tax Provisions			**−95**	**−179**	**−244**	**−289**	**−313**	**−397**	**−600**	**−611**	**−659**	**−711**	**−1,122**	**−4,102**
XII Simplification Provisions Relating to Individuals and Businesses														
A. Provisions Relating to Individuals:														
1. Deduction attributable to unearned income of dependent filers: greater of (a) present law; or (b) earned income plus $250; delink dependent AMT from parent's AMT position.	1/1/98		−2	−38	−35	−35	−35	−35	−35	−38	−37	−36	−146	−327
2. Increase de minimis threshold for estimated tax to $1,000.	tyba 12/31/97		−134	−17	−18	−19	−20	−21	−22	−24	−25	−26	−208	−326
3. Treatment of certain reimbursed expenses of rural mail carriers.	tyba 12/31/97		(6)	−1	−1	−1	−1	−1	−1	−1	−1	−1	−5	−11
4. Treatment of travel expenses of certain Federal employees engaged in criminal investigations.	eii tyea DOE		(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	−1	−2
5. Permit payment of taxes by any commercially acceptable means; and prohibit payment of fees by Treasury.	DOE						Negligible Revenue Effect							
B. Provisions Relating to Businesses Generally:														
1. Modify look-back method for long-term contracts.	cci tyea DOE		−1	−2	−3	−4	−4	−4	−4	−5	−5	−5	−14	−37
2. Minimum tax treatment of certain property and casualty insurance companies.	tyba 12/31/97		−1	−2	−3	−3	−3	−3	−3	−3	−3	−3	−12	−27
3. Provide for exclusion for construction allowances provided to lessees, with technical modification.	leia DOE						Negligible Revenue Effect							
C. Partnership Simplification Provisions:														
1. Simplified reporting to partners	tyba 12/31/97		6	8	8	8	8	9	9	9	9	9	38	83
2. Simplified audit procedure for large part.	tyba 12/31/97		(7)	(7)	(7)	1	1	1	1	1	1	1	2	8
3. Due date for furnishing information to partners of large partnerships.	tyba 12/31/97						No Revenue Effect							
4. Returns required on magnetic media for partnerships with 100 partners or more.	tyba 12/31/97						Negligible Revenue Effect							
5. Other partnership audit rules	tyba 12/31/97		−2	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	−3	−5
6. Closing partnership taxable year with respect to deceased partner.	tyba 12/31/97		(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	−1	−1
D. Provisions Relating to Real Estate Investment Trusts:														
1. Alternative penalty for failure to request information from shareholders.	tyba DOE						Negligible Revenue Effect							
2. De minimis rule for tenant services income.	tyba DOE						Negligible Revenue Effect							
3. Attribution rules applicable to tenant services.	tyba DOE						Negligible Revenue Effect							
4. Credit for tax paid by REIT on retained capital gains.	tyba DOE						Negligible Revenue Effect							
5. Repeal 30% gross income requirement.	tyba DOE		−4	−5	−5	−6n	−7	−7	−8	−9	−10	−11	−26	−72
6. Modification of earnings and profits rules for determining whether REIT has earnings and profits from non-REIT year.	tyba DOE						Negligible Revenue Effect							
7. Treatment of foreclosure property	tyba DOE						Negligible Revenue Effect							
8. Payments under hedging instruments	tyba DOE						Negligible Revenue Effect							
9. Excess noncash income	tyba DOE						Negligible Revenue Effect							
10. Prohibited transaction safe harbor	tyba DOE						Negligible Revenue Effect							
11. Shared appreciation mortgages	tyba DOE						Negligible Revenue Effect							
12. Wholly owned subsidiaries	tyba DOE						Negligible Revenue Effect							
E. Provision Relating to Regulated Investment Companies:														
1. Repeal 30% gross income limitation for regulated investment companies.	tyba DOE		−17	−23	−27	−33	−38	−45	−53	−61	−71	−82	−138	−450
F. Taxpayer Protections:														
1. Provide "reasonable cause" exception for filing claims for refunds.	tyba DOE						Negligible Revenue Effect							
2. Clarification of period for filing claims for refunds.	tyea DOE						Negligible Revenue Effect							
3. Repeal authority to disclose whether a prospective juror has been audited.	pca DOE						No Revenue Effect							
4. Clarify statute of limitations for pass-through entities.	tyba DOE						No Revenue Effect							
5. Clarify procedure for administrative cost awards.	aca DOE						No Revenue Effect							
Subtotal of Simplification Provisions Relating to Individuals and Businesses.			**−155**	**−80**	**−84**	**−92**	**−99**	**−106**	**−116**	**−131**	**−142**	**−154**	**−514**	**−1,167**
XIII. Estate, Gift and Trust Simplification Provisions														
1. Gifts to charities of over $10,000 exempt from gift tax filing requirements.	gma DOE						Negligible Revenue Effect							
2. Clarification of waiver of certain rights of recovery of estate tax from QTIP trust.	dda DOE						Negligible Revenue Effect							

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
3. Transitional rules under section 2056A.	aiii OBRA'90		Negligible Revenue Effect											
4. Estate and gift tax treatment of short-term OID instruments.	dda DOE		Negligible Revenue Effect											
5. Certain revocable trusts treated as part of estate.	dda DOE		−3	−3	−3	−3	−3	−3	−3	−3	−3	−3	−15	−30
6. Distributions during first 65 days of taxable year of estate.	tyba DOE		Negligible Revenue Effect											
7. Separate share rules available to estates.	dda DOE		Negligible Revenue Effect											
8. Executor of estate and beneficiaries treated as related persons for disallowance of losses.	tyba DOE		Negligible Revenue Effect											
9. Treatment of funeral trusts	tyea DOE		2	2	2	2	2	2	2	2	2	2	10	20
10. Adjustments for certain gifts within 3 years of decedent's death.	dda DOE		No Revenue Effect											
11. Clarification of treatment of survivor annuities under qualified terminable interest rules.	dda DOE		Negligible Revenue Effect											
12. Treatment under qualified domestic trust rules of forms of ownership which are not trusts.	dda DOE		Negligible Revenue Effect											
13. Opportunity to correct certain failures under section 2032A.	DOE		Negligible Revenue Effect											
14. Authority to waive requirement of United States trustee for qualified domestic trusts.	dda DOE		No Revenue Effect											
Subtotal of Estate, Gift and Trust Simplification Provisions.			−1	−1	−1	−1	−1	−1	−1	−1	−1	−1	−5	−10
XIV. Excise Tax and Other Simplification Provisions														
A. Excise Tax Simplification:														
1. Increase de minimis limit for aftermarket alterations for heavy truck and luxury car excises.	DOE		Negligible Revenue Effect											
2. Credit or refund for imported bottled distilled spirits returned to distilled spirits plant.	fcq DOE+180 days		Negligible Revenue Effect											
3. Authority to cancel or credit export bonds without submission of records.	fcq DOE+180 days		No Revenue Effect											
4. Repeal of required maintenance of records on premises of distilled spirits plant.	fcq DOE+180 days		No Revenue Effect											
5. Fermented material from any brewery may be received at a distilled spirits plant.	fcq DOE+180 days		Negligible Revenue Effect											
6. Repeal of requirement for wholesale dealers in liquors to post sign.	DOE		No Revenue Effect											
7. Refund of tax to wine returned to bond not limited to unmerchantable wine.	fcq DOE+180 days		Negligible Revenue Effect											
8. Use of additional ameliorating material in certain wines.	fcq DOE+180 days		No Revenue Effect											
9. Domestically produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.	fcq DOE+180 days		Negligible Revenue Effect											
10. Beer may be withdrawn free of tax for destruction.	fcq DOE+180 days		Negligible Revenue Effect											
11. Authority to allow drawback on exported beer without submission of records.	fcq DOE+180 days		No Revenue Effect											
12. Imported beer or wine transferred in bulk to brewery or winery without payment of tax.	fcq DOE+180 days		Negligible Revenue Effect											
13. Authority for IRS to grant exemption from excise tax registration requirements.	DOE		No Revenue Effect											
14. Exemption from truck excise tax for certain wrecked truck fixups and truck modifications.	1/1/98		−5	−8	−8	−8	−9	−9	−10	−10	−11	−11	−38	−89
15. Repeal registration requirement for tax-free sales of trucks for resale.	1/1/98		Negligible Revenue Effect											
16. Repeal of excise tax "deadwood" provision.	DOE		No Revenue Effect											
17. Move taxation of arrows from tax on assembled arrows to tax on component parts of 12.4%.	1/1/98		Negligible Revenue Effect											
18. Clarify tax treatment of skydiving flights as noncommercial aviation; with technical modifications.	10/1/97		Negligible Revenue Effect											
19. Eliminate double taxation for certain purchases of aviation fuel from fixed-based operators; with technical modifications.	10/1/97		Negligible Revenue Effect											
B. Tax Exempt Bond Provisions:														
1. Repeal $100,000 limitation on unspent proceeds from tax-exempt bond issues under year exception from rebate.	bia DOE		(6)	−2	−3	−5	−6	−8	−9	−10	−11	−12	−17	−65
2. Exclusion from arbitrage rebate for earnings on bona fide debt service fund under construction.	bia DOE		(6)	−1	−2	−3	−3	−4	−5	−6	−6	−7	−9	−37
3. Repeal of debt service based limitation on investment in certain nonpurpose investments.	bia DOE		Negligible Revenue Effect											
4. Repeal of expired student loan bond arbitrage rebate provisions.	DOE		No Revenue Effect											
C. Tax Court Procedures:														
1. Clarify jurisdiction of Tax Court with respect to overpayment determinations.	DOE		−3	−3	−3	−3	−3	−3	−3	−3	−3	−3	−15	−30
2. Clarify Tax Court jurisdiction over interest determinations.	DOE		No Revenue Effect											

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
3. Clarify net worth requirements for awards of administrative or litigation costs; $4 million for joint returns.	DOE		−1	−2	−2	−2	−2	−2	−2	−2	−2	−2	−9	−19
4. Clarify Tax Court jurisdiction for independent contractors with technical modification.	DOE							Negligible Revenue Effect						
D. Other Provisions:														
1. Extend due date for first quarter estimated tax by private foundations.	tyba DOE		−2	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	−2	−3
2. Clarification of authority to withhold Puerto Rico income taxes from salaries of Federal employees..	1/1/98		−2	−3	−1	−1	−1	−1	−1	−1	−1	−1	−8	−13
3. Certain notices disregarded under provision increasing interest rate on large corporate underpayments.	1/1/98		−1	−1	−1	−1	−1	−1	−1	−1	−1	−1	−5	−10
Subtotal of Excise Tax and Other Simplification Provisions.			**−14**	**−20**	**−20**	**−23**	**−25**	**−28**	**−31**	**−33**	**−35**	**−37**	**−103**	**−266**
XV. Pension Simplification Provisions														
A. Miscellaneous Provisions Relating to Pensions and Other Provisions:														
1. Water districts made eligible for 401(k) plans even if State or local entity.	1/1/98		(19)	−1	−1	−1	−2	−2	−2	−2	−2	−3	−6	−15
2. Extend moratorium on nondiscrimination rules for public pension plans (permanent), with technical.	DOE													
(12) Negligible Revenue Effect.														
3. Treatment of certain disability benefits received by former police officers or firefighters.	DOE			−10	−1								−11	−11
4. ESOP provision Modify prohibited transaction rules relating to employee stock ownership plans of S corporation; with modifications.	tyba 12/31/97							Negligible Revenue Effect						
5. Repeal UBIT on income from an S corporation to an ESOP; with technical modification.	tyba 12/31/97		−8	−23	−34	−41	−44	−46	−48	−50	−52	−54	−149	−400
6. Pension provision—increase in full funding limit with 20-year amortization; with technical modification.	pyba 12/31/98			−4	−12	−14	−18	−19	−23	−23	−25	−25	−48	−164
7. Deduction for contributions made by ministers to retirement plans.	tyba 12/31/97													
(11)Negligible Revenue Effect.														
8. Exclusion of ministers from discrimination testing of nondenominational retirement plans.	tyba 12/31/97							Negligible Revenue Effect						
9. Diversification of 401(k) investments; with 1-year delay of effective date.	DOE							Negligible Revenue Effect						
10. Exempt police and firefighters from section 415 dollar limitation; with clarification.	yba 12/31/96							Negligible Revenue Effect						
11. Modify section 415 limits for State and local plans; with modifications.	tyba 12/31/97		−9	−25	−25	−26	−26	−26	−27	−27	−27	−28	−111	−246
12. ESOP provision—permit cash distributions in lieu of stock in the S corporation.	tyba 12/31/97							Negligible Revenue Effect						
13. Increase the amount from $3,500 to $5,000 on involuntary cash out from pension plans with no indexing of dollar amount.	dma DOE (7)	2	6	7	7	7	8	8	9	9	10	29	73	
14. Treatment for partnership items of individual retirement accounts.	tyba 12/31/97							No Revenue Effect						
15. Church plan exception to prohibition on discrimination against individuals based on health status.	DOE							Negligible Revenue Effect						
16. Excise tax penalties for failure of group health plan to provide certain maternity and mental health benefits.	pybo/a 1/1/98							Negligible Revenue Effect						
17. Date for adoption of plan amendments.	DOE							No Revenue Effect						
B. Pension Simplification Provisions:														
1. Matching contributions for self-employed individuals not treated as elective deferrals.	tyba 12/31/97		(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(20)	(21)
2. Contributions to IRAs through payroll deductions.	tyba 12/31/97							No Revenue Effect						
3. Plans not disqualified merely by accepting rollover contributions; with modification.	tyba 12/31/97							Negligible Revenue Effect						
4. Modification of prohibition on assignment or alienation.	DOE							Negligible Revenue Effect						
5. Eliminate paperwork burdens on plans	tyba DOE													
(12)No Revenue Effect.														
6. Modifications to section 403(b) exclusion allowance to conform to section 415 modifications.	tyba 12/31/98			(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(20)	(21)
7. New technologies in retirement plans	DOE							No Revenue Effect						
8. Modification of 10% tax on nondeductible.	tyba 12/31/97		−2	−3	−3	−3	−3	−3	−3	−3	−3	−3	−14	−29
9. Modify funding rules for certain plans	cda 12/31/97							Negligible Revenue Effect						
Subtotal of Pension Simplification Provisions.		−27	−51	−68	−78	−86	−88	−95	−96	−100	−103	−310	−792	
XVI. Technical Corrections Provisions														
1. Oklahoma technical on Indian wage credits and development incentives for property with 10-year lives or less, with modification.	dwcorfpt 3/18/97		−10	−2	1	2	2	1	1	1	1	1	−8	−2
Subtotal of Technical Corrections Provisions.		−10	−2	1	2	2	1	1	1	1	1	−8	−2	

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT ON THE REVENUE PROVISIONS OF H.R. 2014, THE "TAXPAYER RELIEF ACT OF 1997"—Continued

[Fiscal Years 1997–2007, in millions of dollars]

Provision	Effective	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1997–2002	1997–2007
XVII. TRADE PROVISION—GSP extension through 6/30/98 [12]	6/1/97		−378										−378	−378
Total Revenue Effect of H.R. 2014		60	−9,483	−9,887	−27,937	−29,329	−23,865	−34,966	−36,611	−38,652	−39,809	−41,551	−100,444	−292,045
XVIII. REVENUE PROVISIONS IN H.R. 2015														
1. Increase small cigarettes tax by $0.10 per pack in 2000 and 2001, and $0.15 per pack in 2002 and thereafter with proportionate increase in other tobacco products excise taxes.	10/1/97				1,175	1,720	2,272	2,280	2,290	2,300	2,310	2,320	5,167	16,667
2. Miscellaneous FUTA provisions [12]	various		3	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	(6)	1	
3. Medicare Plus MSAs	tyba 12/31/97							Negligible Revenue Effect						
Total Revenue Effect of H.R. 2015			3	[6]	1,175	1,720	2,272	2,280	2,290	2,300	2,310	2,320	5,168	16,667
Grand Total: Reconciliation Revenue Provisions.		60	−9,480	−9,887	−26,762	−27,609	−21,593	−32,686	−34,321	−36,352	−37,499	−39,231	−95,276	−275,378

[1] Estimate considers interaction with HOPE tax credit proposal.
[2] The refundable portion of the child credit is equal to $4,281 million for fiscal years 1998–2002 and $10,022 million for fiscal years 1998–2007.
[3] Estimate includes interaction with estate and gift taxes.
[4] Considers interaction with IRA PLUS proposal.
[5] Estimate includes interaction with welfare-to-work tax credit.
[6] Loss of less than $500,000.
[7] Gain of less than $500,000.
[8] Effective for bonds issued after 12/31/96 and bonds issued before 1/1/99.
[9] Effective for expenses in taxable years ending after date of enactment and before 1/1/01.
[10] Effective for payments received in taxable years beginning after 12/31/96 with respect to individuals dying after such date.
[11] Assumes prior or concurrent passage of legislation to allow Virgin Island financing on parity basis.
[12] Estimate provided by the Congressional Budget Office.
[13] Rural airports would be defined as (1) airports receiving "essential air service" assistance on date of enactment and having fewer than 100,000 enplanements in the previous calendar year, and (2) other airports having fewer than 100,000 passenger enplanements in the previous calendar year, excluding those within 75 miles of airports having more than 100,000 passenger enplanements in the previous year.
[14] Estimate does not include increase in receipts to Social Security trust fund ($21 million for fiscal years 1997–2002; $51 million for fiscal years 1997–2007).
[15] The provision would eliminate the present-law requirement that a portion of the suspense account be restored to income whenever the gross receipts of the corporation decline.
[16] Provision would be effective for taxable years ending after 6/8/97 for new suspense accounts, and taxable years beginning after that date for existing accounts. Balances in new accounts would be included in income over a 10-year period, and balances in existing accounts over a 20-year period. For existing accounts, the amounts included in income in any year would not exceed 50% of the taxable income of the taxpayer before the inclusion.
[17] Estimate includes outlay reductions of $254 million for 1997–2002 and $650 million for 1997–2007.
[18] Estimate does not include effect on outlays. Outlays will be provided by the Congressional Budget Office.
[19] Loss of less than $1 million.
[20] Loss of less than $5 million.
[21] Loss of less than $10 million.

Legend for "Effective" column: ab=and before; aba=annuities beginning after; aca=actions commenced after; aiii OBRA'90=as if included in the Omnibus Budget Reconciliation Act of 1990; aiii SBJPA=as if included in the Small Business Job Protection Act of 1996; aoty=all open taxable years; bia=bonds issued after; cai=credits arising in; cci=contracts completed in; cda=contributions due after; cfa=claims filed after; cia=contracts issued after; csa=constructive sales after; da=distributions after; Da=discharges after; da/a=distributions and acquisitions after; dda=decedents dying after; di=dispositions in; dma=disclosures made after; DOE=date of enactment; dofca=date of first committee action; dpoaa=dividends paid or accrued after; droaa=dividends received or accrued after; dwcorfpt=depreciation and wages claimed on returns filed prior to; efbcieo=exception for binding contracts in effect on; eia=expenses incurred after; eii=expenses incurred in; fcq DOE + 180 days=first day of the calendar quarter that begins at least 180 days after date of enactment; ftpoa=foreign taxes paid or accrued in; gma=gifts made after; gra=gross receipts after; gsta=generation skipping transfers after; icoa=involuntary conversions occurring after; lia=instruments issued after; leia=leases entered into after; lia=levies issued after; lpo/a=labor performed on or after; NOLgi=net operating lossess generated in; oia=obligations issued after; pca=proceedings commenced after; pcpa=property contributed to partnership after; pda=partnership distributions after; pma=payments made after; po/a=purchases on or after; poida=payments of interest due after; ppisa=property placed in service after; psora=payments solicited or received after; ptoa=prohibited transactions occurring after; pyba=plans years beginning after; phybo/a=plans years beginning on or after; rd=returns due; rfa=returns filed after; roa=rentals occurring after (for returns open on date of first committee action); Sa=sales after; sea=sales or exchanges after; sepda=sales and exchanges, and certain partnership distributions after; spa=services performed after; ta=transactions after; Ta=transfers after; tyba=taxable years beginning after; Tybo/a=Taxable years beginning on or after; tyb1ya=taxable years beginning 1 year after; tybi=taxable years beginning in; tyea=tax years ending after; tsoaiTg=tax shelters offered after issuance of Treasury guidance; wpoifhma=wages paid or incurred for hires made after; yba=years beginning after; 30da=30 days after; 90da=90 days after; 180da=180 days after; 2ya=2 years after.

Note.—Details may not add to totals due to rounding. Enactment date is assumed to be August 15, 1997.

Source: Joint Committee on Taxation.

For consideration of the House bill, and the Senate amendment, and modifications committed to conference:

JOHN R. KASICH,
BILL ARCHER,
PHIL CRANE,
WILLIAM M. THOMAS,
DICK ARMEY,
TOM DELAY,
CHARLES B. RANGEL,

As additional conferees from the Committee on Transportation and Infrastructure, for consideration of secs. 702 and 704 of the Senate amendment, and modifications committed to conference:

BUD SHUSTER,
SUSAN MOLINARI,
JAMES L. OBERSTAR,
BILL GOODLING,
HARRIS W. FAWELL,
DONALD M. PAYNE,

Managers on the Part of the House.

From the Committee on Finance:

BILL ROTH,
TRENT LOTT,
DANIEL P. MOYNIHAN,

From the Committee on the Budget:

PETE DOMENICI,
DON NICKLES,
FRANK R. LAUTENBERG,

Managers on the Part of the Senate.]

□ 1830

ANNOUNCEMENT OF AVAILABILITY OF H.R. 2014, TAXPAYER RELIEF ACT OF 1997, ON THE INTERNET

(Mr. ARCHER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARCHER. Mr. Speaker, I rise to alert all Members that this evening this entire bill will be on the Internet so that any Member who wishes to peruse it and to learn its entire contents will be able to do so tonight before it comes out on the floor tomorrow.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1998

The SPEAKER. Pursuant to the order of the House of Thursday, July 24, 1997, and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2159.

□ 1831

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2159) making appropriations for foreign operations, export financing and related programs for the fiscal year ending September 30, 1998, and for other purposes, with Mr. THORNBERRY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose earlier today, the bill had been read through page 4, line 24.

For what purpose does the gentleman from California [Mr. ROYCE] rise?

AMENDMENT NO.13 OFFERED BY MR. ROYCE

Mr. ROYCE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment No. 13 offered by Mr. ROYCE: IN TITLE I, UNDER THE HEADING "OVERSEAS PRIVATE INVESTMENT CORPORATION NONCREDIT ACCOUNT" AFTER "$32,000,000" INSERT "(REDUCED BY $11,200,000)".

Mr. CALLAHAN. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments

thereto close in 40 minutes and that the time be equally divided.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The CHAIRMAN. The gentleman from California [Mr. ROYCE] will control 20 minutes. Does the gentleman from Alabama [Mr. CALLAHAN] seek time in opposition?

Mr. CALLAHAN. Yes, Mr. Chairman, I seek time in opposition.

The CHAIRMAN. The gentleman from Alabama [Mr. CALLAHAN] will control 20 minutes, and the gentleman California [Mr. ROYCE] is recognized for 20 minutes in support of his amendment.

Mr. ROYCE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Royce-Andrews-Kasich amendment cuts the operating expenses of the Overseas Private Investment Corporation. It puts it to a level that is more in keeping with the level of business this House has authorized for OPIC. Specifically, this amendment reduces the administrative appropriations by $11.2 million, from $32 million to $20.8 million.

This amendment is supported by a diverse coalition of 12 organizations, organizations who come at it from differing perspectives but groups united by the view that the U.S. Government should not be in the business of insuring American corporations to invest abroad and making loans to American corporations to encourage them to invest abroad.

Now, there are many in this body who would like to see OPIC closed. That is the position of the 12 groups. Many of us fundamentally question why the American taxpayer should be supporting a government agency that makes loans and issues risk insurance when these services are available privately. And despite what OPIC and its supporters say, there are companies that would do this business. Maybe not at the rates that OPIC offers, but that is the point. OPIC is a business subsidy.

So let me ask my colleagues, many of whom have worked hard to give to the private sector what government services can better be done by the private sector, let me ask them to ask themselves why should OPIC be an exception to this rule? Why do we have a government agency competing with the private sector? That is the American financial services sector that they compete with, the most efficient in the world. And also ask why the American taxpayers should be liable to potentially multi-billion dollar losses, and that is what we are talking about.

Do Members in this body recall the S&L crisis? It was not that long ago. Yes, OPIC has not had large losses, but the problem is there. Remember, we were given assurances that there would be no S&L problem.

So I want to point out OPIC's risky loans. Members, look at how many are rated D or D-minus or F or F-minus and FF-minus. Common sense should tell us something is not right here.

And many of us wonder why some of our largest businesses should benefit from OPIC subsidies. Do Coca-Cola and AT&T and McDonald's really need OPIC to make a profit abroad?

Let us not show so little faith in the power of American businesses and the American economy, which year after year ranks as the most competitive in the world, and please do not tell me that Coca-Cola, which just announced an 88 percent increase in earnings for the second quarter, is not a world class company because of the Overseas Private Investment Corporation.

Do not get me wrong, these are great companies, the backbone of the American economy, but they do not need OPIC, and we hear that OPIC does not cost the American taxpayers a dime. That is a mantra of OPIC supporters, yet the Congressional Research Service has reported that OPIC has cost a minimum of $73 million over the last few years, and the Congressional Budget Office tells us that we would save $296 billion if we ended the program.

Last, we hear that OPIC creates jobs. I ask my colleagues that logic. Members come down to the floor every day and praise the American economy. They say how dynamic it is, and they are right. We have the most dynamic economy in the world. That is not because we have OPIC creating jobs. Consider that the Congressional Research Service has reported there is little theoretical support or empirical evidence which supports claims that subsidizing exports or overseas investment offers a positive net gain in jobs in the U.S. economy.

There is simply no justification for appropriating $32 million to OPIC today. This is a 50 percent increase in appropriations from 1994, and no more business is being authorized than was authorized then.

I ask my colleagues why does OPIC need this additional money? Let us cut it back.

Mr. Chairman, I reserve the balance of my time.

Mr. CALLAHAN. Mr. Chairman, I ask unanimous consent that one-half of my time be yielded to the gentlewoman from California [Ms. PELOSI] and that she be allowed to further yield time.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. CALLAHAN. Mr. Chairman, I rise in opposition to the amendment, and in staunch opposition, but I first yield 3 minutes to the gentleman from Nebraska [Mr. BEREUTER], who is chairman of the Committee on International Relations' Subcommittee on Asia and the Pacific.

Mr. BEREUTER. Mr. Chairman, I do rise in strong opposition to the Royce amendment.

Mr. Chairman, they are laughing and gloating in Germany, France and Japan over this amendment to gut the Overseas Private Investment Corporation. Those three countries, among others, will be fighting over the hundreds of thousands of jobs and trillions of dollars in infrastructure projects if the House votes to pass the Royce amendment and gut OPIC, United States foreign policy and investment insurance agencies. The Japanese Government already out-subsidizes our investment insurance 6 times to 1 as a percentage of GDP. Germany spends 5 times more, and France 4 times more than the United States to help their companies win lucrative infrastructure projects in the developing world, and those infrastructure projects lead to a whole series of other American job creating activities.

Mr. Chairman, this Member finds it truly amazing that some of our well-intended colleagues would thus hurt our Nation in so shortsighted an effort to eliminate funding for an agency of the Federal Government which runs at no net cost and helps make our companies competitive in the global marketplace.

At a time when the U.S. trade deficit is hitting record highs, supporters of the Royce amendment feel compelled to remain in those isolated, academic, ivory towers chastising government involved in overseas investments. Well, Mr. Chairman, in a perfect world governments would not have to be involved in subsidizing overseas investments.

In fact, I have added an amendment to an OPIC authorizing bill moving through the House Committee on International Relations which requires U.S. officials to negotiate with foreign competitors and put an end to these subsidies, and that is what we try to do through the OECD. We are making progress, but we are nowhere close. But until that time, therefore, our workers, our exporters, our businesses cannot afford to have the U.S. House of Representatives vote like a bunch of isolationists in ivory towers. The fact remains that foreign governments will fight and spend money to rustle jobs away from hard-working Americans.

Mr. Chairman, this Member urges his colleagues to vote for American workers and vote against the Royce amendment.

Let me bring, finally, a few facts to the attention of my colleagues. OPIC makes a profit every year since its creation. Here is what the net, net annual income was for OPIC. Starting in 1971, $25.9 million. Today, last year, that particular year, 1996, $208 million, nearly $209 million. Here is the cumulative impact of U.S. exports generated, I hope, by OPIC. It has increased from $687 million the first year, and we believe this, $52,823,000,000 this last year.

That is how much U.S. exports cumulatively was generated by OPIC.

Finally, take a look at the cumulative U.S. jobs created and generated by OPIC, and I mean directly, despite what we heard a minute ago. It has increased from a relatively small amount, 4,800 the first year; this year, 225,000 plus. That is how many additional American jobs were created by OPIC.

I urge my friends to oppose the Royce amendment.

Mr. ROYCE. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. KASICH].

Mr. KASICH. Mr. Chairman, let me get the attention of my colleagues in the House on both sides of the aisle. We were just able to pass a bill that started to dramatically reform the operation of the Federal Government and get us to a balanced budget.

What is this vote about? This vote is about reforming corporate welfare.

Couple years ago we passed a bill that reformed welfare for people who did not have lobbyists. Now we have a family friendly bill that is on the House floor, and the reason why I say it is a family friendly bill is there have been more lobbyists hired to defend this big giveaway of the Federal Government, put more food on the plates of more people who were hired to represent the special interests in this regard. The fact is this program does not make any money. This program only gets money because of transfers of interest payments, intergovernment. It would be like arguing that the Department of Education makes money on their student loan program. It makes no money.

It also says to all of my colleagues back in their districts, when you have a woman, when you have a man come up to you and tell you they want to start a small business and they would like a loan to open up a small business, they do not get these kind of sweetheart deals that the most profitable large multinational corporations get. Our operations in the amount of business we do with China does not involve one dime of any of these guarantees.

The fact is, if these business agreements make sense, let them get loans like everybody else does in this country. We do not need sweetheart deals, loan guarantees and direct loans from the Federal Government to help big business. Big business can compete and win, small business can compete and win by having an aggressive strategy to market their products, by balancing the budget and having an element of fairness.

So what I would suggest to Republicans as well as Democrats, if they marched to this floor and they voted for welfare reform bill that reformed the welfare programs for people who do not have lobbyists, it is time to come to the floor and cast a giant vote against corporate welfare and for the people who live next door.

Ms. PELOSI. Mr. Chairman, I yield 2½ minutes to the distinguished gentleman from Connecticut [Mr. GEJDENSON], a senior member of the Committee on International Relations.

Mr. GEJDENSON. Mr. Chairman, if the fact that there was a lobbyist in this town working on a bill was a reason to vote against it, then I guess everybody is going to vote against the tax cut tomorrow because the reality is on the merits we cannot beat OPIC. It makes money for the Treasury, it pays its own way, and it has created in the range of a quarter of a million high paying jobs in America. Where OPIC is rightfully prohibited from participating in places like China, when an American company goes after a contract, it gets a German Government insurance program and has to use German subsidiaries to provide much of the working product. The American private sector that is in financial instruments of this nature supports OPIC. They are not for its closure.

This is taking a great racehorse that has won race after race, tying up a leg or two and say, gee, it does not run so well any more. If we cut the money out of OPIC; it is its own money, it is not taxpayer money, it is money that is made in profit on its operations; we will end up with an agency that will not adequately be able to monitor its own operations. Kill it rather than vote for this amendment; $2.7 billion in reserves in the Treasury, $52 billion generated in exports, a quarter of a million jobs; if this is welfare, where is the welfare in this? This is a place where the private sector will not go, it is a place the private sector supports our Government's actions. It puts American families to work, it keeps us competitive internationally.

□ 1845

Some people around here talk, posing for holy pictures. This may be one: Members stand up and pose that they want to end a Government program; but do they not look at the facts if they are going to try to do that? Because the facts say this program is good for America, it is good for taxpayers, it is good for families that depend on the jobs from this very program.

Reject the amendment. It hobbles a great racehorse that does well for our economy.

Mr. Chairman, I urge Members to defeat this amendment and support a program that organizations and men and women in unions and nonunions alike benefit from the contracts American corporations get. This is an ill-advised amendment that will harm American workers.

Mr. ROYCE. Mr. Chairman, I yield 4 minutes to the gentleman from New Jersey [Mr. ANDREWS].

Mr. ANDREWS. Mr. Chairman, I would like to thank my friend, the gentleman from California, for yielding time to me.

I urge my colleagues to vote in favor of this amendment. Mr. Chairman, I think the American people ought to know tonight where their money is going. Some of it is going to provide a loan guarantee for McDonald's to open restaurants in Brazil. Some of it is going to help subsidize the operation of a luxury hotel in Bermuda; or Jamaica, excuse me. Some of it is going to help General Electric Co. build a light bulb factory in Hungary.

Mr. Chairman, that is where the American people's money is going tonight, courtesy of OPIC. Where we should go tonight is a yes vote in favor of this amendment.

We are going to hear the arguments about the miraculous and wonderful things OPIC does. OPIC makes money because they invest in profitable deals. Mr. Chairman, if the deals are so profitable, then let OPIC proceed as a private firm with private risk and private capital and put their money at risk, not the money of the men and women that we represent.

We will hear that OPIC does not cost the taxpayers any money because what OPIC brings in is greater than what it puts out every year. The Congressional Budget Office disagrees. Its analysis is that if we terminated OPIC, over a 5-year period we would save $296 million.

Mr. Chairman, OPIC also makes money the way another Federal agency used to make money. In 1987 the head of that Federal agency said that times are bright, good times are ahead, the revenues are rolling in. The head of that agency was the head of the Federal Home Loan Bank Board. He was talking about the savings and loan institutions. The good times ended, our money rolled out, and that agency lost money, the same way OPIC would if its deals go sour.

We will hear that OPIC creates lots of jobs. But then we will hear the Congressional Research Service say that there is little or no empirical evidence to support that claim.

We will hear that exports for our country will dry up, that we will be unilaterally disarming in the war for exports if we get rid of OPIC. Here is the evidence. In countries that were eligible for OPIC treatment, U.S. firms exported $3.6 billion last year. But in the Peoples Republic of China, ineligible for OPIC treatment, without one nickel of assistance from OPIC, exports were $52 billion without OPIC. Mexico, which is also ineligible for OPIC subsidy, United States exports, $28 billion, without a shred of help from OPIC. The evidence shows the exports do not increase.

Finally, we will hear that OPIC is a valuable tool to pursue the foreign policy goals of our country. Mr. Chairman, the foreign policy goals of our

country should be decided and executed by us as the duly elected Representatives of the people, and by those who work for the President and the State Department, not by a quasi-public taxpayer-subsidized corporation, which, by the way, has been using its public subsidy this week to lobby us against cutting off its funding.

The letters have arrived, the doors have been knocked on, the advertising campaign has begun. For no other reason, for no other reason, our colleagues should support this amendment because we do not like the idea of people we are funding using that funding to lobby us on how to vote.

Do the American taxpayer a favor. Support our amendment.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from New York [Mr. RANGEL], the distinguished ranking member of the Committee on Ways and Means, who is working on the tax bill.

Mr. RANGEL. Mr. Chairman, let me tell Members why I oppose this amendment and support OPIC. There is no question that this great democracy of ours has been responsible for taking a lot of dictatorships, a lot of military governments, and trying to make democracies out of them. We have had tremendous success in Africa, tremendous success in South America, and the one thing that makes democracies work is not just a good feeling, but that people are eating and people have jobs and people are doing things. That is what is necessary in order to have a democracy.

What is it that really makes a country not look for aid but is willing to be looking for trade? That is where we are looking for economic expansion. It is not just love and affection. We want markets there to sell our goods. If there is no disposable income, if they are only asking for assistance, they cannot buy American goods.

Take Africa. The President of the United States finally recognized that here was a continent that was rich with resources that have not been developed. There are people that are skeptical about investing in Africa because they think these new young governments are unstable. Now comes OPIC and says, we will be there with you. We will give the guarantees. Just the President recognizing for trade purposes Africa has more than doubled the investments that are there.

What I am suggesting: Why would we shoot ourselves in the feet where the investments have increased when we started having OPIC in Asia, it has done well in Latin America, and now comes Africa's chance at bat to say we, too, need investment.

I do not know why when something is working and not losing money, and when the American people go and invest that money, and we know we get our return because our investors normally are buying American-made goods, and if we enrich the people that know that it was America, not France and not Germany that was there for them, for God's sake, do not tell Africa they have the opportunity to enjoy free trade with us and then we encourage American firms not to be there when they need them.

I oppose the amendment. The thing is working. Let us continue to support it.

Mr. ROYCE. Mr. Chairman, I yield 2¼ minutes to the gentleman from Illinois [Mr. JACKSON].

Mr. JACKSON of Illinois. Mr. Chairman, if we are serious about Africa, we should give direct loan guarantees to the country that we are serious about, just like we do for Egypt or for Israel. Direct loan guarantees is the way to be serious about investments in these countries.

OPIC, however, is not the vehicle by which we should make these investments. The amendment reduces the administrative appropriation for the Overseas Private Investment Corporation from $32 to $20.8 million. OPIC uses taxpayer money to provide direct loans and risk insurance to Fortune 500 companies, who are in turn firing American workers.

One year ago, the President and this Congress put an end to a six-decade minimum floor of entitlements for poor people, Aid to Families with Dependent Children, or AFDC. In my judgment, that minimal entitlement was justified on the basis of simple humanity and basic morality. But that view was defeated, and the minimum floor was pulled from underneath the poor.

Yet, the corporations, many of whom have been lobbying us all week long, want to continue their AFDC program, or aid for dependent corporations, with their record profits and management salaries and benefits. They have no such humanitarian claim or moral claim to this particular subsidy. The cost to American taxpayers and workers simply cannot be justified.

OPIC bestows upon these corporations welfare through direct loans, subsidized loan guarantees, and political risk insurance. Imagine that, a Fortune 500 company needing political risk insurance in a Third World country.

With the full faith and credit of the U.S. Government and backing of business ventures, OPIC's corporate clients have eliminated thousands of American jobs. With the destabilizing effects of corporate downsizing on American workers and their families, we should not be providing these incentives for America's corporate giants to invest abroad, taking advantage of low-wage costs, lower standards, and often exploitive working conditions of the Third World.

Mr. Chairman, in the final analysis, we must raise their standards, the standards of people in the Third World, not lower ours to meet theirs in an increasingly global economy. Mr. Chairman, if we are serious about Africa and serious about the Third World, let us give the same kinds of loan guarantees to African nations that we also give to Israel and to Egypt. That is fair. Vote in support of the Royce-Andrews-Kasich amendment.

Mr. CALLAHAN. Mr. Chairman, I yield 2½ minutes to the gentleman from Illinois [Mr. MANZULLO].

Mr. MANZULLO. Mr. Chairman, OPIC provides a unique service to this country. It provides political risk insurance. That does three things: currency and convertibility, political violence, and seizure of assets. That is pretty unusual.

There is a statement made that OPIC, if it is really great, can be privatized. The answer is no. I have a letter here from Zurich Insurance Group that is addressed to me in direct response to a Dear Colleague letter sent around by the gentleman from California [Mr. ROYCE] and the gentleman from Ohio [Mr. KASICH] asking if Zurich America intends to enter the same market as that of OPIC, if OPIC is eliminated. The answer to that is no.

Sean Cassidy, the vice president of Federal Affairs, said that Zurich does not intend to compete directly with OPIC, but rather, complement OPIC's coverage. So, therefore, there is no company that is ready to pick up OPIC should it be privatized.

Second of all, here is how OPIC makes money. This is Price Waterhouse's statement for the past year. OPIC takes in $299,000, and here it comes, through political risk insurance premiums, that is $81 million, investment financing, $52 million, interest on U.S. Treasury securities, $166 million. Even if we take out the interest on the U.S. Treasury securities, it still comes up making about $45 million a year. It actually makes money. OPIC makes money and it provides an insurance service that nobody else can provide in this country.

What amazes me is the fact that OPIC steps into very unique situations and makes projects nobody else can do. Look what is going on just in Africa alone: In Uganda, Agro Management; in Tanzania, NBS Card Service in Africa; in Ethiopia, the Louisiana-Baton Rouge Schaffer & Associates; in Tanzania, a small business with ACG Co.; with Tanzania suppliers, ADCO.

All over Africa we see OPIC stepping into the gap, so we have small, emerging companies that are getting a foothold, and then after a while, such as in Hungary, OPIC backs out because it is no longer necessary to have political risk insurance, because when a country becomes a member of OECD it no longer is eligible for political risk insurance under OPIC.

So we have an organization here that actually makes money; not on paper, it

actually makes money. We would urge the defeat of that amendment.

Mr. ROYCE. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. PAUL].

Mr. PAUL. Mr. Chairman, I thank the gentleman for yielding time to me. This is a form of welfare that should be stopped. We have poor man's welfare, foreign welfare, and corporate welfare. This is an example of foreign and corporate welfare. The program really ought to be abolished.

If it is true that this program pays its own way, then there is no need for us to be here. Why are they asking for $32 million? It is a good program. Some insurance company will take it over.

□ 1900

Obviously, they need the $32 million that is in here. But there is something else involved here that is very, very important. On the very chart that was standing here a minute ago, it was showing that they do fabulously, this tremendous income of $299 million in 1996, which is true. But in looking at this Price Waterhouse balance sheet, financial report for 1996, it shows that OPIC owns $2.47 billion worth of bonds. Right above it, as a matter of fact, the line went through it, so you could not read it, it said that the income from these treasuries was $166 million. That is what it is costing the taxpayers.

We are giving a subsidy to OPIC in the back door by paying interest. It appears on the budget as an interest payment. I mean this is really close to outright deception on the part of many here in the Congress as well as the American people. So it is not paying its own way.

The other argument, we heard it expressed several times now, is that this is a very necessary program because it goes where the private market will not go. That is precisely the reason we should not be there, because there is a risk. The businessman will not go there because it is too risky.

So what do we do? We ask the American taxpayers to back it up. What to do? To take our businesses from this country, export the business and export the jobs. Most of this money goes to big companies. If we look at their record over the past 6 years, these big companies have had a significant shrinkage of employment. These jobs are going overseas. Programs like this serve to export jobs, and this amendment should be passed.

Ms. PELOSI. Mr. Chairman, I yield 10 seconds to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Chairman, we are allowing OPIC to spend money that they have earned. This is not a new appropriation.

Ms. PELOSI. Mr. Chairman, we have had considerable interest on our side on this issue. Members were not aware that there was going to be a time limitation on this. I ask unanimous consent for 10 additional minutes on this side in opposition to the OPIC amendment.

The CHAIRMAN. The Chair is only able to entertain such a request if it is 10 additional minutes for the proponents and opponents. Is that the gentlewoman's request?

Ms. PELOSI. Yes, Mr. Chairman.

The CHAIRMAN. The Chair's understanding of the request is 10 additional minutes for the opponents and 10 additional minutes for the gentleman from California [Mr. ROYCE].

Is there objection to the request of the gentlewoman from California?

There was no objection.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. TRAFICANT).

Mr. TRAFICANT. Mr. Chairman, I want to talk about a different aspect. After encouragement from the White House themselves, a company in my district, Buchite International, is the only American company to agree to be a model company for investment in Gaza. Mr. Chairman, they have been ripped off big time, and we cannot allow this to happen.

In their dealings with the Cairo Amman Bank of Gaza, the corporate accounts were opened without proper documentation. Corporate checks denominated in dollars were endorsed and cashed by individuals without first being deposited into the account.

Canceled checks were not returned. Corporate funds in excess of $100,000 were used to guarantee an overdraft facility of a private individual without authorization. The company had no knowledge or approval of this. A letter of guarantee was written by a bank without notifying the company, in strict violation of company instructions. Four point four million was invested, forcing them to default on a $2 million loan.

Tomorrow I will be bringing an amendment and there may be some technicalities to that amendment. I want the Congress to allow that amendment to go forward because the PLO and Palestinian authorities cannot rip off American companies. We cannot tolerate that. Vote your conscience on any of these amendments.

Mr. ROYCE. Mr. Chairman, I yield 2 minutes and 15 seconds to the gentleman from New Hampshire [Mr. BASS].

Mr. BASS. Mr. Chairman, I rise in strong support of the pending amendment which would reduce the OPIC account by 11.2 million. Let me emphasize this is not abolition of OPIC. This is a reduction in the administrative account. If I may quote from a letter from my distinguished colleague from California, he states here that OPIC uses taxpayers fund to provide loans, and the amendment would bring OPIC's administrative appropriation in line with its stated administrative cost.

According to OPIC, administrative expenses were 20.2 million in 1994. Even though OPIC has the same insurance and loan caps as it had in 1994, it has requested a 50 percent increase in appropriations from what administrative costs were in 1994.

It is a simple question of whether or not this corporation can operate with the same workload as it did in 1994, with the same administrative overhead.

We have heard about the fact that the loans are going to Fortune 500 companies that only 3 percent or three loans went to small businesses and 41 went to the Fortune 500 companies. But aside from subsidizing these megacorporations, OPIC has risked over $8.7 billion in U.S. taxpayers money by underwriting risky investments in unstable regions of the world. Let me remind my friends that, should political unrest and turmoil upset these foreign markets, American taxpayers will be liable for the losses of OPIC insured corporations.

I heard one of my colleagues mention earlier, remember that the FDIC and the FSLIC could never go wrong. They always would make money and we know what happened in the savings and loan fiasco.

Mr. Chairman, OPIC is not contributing to reducing the deficit. The resources that come from the OPIC premiums that are received do not go into the Treasury. They go, as they should, to income, to a capital account to reduce the probability or possibility that there will be a default.

Mr. Chairman, I urge my colleagues to join the Americans for Tax Reform, Capital Watch, Citizens Against Government Waste, Citizens for a Sound Economy, Competitive Enterprise Institute, Friends of the Earth, National Taxpayers Union, Public Citizens and USPIRG in supporting this amendment.

Mr. CALLAHAN. Mr. Chairman, I yield 2 minutes and 30 seconds to the gentleman from New York [Mr. GILMAN], chairman of the Committee on International Relations.

Mr. GILMAN. Mr. Chairman, I rise in opposition to the amendment being offered by the gentleman from California [Mr. ROYCE] making a 35 percent cut in the operating budget of the Overseas Private Investment Corporation. The funds in OPIC's $32 million administrative budget are fully offset revenues from those companies utilizing OPIC services.

I might add that the revenue has been increasing each and every year. In short, the cutting amendment does not save $1 of taxpayer funds.

My colleagues should be aware that each year for the past two decades the premium and fee income from OPIC's programs have covered all of its operating costs. The adoption of this amendment would simply reduce the

use of OPIC's own revenues. This amendment prevents OPIC from properly managing its $23 billion portfolio of insurance policies, of loan guarantees and loans to American businesses.

While OPIC has some $2.7 billion in reserve to protect the U.S. taxpayer, this amendment would not allow OPIC to use enough of its reserve funds to support its portfolio. In short, it is penny-wise and pound-foolish and will put the American taxpayer at risk.

By depriving the agency of administrative funds for next year, it will put thousands of jobs at risk and will stop any effort to develop new trade and investment initiatives in sub-Saharan Africa. OPIC does not cost a single taxpayer dollar. OPIC is required by law to operate on a self-sustaining basis. And since 1971, OPIC has reimbursed the government for every dollar of actual outlays it has received. Every objective review of OPIC's operations undertaken over the past two years by the CRS, J. P. Morgan and independent accounting firms and the General Accounting Office concluded that risky markets still exist where the private sector is reluctant to operate without public guarantees and insurance, such as those provided by OPIC.

This agency has a proven track record of experiencing few claims losses and recovering a large portion of its claims. All of our major trading partners have insurance and export financing agencies like OPIC. Taking us out of the export and investment assistance business is tantamount to unilateral disarmament of our American investment overseas. I urge defeat of the measure before us.

Mr. CALLAHAN. Mr. Chairman, I yield 1 minute to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Chairman, both the gentleman from New Hampshire and the gentleman from New York have talked about the administrative cost increases. Let me point out that the size of the loan portfolio has grown dramatically because of the mandate of Congress in 1994.

Take a look at the green bar chart. This shows the escalation of administrative costs from $19 to $32 over this period of time. But look at the loan portfolio they are managing: $160 up to $260, $310. Actually they have been very, very conservative in the amount of money they have spent for administrative costs. They have done that despite having an authorization to manage this well. They have managed it well. They are doing a good job. We ought to continue to support them, to implement the congressional mandate.

Mr. ROYCE. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL. Mr. Chairman, equity in our approach to welfare, safety for the American taxpayer, and sending the right signal to those countries that have not yet provided a reliable place for investment in the world, these are the three arguments that compel support for this amendment.

Equity. We have with difficulty struck down welfare program after welfare program or restricted it. We must be prepared to do the same when it comes to an aspect of corporate welfare, an aspect of favoritism for those companies who cannot stand on their own.

A question of risk. The chart that I have to my left is prepared by the Congressional Budget Office. That does a risk rating of the loans which are being insured by OPIC. It should not surprise us when we look at it to see such a concentration of these loans at the risky end of the spectrum, D, D minus, E, F, F minus. Why should it not surprise us? Because by definition OPIC is offering insurance for loans that were not otherwise able to be insured in the market.

Finally, sending the correct signal. There is something important that the market tells us when the market says it will not insure an investment in a country. It tells us that that country has not yet established its economic or governmental structure in such a way as to attract investment. And by affording insurance anyway, which the United States does through OPIC, we are sending a message and actually deterring, retarding the progress that that country might otherwise make. Driven by the necessity of coming into the world standard so that it would attract the type of insurance that would be available in the private market, fairness to all welfare recipients, safety for the American taxpayer, and sending the right signal to countries that have far to go, all compel a "yes" on the Royce amendment.

Ms. PELOSI. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. DAVIS].

Mr. DAVIS of Illinois. Mr. Chairman, not very often will my colleagues find me taking a position that is contrary to that of my colleague from Chicago. But I rise in opposition to the amendment to cut OPIC.

I do so because we are a pace setter. We are a Nation that is known as a leader. We have been a leader in business and industry all over the world. I have been told that you cannot lead where you do not go, just as you cannot teach what you do not know.

If I know one thing, I know that if our corporations, if our companies, if our businesses are not there in the marketplace, then I know that they cannot do business.

□ 1915

And so that I urge that we oppose this amendment and let OPIC do its job, do its work, do its business.

Mr. ROYCE. Mr. Chairman, I yield 2 minutes to the gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Chairman, this Congress in the last 2½ years has sought to balance the Federal budget and get our country's financial house in order. We have sought to save our trust funds for not just future generations but present generations. And, thirdly, we have attempted as hard as we can to transform our caretaking, social, corporate and agricultural welfare state into a caring opportunity society.

We have worked hard to help mothers get work, a opportunity for employment and training to be free from welfare. We have seen an agricultural bill, the Freedom to Farm, wean farmers off welfare. And yet when it comes to corporate welfare, we seem to find every defense possible to continue it.

This amendment is not going to eliminate OPIC, it is going to reduce its administrative costs. There are some of us who would sincerely want to eliminate OPIC, totally privatize this operation. But, Mr. Chairman, this is a modest amendment. I support it. It is in line with everything we have attempted to do in transforming our caretaking, social, corporate and agricultural welfare state into what must become a caring opportunity society.

Ms. PELOSI. Mr. Chairman, I yield 1 minute to the gentleman from California, Mr. BRAD SHERMAN.

Mr. SHERMAN. Mr. Chairman, I wish to address those who call OPIC corporate welfare.

We should remember who creates the risk in the first place. When the terrorists take the plane, they do not shoot the Norwegians first. They go after Americans because we play a prominent role in the world. And when rogue countries think of nationalizing assets, they do so because of American foreign policy and they threaten American assets first. We have an opportunity to insure our companies from risks that we as a government create.

There are those who say that OPIC is the next S&L mess. This amendment is an opportunity to make that a self-fulfilling prophecy. If we cut the administrative costs, if we cut the safeguards, if we cut those who are watching to make sure that sound loans and guarantees are made, then we can sit back and laugh as mistakes are made, and sit back and say, "We told you they would make mistakes."

Mr. ROYCE. Mr. Chairman, I yield 2¼ minutes to the gentleman from Florida [Mr. MILLER].

Mr. MILLER of Florida. Mr. Chairman, I thank the gentleman for yielding me this time and I rise in support of this amendment.

I wish to reiterate an important point. The amendment does not eliminate OPIC. It merely reduces OPIC's administrative expenses down to a fiscally responsible level.

I am speaking on behalf of this amendment today because I believe subsidizing large corporations represents corporate welfare. Large multinational companies simply should not

receive special treatment from the Federal Government.

I ran for Congress with the hope of reducing the size and scope of the Federal Government. But how can we ask one sector to accept cuts in Federal subsidies if we are not applying this practice fairly? Like the special interest groups, big business has to wean itself off the Federal dole as well.

In order to successfully reduce the size of government, every single line item that the Federal Government funds needs to be reviewed. These items need to meet three criteria: First, is the Federal program achieving its goal? Second, does it represent a true Federal priority? And, third, does it duplicate other existing Federal or private initiatives?

The Overseas Private Investment Corporation does not meet these criteria. To begin with, the program is not meeting its intended goals. Originally developed to help small domestic businesses compete internationally, OPIC funds are instead diverted towards multinational corporations that do not need special subsidies.

Second, this program does not represent a true Federal priority. Funding biomedical research to save people from life-threatening disease is a vital priority. Supplying weaponry and soldiers to keep this country safe is a Federal priority. However, providing corporate giveaways to large multinational companies in no way represents a Federal priority.

And finally, OPIC competes with and effectively crowds out private sector initiatives. Companies such as Exporters Insurance Company Limited, Zurich American Insurance Group, both provide risk insurance at competitive rates and terms without using hard-earned taxpayer financing.

For these reasons I encourage support of this amendment. This is not a needed Federal responsibility. There is a private sector alternative. We should support this amendment.

Mr. CALLAHAN. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. MANZULLO].

Mr. MANZULLO. Mr. Chairman, I just heard my colleague from Florida say that Zurich American is ready to take over OPIC, and I put into testimony a letter from Zurich American. They are not interested in taking over OPIC. Zurich American does not want to take over OPIC. We cannot privatize it because no one wants to go into that market, period. That should settle that argument.

Second of all, this is the rate of loss. It is 1 percent. It is one of the smallest rates of loss that any company can have. And it is not corporate welfare because American companies, multinational corporations, if they do business in more than one country they are multinational, they have to pay very high premiums to buy this insurance. It is the premium risk insurance that accounts for most of the profits that OPIC turns back.

Fourthly, today we are here not to get any new money from the government treasury for OPIC but to use the money that OPIC has made in terms of profits.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. MANZULLO. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, I wanted to say, with all that risk assessment we had from the gentleman from California [Mr. CAMPBELL], that the recovery rate is 98 percent. Ninety-eight percent recovery rate.

Mr. ROYCE. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. EHRLICH].

Mr. EHRLICH. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, a lot of us came to Congress to stop the endless growth in government, and we talk an awful lot about it, restoring a sense of common sense to what we do in this town. As an effort to accomplish those objectives, a lot of us have focused on flawed and nonsensical programs such as OPIC.

At the risk of being redundant, we have heard a lot of reasons to eliminate OPIC here today. It is risky, its portfolio has grown dramatically over the last several years, it is biased towards large Fortune 500 companies, it crowds out other entities in the market, it duplicates the products of private lenders and insurers. For those interested in the market, I should add. And it is unnecessary.

Emerging markets attracted $243 billion in private investment in 1996. OPIC financed $2.2 billion. These are sufficient reasons to eliminate OPIC, but what we are debating here today is simply the increase of administrative costs, and I rise in support of this more limited objective, in support of the Royce-Kasich amendment.

Make no mistake about it, there is no reason to increase OPIC's administrative budget. In fiscal year 1994, as has been stated, OPIC's current insurance and loan caps were established. OPIC's administrative expenses were $20.2 million. Even though OPIC has the same insurance and loan caps today as it had in 1994, it requested a 50 percent increase in appropriations above that 1994 level.

Since OPIC is not authorized to increase higher levels of insurance or loans and is a self-financed agency, there is no need to increase appropriations for OPIC's administrative expenses.

Mr. Chairman, at a time when Americans, in fact we are celebrating the fact that the government has been asked to do less and cut wasteful government spending, OPIC should not ask this Congress to do more. It makes no sense. Support the amendment.

Ms. PELOSI. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentlewoman from California for yielding this time to me, and I am saddened that I have to disagree with my other friend from California.

But let me say this in rebuttal to all I have heard about OPIC. It does creates jobs. In fact, if we look right over here, we will see that a single project has created some 260 suppliers across the Nation. It creates small business opportunities and it does create jobs. At the same time, we will see this whole list of small business owners who are working because of OPIC.

How much can we realize that this is actually an opportunity for American businesses to do international business? Why would we shackle the hands of business to go across the Nation, to go across internationally, to go into Africa and India and China and result in dollars that come back to this country, where those who are in small businesses and elsewhere pay the taxes that make this government run?

Do not shackle the hands of those who are working internationally. Let us stand proud and make sure that we continue to create job opportunities and jobs for the citizens of America through small business.

Ms. PELOSI. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas [Mr. BENTSEN].

Mr. BENTSEN. Mr. Chairman, this is a penny-wise and pound-foolish amendment that is based on a flawed understanding of classical economics, and it actually has some tinges of mercantilism. It believes in a perfect world, and the fact is it is not a perfect world.

When we look at the facts we will find that the United States provides export subsidies amounting to about 3 percent of our exports, but the rest of the world, or many of our trading competitors, provide anywhere from 20 to 40 percent subsidization. So we are already dealing at a disadvantage in that case.

Second of all, this theory that this is somehow where the private sector would go is, I think, very flawed as well. Because what we are talking about is lending the credit of the United States under a very controlled program, with losses that the gentleman from Nebraska pointed out are lower than most American mortgage pools are, and the recovery rate better.

The fact is the private sector will not go into these areas. If we are going to start believing in this theory, let us not stop here. Let us go after student loans and FHA, because that is the same theory as we are applying in that case.

Do we really want to walk away from emerging markets and have U.S. businesses walk away from that? There is

no proof whatsoever, no proof provided by Americans for Tax Reform, or any other group that we have asked for, that there is crowding out of the market. That in and of itself is a flawed theory, that somehow we have reached our full capacity utilization, when we know that we have not.

So this is a bad amendment, it is a bad idea, it is bad for the American economy, and I hope our colleagues will vote it down.

Mr. ROYCE. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Chairman, this idea that OPIC is creating jobs in the United States is so much nonsense I can hardly contain myself. We are talking about taxing the hardworking people of the United States in order to provide loan guarantees and subsidies for people who, not that they want to sell products overseas, but so that they can build manufacturing units overseas.

For people that want to know what that means, that means we are building companies that will compete with Americans and put Americans out of work and we are taxing the American people to do it. This is absurd. This is a sin against average American working people.

Furthermore, what kind of countries are we talking about? These are not struggling democracies we are trying to encourage investment in. These are dictatorships. These are bloody gangster regimes that cannot get private sector financing because it is too risky.

Now, of course, by getting the American taxpayers to pony up the money, to take all the risk, are we encouraging those gangster regimes to liberalize? Not only are we putting our people out of work, we are telling the gangsters to go ahead and suppress their unions, go ahead and suppress freedom of speech, go ahead and suppress competition, let our businessmen in, because we are going to subsidize them.

□ 1930

This is horrendous. We are taking away the incentive for dictatorships to liberalize and become free. We are taking jobs away from our people. The only thing wrong with the Royce amendment is that it does not go far enough, it does not eliminate this abomination from the budget altogether, this attack on the well-being of the American people.

I am with the gentleman from California [Mr. ROYCE]. Let us cut it down if not eliminate it.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 1 minute to the gentleman from Oregon [Mr. BLUMENAUER].

Mr. BLUMENAUER. Mr. Chairman, I thank the gentlewoman from California [Ms. PELOSI] for yielding me the time.

It is disingenuous at best to suggest that a vote for this amendment is going to save one dime of taxpayer money. There is a big difference between subsidy and public guarantee. There are some things that are desirable that no individual company is going to take on themselves.

Other countries have similar tools because they work. And in fact, there are a number of countries that invest far more proportionately than we do. Cutting this administrative program off could in fact have a perverse effect by putting more of this loan portfolio at risk.

This amendment betrays a fundamental lack of understanding about how the program works. In terms of the notion of crippling our ability to oversee and manage this larger portfolio, it could have the perverse effect of losing taxpayer money and have these guarantees kick in. And last, but not least, it would make it impossible to enable this agency to move into some of the riskier markets where we need the power of the free market to help transform this society.

Mr. ROYCE. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. JACKSON].

Mr. JACKSON of Illinois. Mr. Chairman, let me once again rise to challenge a couple of arguments that I heard in support of this amendment and certainly congratulate the gentleman from California [Mr. ROHRABACHER] for an outstanding speech that he just gave. No truer words could have ever been spoken in support of this particular amendment.

I want to go back to Africa for a moment, because several of my colleagues since I spoke initially indicated that these corporations subsequently invest in Africa. In the final analysis, Mr. Chairman, if we really trust African leaders, again, we should do for Africa what we do for Israel and what we do for Egypt, give them direct loan guarantees.

Nothing could be more paternalistic than to say that the only way we are going to invest in Africa is through a U.S. corporation in an undemocratic, un-American regime, and put the U.S. taxpayer dollars at high risk if in fact that government is toppled and we find ourselves on the wrong side of the human rights equation.

Once again, Mr. Chairman, I rise in support of the Royce-Andrews-Kasich amendment. I would encourage my colleagues, particularly those colleagues who voted in support of reducing this program in the last Congress, an opportunity to vote again on behalf of the side of the working people in our own country.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2 minutes to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Chairman, I rise against this amendment. OPIC has, since its creation, really protected the U.S. investment it has made overseas. Argument can be made, and persuasive arguments have been made, as to why perhaps this should not be considered. But that persuasive argument, I suggest to my colleagues, can be appropriately argued somewhere else other than OPIC.

Consider these facts: Not one dollar has been used, been lost, as a result of the taxpayers' money making administrative costs. In fact, OPIC is mandated by Congress to be self-sustaining. It is self-sustaining, paying for its administrative costs. This amendment would deny OPIC the ability to fulfill its 1994 mandate that says raise its portfolio from $11.5 billion to $23 billion. The Royce amendment would undercut that ability to fulfill that.

It is not unreasonable to assume that the Government would provide risk insurance to allow for countries that do not have the economic stability to have jobs in development. That also creates investment back here in America, if not jobs, certainly investment that goes back into applying for economic development for American jobs and American citizens here.

Mr. Chairman, OPIC supports more than 10,000 new American jobs here as a result of that investment. Yes, I was one of those congresspersons that my colleague, the gentleman from Illinois [Mr. JACKSON] referred to, because I know of a company, indeed, that has participated in OPIC, will not only take their monies but borrow from OPIC and add more monies to make sure their investment is a sound investment in South Africa.

It is working, it is working in countries, not only in South Africa, but other countries that want to remove themselves from a dictatorship and embrace democracy and have opportunity for economic development. This is the right way for America to go. We should be leaders on this. Vote no on the Royce amendment.

The CHAIRMAN. The Chair would inform Members that the gentlewoman from California [Ms. PELOSI] has 1 minute remaining, the gentleman from California [Mr. ROYCE] has 2 minutes remaining, and the gentleman from Alabama [Mr. CALLAHAN] has 5¼ minutes remaining.

The gentleman from Alabama has the right to close, preceded by the gentleman from California [Mr. ROYCE].

Mr. ROYCE. Mr. Chairman, I yield 1 minute to the gentleman from New Jersey [Mr. ANDREWS].

Mr. ANDREWS. Mr. Chairman, I want to thank the gentleman from California [Mr. ROYCE], my friend and colleague, and also the gentleman from Ohio [Mr. KASICH], the chairman, for their work on this amendment.

This week, our constituents are going to have taxes taken out of their paycheck. And each week we go home

for the weekend they ask us, "Congressman, what did you spend my money on this week?

If my colleagues are prepared to tell their constituents that this week they spent their money to help the McDonald's Corp. in Brazil, then oppose our amendment. If my colleagues are prepared to tell their constituents that this week they spent their money to help the General Electric Corp. in Hungary, then oppose our amendment. But if my colleagues believe, as we do, that the time has come to have equity in the way we disperse welfare and to stop corporate welfare, then support our amendment, as so many did in voting to limit OPIC last year.

Ms. PELOSI. Mr. Chairman, I yield myself the remaining 1 minute.

Mr. Speaker, I commend and applaud our colleague from California [Mr. ROYCE], whom we all hold in such high regard, for his work in fighting corporate welfare. I applaud him and the gentleman from Ohio [Mr. KASICH] in their fight against corporate welfare. Indeed, I join them in their fight against corporate welfare. But, Mr. Chairman, OPIC is not corporate welfare. OPIC does not cost the taxpayer a single dollar.

Some of the points our colleagues have made in the course of fighting this amendment this evening bear repeating. OPIC is required by law to operate on a self-sustaining basis. Since 1971, OPIC has reimbursed the Government for every dollar of actual outlays it has received. OPIC produces a positive cash-flow for the Government because the fees it charges clients, companies exceed its total cost.

OPIC creates American jobs by promoting exports. OPIC has a unique foreign policy role, and OPIC levels the playing field in the global competition. All of America's major economic competitors have OPIC-like agencies to bridge commercial gaps in emerging markets. Let us not tie the hands of our companies in the international market. I urge my colleagues to vote against the Royce amendment.

The CHAIRMAN. The gentleman from California [Mr. ROYCE] has 1 minute remaining.

Mr. ROYCE. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, claims have been made that OPIC is a large benefactor of small business; 97.6 percent of the beneficiaries are corporations with revenues that exceed $1 million. In fact, only one beneficiary had annual revenues less than $2 million.

Private political risk insurance is regularly advertised in publications like The Economist. Recently Exporters Insurance Co. offered to reinsure much of OPIC's insurance portfolio at all existing terms and conditions.

Last, we have got $23 billion at risk, taxpayers' dollars at risk. CRS says that there are savings if we cut this back. There is a cost, according to the CBO, $73 million. There is simply no justification for appropriating $32 million to OPIC today. This is a 50-percent increase in appropriations from 1994, and no more business being authorized.

This amendment is about stopping the train. It is about saying that the House wants to stay in the future of OPIC, this should not be a deal cut in conference committee. This may be the only say this body has on the future of OPIC. Vote to hold the train. We are talking about a modest reduction.

Mr. CALLAHAN. Mr. Chairman, I yield myself the balance of my time.

Mr. PACKARD. Mr. Chairman, will the gentleman yield?

Mr. CALLAHAN. I yield to the gentleman from California.

Mr. PACKARD. Mr. Chairman, I appreciate the chairman yielding, and I reluctantly speak out against my dear friend, the gentleman from California [Mr. CALLAHAN], from my own county, Orange County, where he represents. I wanted to speak to that in just a moment.

But the simple truth is, and I certainly agree with the gentlewoman from California that spoke earlier, OPIC is a self-supporting and self-financed program. It is not a corporate welfare program. It has recorded a positive net income for every year it has operated, and it operates at no net cost to the American taxpayers. In fact, OPIC actually contributes to the Treasury. It provides for these services by charging a user fee that completely covers the operation of OPIC.

In my own home State of California, OPIC has provided support for over 40 projects, generating $3 billion in American exports and over 9,000 jobs. In Orange County, CA, the county where the author of this amendment resides and represents, one company alone has provided $1 billion of American-made services and goods exported and over 3,000 American jobs just because OPIC has helped them.

I implore the Members to stand above the political rhetoric and see that this amendment is voted for what it is, that is that it is not corporate welfare. I urge a no vote on the amendment.

Mr. CALLAHAN. Mr. Chairman, reclaiming my time, I insert for the RECORD at this point a letter from the Vice President to the Speaker of the House.

The letter referred to follows:

THE VICE PRESIDENT,
Washington, DC, July 30, 1997.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representative, Washington, DC.

DEAR MR. SPEAKER: I write to express my strong opposition to the Royce-Andrews-Kasich amendment that is scheduled for House floor action Thursday, July 31.

The Administration believes it is very important to reauthorize Overseas Private Investment Corporation this year. The Royce Amendment would make it impossible to perform its valuable role in supporting American foreign policy and its equally important mission of promoting the competitiveness of American firms in international markets.

Since it was established in 1971, OPIC has supported over $53 billion in U.S. exports. As Vice President, I have personally witnessed what OPIC can accomplish in countries like Russia to open opportunities for American companies and create jobs for American workers.

I had meetings this week with Deputy President Mbeki of South Africa which included OPIC participants. OPIC has provided critical support for many foreign policy and developmental initiatives around the world from South Africa to Russia and the Newly Independent States. Most recently, OPIC has been tapped to play an important part in a new Africa initiative sponsored by both the Administration and Members of Congress.

The Royce Amendment would undermine OPIC's capacity not only to support foreign policy and create American jobs, but also hinder prudent financial management of the existing portfolio and harm OPIC's capacity to level the international playing field while promoting American standards on human rights and workers rights.

I urge you to oppose this amendment.

Sincerely,

AL GORE.

Mr. Speaker, the Royce amendment is an extremely harmful amendment, which is just a back-door attempt to try to kill OPIC in the name of corporate welfare. While I know the gentleman from California believes very strongly in his crusade against corporate welfare, in the case of OPIC he is tilting against the wrong windmill.

OPIC is not corporate welfare. If anything, OPIC is workfare. The truth is that OPIC enables American workers to work hard to take home a living wage and to make first-rate products which can be sold to the developing world. OPIC creates a market for American products. Sure, that helps American companies. But most importantly, it helps over 30,000 American workers each year who benefit from the OPIC-supported projects.

I have listened to the testimony this afternoon of my colleagues, and they are eloquent, and I know their passion and I know where they are coming from. I listened to the gentleman from Ohio [Mr. KASICH] talking about the fact that this is corporate welfare. Let us save this few tens of millions of dollars. Yet, he, just a few hours ago, agreed with the President to give $4 billion more than what this bill gives.

So I think that the gentleman from Ohio [Mr. KASICH] is saving $10 million while agreeing, on the other hand, to give the President $4 billion more. And I do not fault him. I voted for his budget resolution. And he certainly is doing everything he can to ensure that some day we reap a balanced budget, and that is my goal as well. But this is not the way to do it.

This is not an authorization bill to allow OPIC to increase the debt. What they are saying is shut down the collection window, that we have billions

of dollars out here in loans and, therefore, we are going to cut their ability to even collect the moneys. And that is absolutely wrong. And it is not, I am sure, the intent of the gentleman from California [Mr. ROYCE], but that would be the result of this legislation.

A few years ago, the gentleman from Ohio [Mr. KASICH] came to me and said, "Sonny, there is something wrong with OPIC." So I had a study made about privatization of OPIC. I pleaded with the gentleman from Ohio [Mr. KASICH] to meet with me to discuss the results of that study. And 2 years later, he still has not had time to look at the survey that we made at his request.

On the other hand, he has been very busy, he is cutting taxes, he is cutting spending, he is doing all of these good things, and I want him to continue to do those good things. But I wish some of my colleagues would take the time to read the report that we commissioned that justifies every dime that is spent at OPIC.

And speaking of spending moneys, OPIC returns money. What other agency of Government do we have that returns money to us every single year?

□ 1945

They are bringing in each year, according to the Treasury reports, more than enough money to offset this allocation that we are giving to them. They bring in $251 million in profit and they are asking for $92 million of its own collections to continue their operations. So while I certainly respect what the gentlemen are doing, recognize that this is not helping General Electric; this is helping the employees of General Electric. There is a big, big difference. The French do it. The Japanese do it. The Germans do it. So why should we do it is what the gentleman is saying. Let me encourage Members to vote against this misguided amendment and let us continue the operation of OPIC.

Mr. ORTIZ. Mr. Chairman, I rise today in support of the Overseas Private Investment Corporation and to express my opposition to the amendments offered by Mr. ROYCE and Mr. PAUL to H.R. 2159, the FY 1998 Foreign Operations Appropriations Act. These amendments would do nothing but hurt American businesses and American workers.

Mr. Chairman, at a time when American businesses are facing increased competition in the global marketplace, it is inconceivable to me that we, the very government charged with helping our businesses, would obstruct the most important means to this end. To those who support the elimination of OPIC, I implore them to give up the isolationist belief that if we ignore foreign trade deficits, they will simply go away. Nothing could be farther from the truth! We must engage our competitors in the global marketplace or we will become a second place economic power.

Mr. Chairman, there is a reason we have trade deficits with some foreign nations—they actively support their businesses to a much greater extent than we do. If we cut OPIC, we tie the hands of American businesses just as they are poised to step into the ring. My colleagues have to understand this essential fact: the global marketplace is not going to go away. If we stick our heads in the sand and let foreign businesses get the upper hand in the global marketplace, then we are turning our backs on our own people and our own future. Let us make no mistake, Mr. Chairman, we need OPIC.

Mrs. KENNELLY of Connecticut. Mr. Chairman, I rise in strong opposition to the Royce amendment to cut the Overseas Private Investment Corporation. OPIC has been crucial in promoting U.S. investment abroad and continued support for the Overseas private Investment Corporation is not only smart foreign policy it is sound fiscal policy.

OPIC plays a critical role in our Nation's export strategy, and supports important foreign policy initiatives across the globe. A cut in OPIC's administrative fees will hamper crucial new investment work in Africa and the Caribbean. This new investment will create U.S. jobs, and improve stability in developing nations.

Mr. Chairman, OPIC operates on a self-sustaining basis paid for by its program users. In fact, throughout its 26 year history, OPIC has supported projects worth $107 billion and has created 225,000 new U.S. jobs and $52 billion in exports.

OPIC is a major vehicle for promoting U.S. foreign and economic policy without cost to the taxpayer and I urge mu colleagues to reject the Royce-Kasich amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. ROYCE].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. ROYCE. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to the order of the House of Thursday, July 24, 1997, further proceedings on the amendment offered by the gentleman from California [Mr. ROYCE] will be postponed.

The Clerk will read.

The Clerk read as follows:

FUNDS APPROPRIATED TO THE PRESIDENT

TRADE AND DEVELOPMENT AGENCY

For necessary expenses to carry out the provisions of section 661 of the Foreign Assistance Act of 1961, $40,000,000: *Provided*, That the Trade and Development Agency may receive reimbursements from corporations and other entities for the costs of grants for feasibility studies and other project planning services, to be deposited as an offsetting collection to this account and to be available for obligation until September 30, 1999, for necessary expenses under this paragraph: *Provided further*, That such reimbursements shall not cover, or be allocated against, direct or indirect administrative costs of the agency.

AMENDMENT NO. 36 OFFERED BY MR. PAUL

Mr. PAUL. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Was the amendment printed in the RECORD?

Mr. PAUL. Yes, Mr. Chairman, it was.

The Clerk read as follows:

Amendment No. 36 offered by Mr. PAUL: At the end of title I (page 5, after line 14), insert the following new paragraph:

REDUCTION IN AMOUNTS

Each amount otherwise provided in this title is hereby reduced to $0.

Mr. PAUL. Mr. Chairman, earlier in the debate on the previous amendment, the gentleman from California [Mr. ROHRABACHER] suggested that there was one problem with the Royce amendment. He said it just does not go far enough.

I have an amendment that will go far enough to deal with this entire problem of corporate welfare. My amendment strikes all the funding from title I. This means that the $632 million that goes to the Export-Import Bank, the $32 million that goes to OPIC and the $40 million that goes to the Trade and Development Agency would be struck. This would not close these agencies down. We have heard on numerous occasions already today that OPIC and other agencies like OPIC are obviously self-supporting. If they are self-supporting, they need no more appropriations. They can use the current funding, they can be privatized. This whole idea that they come with the argument that they are self-supporting and self-sustaining and that they make a profit, there is no purpose in being here. Why do they come to the American people and ask in this particular bill for export subsidies of $704 million? My amendment would strike the $704 million. These three agencies have liabilities of well over $100 billion and this would be eliminated.

One of the reasons the argument is made that these agencies are self-sustaining is that they hold Treasury bills, which means that they receive huge sums of money through the back door through interest payments. This money is not appropriated for the specific purpose, but as long as they hold Treasury bills they get the interest payments. For instance, I mentioned earlier that OPIC in 1996 received $166 million in this manner. Self-sustaining, it is not.

We should really ask if this is good economic policy. Quite frankly, it is not good economic policy. It encourages businesspeople to do the wrong things at the taxpayers' risk.

It is mentioned that these programs are available in the private sector but they will not go into the risky areas. Obviously not. OPIC, for instance, goes into countries, and what the American people have to assume is the risk against political risk and economic risk. So if these companies go bust, the American taxpayers have to stand behind them. We have a misdirection of the economy and the misdirection of investment because we get companies to do things more risky than they would have otherwise. If they want to go into a more risky area, the private

insurance would obviously be higher, so therefore this is a subsidy to corporations.

There is no reason why we should support this type of welfare. There are several kinds of welfare. We have welfare for the poor, we have welfare for the foreigners and we have welfare for the corporations. I do not think the correct place to try to solve our problem on welfare is to go after the poor man's welfare, but we can go after foreign welfare and we can go after corporate welfare, and this is an example of corporate and foreign welfare.

It is said that with these programs there is never any loss to the taxpayers. That is a bit of a fallacy, because the loss to the taxpayers is when we take the money from the taxpayer, so they are losing all the time. Most little people never get benefits from this. It is the large corporations that lobby us so heavily to endorse these programs. There are not that many loans that default.

But there is another reason why we do not have that many loan defaults, because they quickly renew these loans at different terms. There is a lot of generous renewing of loans and therefore the default level is very, very low, if we see it at all. But the risk is there. The real risk to the American taxpayer is when we tax the Americans to go and encourage programs like this. The assumption is made that if we do not do it, it will not happen. Maybe not, maybe it will. If it does not happen, maybe it is too risky. But most of it still would happen; it would be insured in the private sector and many of these programs would occur.

To get up and say A, B, and C company would not have existed and could not have done this is not correct because we do not know. The other thing we do not know is who suffered from this credit allocation. When the Government gets involved in credit allocation, in saying this credit is guaranteed and should go in this direction, every time there is $10 billion going in that direction, it comes out of the private sector and some little guy lost his credit. So obviously the banks are going to loan to the people that have a guarantee.

Another area that we should address here is the subject of who gets these loans. For instance, one of the biggest beneficiaries is China. Red China gets over $4 billion. That in itself is enough reason to vote for this amendment and reject corporate welfare on principle.

Mr. CALLAHAN. Mr. Chairman, I rise in opposition to the amendment.

Once again, Mr. Chairman, this amendment is intended to destroy the Eximbank which might sound good and might look good on the back of a bumper sticker, but it would be a tremendous mistake for literally tens of thousands of working American people who are working today as a result of the fact that we are doing business in some overseas countries. If indeed my colleagues believe that we are not in a global economy, then my colleagues ought to do exactly what the gentleman from Texas said: build a wall around the United States of America. Let us not let anybody in and let us not let anybody out, let us not ship any of our equipment overseas.

Let us talk about General Electric. What kind of generators do Members think they use if GE builds a plant in a foreign country? They use a GE generator built by American workers, built by American workers who take that money home and support their families and support my colleagues through their taxes that they pay.

So if my colleagues want to close down America, if they do not want to do business overseas, if they really in their heart believe that a global economy is not the future of this country, then my colleagues ought to abolish the Eximbank and they ought to abolish OPIC as well.

But unfortunately, if the gentleman will read the newspapers, watch television, look at world affairs, attend some of the committee hearings that we have, when we hear the testimony of the Eximbank and these various agencies, he will learn that we are exporting our jobs overseas by letting them work in Texas, by letting them work in Alabama, in California. They are taking that money to their homes and we are shipping our generators and our products to them overseas simply because we have provided for our businesspeople the same thing that the French, the British, the Germans, the Japanese have provided to theirs. Not as much, I grant the gentleman. They still give them much more. They subsidize theirs. We do not subsidize these.

So, yes, if the gentleman wants to shut the world down as far as the United States is concerned and abolish all these; but it would be very, very unwise to do that. I would encourage my colleagues to recognize that and to vote against the gentleman's amendment.

Mr. PAUL. Mr. Chairman, will the gentleman yield?

Mr. CALLAHAN. I yield to the gentleman from Texas.

Mr. PAUL. Japan subsidizes 32 percent of their exports and we only subsidize a small amount, only 2 percent. So I guess I would be complaining a lot more if I lived in Japan because they do so much more; but if we look at the economic growth of Japan, now it is less than 1 percent and we are doing better. We have economic growth of 4 percent.

Mr. CALLAHAN. If I may reclaim my time, that is because they are doing too much. We are not doing too much. We are trying to facilitate our businesspeople in this country the opportunity to make them competitive doing business in foreign countries. If that is wrong, then I am wrong. But I am not wrong. The gentleman is wrong in trying to abolish this agency.

Ms. PELOSI. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment of our distinguished colleague from Texas.

Mr. Chairman, this is a most unfortunate amendment, because it strikes right to the heart of eliminating title I of our bill, which is an important part of our foreign operations legislation. Eximbank, Overseas Private Investment Corporation, Trade and Development Agency programs help create more and better-paying U.S. jobs through exports. Each of these agencies has a distinct role in the administration's effort to increase U.S. exports. Increasing U.S. exports is a major pillar of our foreign policy and these agencies help do that. Every one of our major industrial competitors have publicly supported counterparts to Exim, OPIC and TDA. Virtually all of our competitors fund their trade and investment finance agencies at a higher level than we do. Failure to fully fund Exim, OPIC and TDA would severely handicap our exporters as they battle for market share in the key fast-growing markets. Exports create more and higher-paying jobs, support the creation of American jobs by promoting exports. Vote against this amendment.

Mr. PAUL. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I yield to the gentleman from Texas.

Mr. PAUL. Could the gentlewoman cite the constitutional authority for programs like this? Where did we get this authority? When did we get involved in doing this? I am confused on that constitutional issue.

Ms. PELOSI. I would not be able to cite the constitutional authority. I know the gentleman is well known for his opposition to any spending bills, but I think the question that he asks is an appropriate one to ask every Member who speaks on the floor, because these agencies of government create jobs and return revenue to our Treasury.

I would like to address one of the points the gentleman made in his remarks. He said if they are so self-sustaining, why are they not privatized, or words to that effect.

I think it is very important that this is part of our national export program, that we be able to participate in the program level and have a control on the operating expenses so that all of the funds that are put to this end are well spent and that they promote the most exports, create the most jobs and increase the vitality and dynamism of our own economy.

Mr. PAUL. If the gentlewoman will continue to yield, I think that is a noble gesture to mix business and government, but some people are hesitant

to do that, to supervise what businesses are doing.

Ms. PELOSI. Reclaiming my time, the point was not to mix business and government. The point was to promote U.S. exports abroad and to recognize the realities of the global economy, where all of the countries, the developed countries of the world and the developing countries, are very competitive for the market share out there. It is very important for us in those particular instances where, for example, OPIC would be necessary, assessing the risk very carefully so as not to put the U.S. taxpayers' dollars at an extraordinary risk, but where the calibration is such that we need OPIC's participation, or Eximbank's participation or TDA's promotion, that we give some opportunity to U.S. business to make the playing field more level. As I have said in my remarks, we do not come close to what many countries do to help promote exports, but at least we can participate in promoting exports.

Mr. PAUL. If the gentlewoman will yield further, I think earlier she said that it would be an appropriate question to ask for constitutional authority and suggested that this is a good idea, and I would like to emphasize that we do it more often.

Mr. FOGLIETTA. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I yield to the gentleman from Pennsylvania.

Mr. FOGLIETTA. I think if the gentleman reads the question, he will find that the Constitution calls upon the Congress to promote the general welfare of this Nation. I think by increasing trade and creating jobs, we are promoting the general welfare of our Nation.

Mr. PAUL. If the gentlewoman will yield further, this is frequently cited as a constitutional authority to do almost anything. But let me be specific to point out to the gentleman that we are not dealing with the general welfare. We are dealing with the very specific welfare of General Electric and other big companies at the expense of the general welfare of the taxpayers who are paying the money.

Ms. PELOSI. Reclaiming my time, I would like to say to the gentleman, I keep a very close eye on these agencies. To the extent that I believe that they are not promoting the general welfare and that special interest is served rather than the public interest, I would be certain to join with the gentleman in criticism of those aspects.

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But that is not what the point is here tonight.

I urge my colleagues to oppose the Paul amendment.

Mr. BEREUTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strongest opposition to the gentleman's amendment, offered for ideological reasons no doubt. It is devastating. It would do draconian levels of damage to the American economy, American exporters, American business and American workers. It needs to be rejected.

Mr. Chairman, I yield to the gentleman from Illinois [Mr. MANZULLO].

Mr. MANZULLO. Mr. Chairman, I would cite with authority Article I, section 8, clause 3 of the United States Constitution that it is within the powers of this body to regulate commerce with foreign nations, and if I could make my point, then I would be glad to yield for a question from my constitutional friend.

In what we are doing here with these 3 bodies, Ex-Im, OPIC and TDA, are we regulating commerce? You bet we are. We are involved in an international global war. If the amendment offered by the gentleman from Texas [Mr. PAUL] were presented somehow in an international body, and I would dread that because we would have a one-world government, then I would say let us go ahead and do what he is doing because there are 73 export credit agencies, there are 36 international equivalents of OPICs. So what that means is that if we get rid of these specialty types of credit agencies, where are we? What we have done is we have effectively thrown up our hands and we have left it to the Finns and Germans to take over.

Let me give my colleagues an example that is in my backyard, Beloit Corporation. There is one of 3 manufacturers of paper making machines, 3 worldwide manufacturers of paper making machines, engaged in trying to get a contract in Indonesia. The only other 2 manufacturers are in Europe. One are the Finns and the other one are the Germans, and the Finns and the Germans go through extraordinary lengths in order to, if my colleagues want to use that word, subsidize, grant favorable financing so that these sales can take place.

So what happened was Beloit Corporation applied to Ex-Im in working with Members on both sides of the aisle, including the gentleman from Wisconsin [Mr. BARRETT] over here from Milwaukee. We were able to see Ex-Im grant a $275 million loan guarantee which has to be paid back with interest at a good premium for the purpose of making sure that Beloit Corporation was put in a level playing field to sell those machines. Those were 2 machines that cost over $150 million a piece, and there are several more in the lot. Let me finish my thought here.

Now what is going on here dynamically is this. Worldwide there is an effort, there is an effort to eliminate OPIC and Ex-Im types of financing. For example the OECD met and said that what we will do is we will have an agreement that a Nation can only subsidize the spread; that is, the actual amount of interest as charged worldwide on the open market with what a Nation wants to pay to a certain extent, and they continue to narrow that gap so that nations will be involved in less core subsidizing of the loans for the exports.

Mr. PAUL. Mr. Chairman, will the gentleman yield?

Mr. BEREUTER. I yield to the gentleman from Texas.

Mr. PAUL. Let me address the subject of regulation. The Constitution does give us the authority to regulate commerce, but it never mentions that we should subsidize special interests at the expense of the average American taxpayers. Yes, we can put on tariffs and we can regulate what comes and goes across our borders, but in the wildest dreams of the Founders of this country they never intended that we would have programs like this. We have to think this is a concoction of the latter part of the 20th century, the past 20 or 30 years. This is when this stuff; when welfare-ism has blossomed, it has been these type of programs. It was never intended by our Constitution to do these programs.

Mr. BEREUTER. Reclaiming my time, Mr. Chairman, I would say that the authorization appropriations are funds that are very much in the American taxpayers' benefit. They come out positive as a result directly of these jobs.

Mr. MANZULLO. Mr. Chairman, will the gentleman yield?

Mr. BEREUTER. I yield to the gentleman from Illinois.

Mr. MANZULLO. Mr. Chairman, back in those days the main income for the United States was international tariffs. We have these incredible tariff barriers, and that is how we supported the economy of the Nation before the income tax.

I mean nobody wants those tariffs. I know the gentleman is a libertarian and does not like the tariffs, but that is what was going on 200 some years ago when the Nation was founded, and I think when this was put into the Constitution it says to regulate, meaning this body, the United States Congress, is given the power to make sure that we can operate internationally.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. PAUL].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. PAUL. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to the order of the House of Thursday, July 24, 1997, further proceedings on the amendment offered by the gentleman from Texas [Mr. PAUL] will be postponed.

POINT OF ORDER

Mr. BARR of Georgia. Mr. Chairman, I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. BARR of Georgia. Mr. Chairman, I make the point of order that the language beginning with "provided" on page 24, line 8 through "justice" on line 16 violates clause 2(b) of rule XXI of the rules of the House of Representatives.

The CHAIRMAN. The gentleman from Georgia will suspend. The Clerk has not yet read to that portion of the bill, and the gentleman's point of order is not in order at this point.

The Clerk will read.

The Clerk read as follows:

TITLE II—BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

For expenses necessary to enable the President to carry out the provisions of the Foreign Assistance Act of 1961, and for other purposes, to remain available until September 30, 1998, unless otherwise specified herein, as follows:

AGENCY FOR INTERNATIONAL DEVELOPMENT

CHILD SURVIVAL AND DISEASE PROGRAMS FUND

For necessary expenses to carry out the provisions of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, for child survival, basic education, assistance to combat tropical and other diseases, and related activities, in addition to funds otherwise available for such purposes, $650,000,000, to remain available until expended: *Provided*, That this amount shall be made available for such activities as (1) immunization programs, (2) oral rehydration programs, (3) health and nutrition programs, and related education programs, which address the needs of mothers and children, (4) water and sanitation programs, (5) assistance for displaced and orphaned children, (6) programs for the prevention, treatment, and control of, and research on, tuberculosis, HIV/AIDS, polio, malaria and other diseases, (7) not to exceed $98,000,000 for basic education programs for children, and (8) a contribution on a grant basis to the United Nations Children's Fund (UNICEF) pursuant to section 301 of the Foreign Assistance Act of 1961.

DEVELOPMENT ASSISTANCE

For necessary expenses to carry out the provisions of sections 103 through 106 and chapter 10 of part I of the Foreign Assistance Act of 1961, title V of the International Security and Development Cooperation Act of 1980 (Public Law 96–533) and the provisions of section 401 of the Foreign Assistance Act of 1969, $1,167,000,000, to remain available until September 30, 1999: *Provided*, That of the amount appropriated under this heading, up to $2,000,000 may be made available for the Inter-American Foundation: *Provided further*, That of the amount appropriated under this heading, up to $2,500,000 may be made available for the African Development Foundation: *Provided further*, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: *Provided further*, That none of the funds made available under this heading may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions; and that in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services: *Provided further*, That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and, additionally, all such applicants shall comply with the requirements of the previous proviso: *Provided further*, That for purposes of this or any other Act authorizing or appropriating funds for foreign operations, export financing, and related programs, the term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options: *Provided further*, That nothing in this paragraph shall be construed to alter any existing statutory prohibitions against abortion under section 104 of the Foreign Assistance Act of 1961: *Provided further*, That none of the funds made available under this heading may be used for any activity which is in contravention to the Convention on International Trade in Endangered Species of Flora and Fauna (CITES).

AMENDMENT OFFERED BY MR. PITTS

Mr. PITTS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Has the amendment been printed in the RECORD?

Mr. PITTS. Yes.

The CHAIRMAN. Does the gentleman ask unanimous consent to have his amendment considered?

Mr. PITTS. Yes, Mr. Chairman.

The CHAIRMAN. Is there objection to the consideration of the en bloc amendments?

Mr. CALLAHAN. There is objection here.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk read as follows:

PRIVATE AND VOLUNTARY ORGANIZATIONS

None of the funds appropriated or otherwise made available by this Act for development assistance may be made available to any United States private and voluntary organization, except any cooperative development organization, which obtains less than 20 per centum of its total annual funding for international activities from sources other than the United States Government: *Provided*, That the requirements of the provisions of section 123(g) of the Foreign Assistance Act of 1961 and the provisions on private and voluntary organizations in title II of the "Foreign Assistance and Related Programs Appropriations Act, 1985" (as enacted in Public Law 98–473) shall be superseded by the provisions of this section, except that the authority contained in the last sentence of section 123(g) may be exercised by the Administrator with regard to the requirements of this paragraph.

Funds appropriated or otherwise made available under title II of this Act should be made available to private and voluntary organizations at a level which is equivalent to the level provided in fiscal year 1995. Such private and voluntary organizations shall include those which operate on a not-for-profit basis, receive contributions from private sources, receive voluntary support from the public and are deemed to be among the most cost-effective and successful providers of development assistance.

INTERNATIONAL DISASTER ASSISTANCE

For necessary expenses for international disaster relief, rehabilitation, and reconstruction assistance pursuant to section 491 of the Foreign Assistance Act of 1961, as amended, $190,000,000, to remain available until expended.

DEBT RESTRUCTURING

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of modifying direct loans and loan guarantees, as the President may determine, for which funds have been appropriated or otherwise made available for programs within the International Affairs Budget Function 150, including the cost of selling, reducing, or canceling amounts, through debt buybacks and swaps, owed to the United States as a result of concessional loans made to eligible Latin American and Caribbean countries, pursuant to part IV of the Foreign Assistance Act of 1961; and of modifying concessional loans authorized under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, as authorized under subsection (a) under the heading "Debt Reduction for Jordan" in title VI of Public Law 103–306; $27,000,000, to remain available until expended.

MICRO AND SMALL ENTERPRISE DEVELOPMENT PROGRAM ACCOUNT

For the cost of direct loans and loan guarantees, $1,500,000, as authorized by section 108 of the Foreign Assistance Act of 1961, as amended: *Provided*, That such costs shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That guarantees of loans made under this heading in support of microenterprise activities may guarantee up to 70 percent of the principal amount of any such loans notwithstanding section 108 of the Foreign Assistance Act of 1961. In addition, for administrative expenses to carry out programs under this heading, $500,000, all of which may be transferred to and merged with the appropriation for Operating Expenses of the Agency for International Development: *Provided further*, That funds made available under this heading shall remain available until September 30, 1999.

URBAN AND ENVIRONMENTAL CREDIT PROGRAM ACCOUNT

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of guaranteed loans authorized by sections 221 and 222 of the Foreign Assistance Act of 1961, including the cost of guaranteed loans designed to promote the urban and environmental policies and objectives of part I of such Act, $3,000,000, to remain available until September 30, 1999: *Provided*, That these funds are available to subsidize loan principal, 100 percent of which shall be guaranteed, pursuant to the authority of such sections. in addition, for administrative expenses to carry out guaranteed loan programs, $6,000,000, all of which may be transferred to and merged with the appropriation for Operating Expenses of the Agency for International Development: *Provided further*, That commitments to guarantee loans under this heading may be entered into notwithstanding the second and third sentences of section 222(a) and, with regard to programs for Central and Eastern Europe and programs for the benefit of South Africans disadvantaged by apartheid, section 223(j) of the Foreign Assistance Act of 1961.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For payment to the "Foreign Service Retirement and Disability Fund", as authorized by the Foreign Service Act of 1980, $44,208,000.

OPERATING EXPENSES OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT

For necessary expenses to carry out the provisions of section 667, $468,750,000: *Provided*, That none of the funds appropriated by this Act for programs administered by the Agency for International Development may be used to finance printing costs of any report or study (except feasibility, design, or evaluation reports or studies) in excess of $25,000 without the approval of the Administrator of the Agency or the Administrator's designee.

OPERATING EXPENSES OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT OFFICE OF INSPECTOR GENERAL

For necessary expenses to carry out the provisions of section 667, $29,047,000, to remain available until September 30, 1999, which sums shall be available for the Office of the Inspector General of the Agency for International Development.

OTHER BILATERAL ECONOMIC ASSISTANCE

ECONOMIC SUPPORT FUND

For necessary expenses to carry out the provisions of chapter 4 of part II, $2,400,000,000, to remain available until September 30, 1999 *Provided*, That any funds appropriated under this heading that are made available for Israel shall be available on a grant basis as a cash transfer and shall be disbursed within thirty days of enactment of this Act or by October 31, 1997, whichever is later: *Provided*, That in exercising the authority to provide cash transfer assistance for Israel and Egypt, the President shall ensure that the level of such assistance does not cause an adverse impact on the total level of nonmilitary exports from the United States to each such country.

INTERNATIONAL FUND FOR IRELAND

For necessary expenses to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, $19,600,000, which shall be available for the United States contribution to the International Fund for Ireland and shall be made available in accordance with the provisions of the Anglo-Irish Agreement Support Act of 1986 (Public Law 99-415): *Provided*, That such amount shall be expended at the minimum rate necessary to make timely payment for projects and activities: *Provided further*, That funds made available under this heading shall remain available until September 30, 1999.

ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES

(a) For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 and the Support for East European Democracy (SEED) Act of 1989, $470,000,000, to remain available until September 30, 1999, which shall be available, notwithstanding any other provision of law, for economic assistance and for related programs for Eastern Europe and the Baltic States.

(b) Funds appropriated under this heading or in prior appropriations Acts that are or have been made available for an Enterprise Fund may be deposited by such Fund in interest-bearing accounts prior to the Fund's disbursement of such funds for program purposes. The Fund may retain for such program purposes any interest earned on such deposits without returning such interest to the Treasury of the United States and without further appropriation by the Congress. Funds made available for Enterprise Funds shall be expended at the minimum rate necessary to make timely payment for projects and activities.

(c) Funds appropriated under this heading shall be considered to be economic assistance under the Foreign Assistance Act of 111961 for purposes of making available the administrative authorities contained in that Act for the use of economic assistance.

(d) None of the funds appropriated under this heading may be made available for new housing construction or repair or reconstruction of existing housing in Bosnia and Herzegovina unless directly related to the efforts of United States troops to promote peace in said country.

AMENDMENT OFFERED BY MR. CAMPBELL

Mr. CAMPBELL. Mr. Chairman, I have an amendment, No. 27, which I believe is germane to the second title of the bill at page 13.

The CHAIRMAN. Does the gentleman ask unanimous consent to offer the amendment at this time?

Mr. CAMPBELL. That is my request, yes, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. CALLAHAN. Yes, Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

PARLIAMENTARY INQUIRY

Mr. CAMPBELL. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. CAMPBELL. Mr. Chairman, I simply wish to know about the amendment, page 13, line 4, whereby I am inserting $25 million in the Amendment No. 27; my parliamentary inquiry is whether that is in order at this time without a unanimous consent request.

The CHAIRMAN. The Chair would inform the gentleman that the Clerk had passed that point in reading the bill and it requires unanimous consent to go back to that paragraph.

Mr. CAMPBELL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, at the conclusion of striking the last word I am going to ask an indulgence of the chairman of the subcommittee, and so I rise to speak to this request.

I was here, I was talking at the desk. It is appropriate at page 13, line 4. The members of the Congressional Black Caucus I have summoned to be on the floor at this moment. There is every record that I intended and had, except for the discussion at this desk, would have been able to present it at this moment.

I ask; it is a favor, I understand, but I have a very specific reason for asking for that favor, it is an unusual circumstance. I was here, there was discussion, and I could not get to the microphone because we were worried that the amendment of the gentleman from Pennsylvania [Mr. PITTS] might have had precedence to mine.

It is for that reason, which is really not a common situation, that I would ask a very great favor, but a favor of the chairman of the subcommittee that if I renew my unanimous consent request that I might now offer the amendment, No. 27, that it might be offered without an objection.

Mr. Chairman, with that I renew my unanimous consent request that Amendment No. 27 might be allowed at this time.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. CALLAHAN. Yes, Mr. Chairman.

I recognize the gentleman's plight. Nevertheless, we cannot continue to go back because if we go back for him, we have to do the same thing for every Member of this body. So I reluctantly still object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk read as follows:

(e) With regard to funds appropriated or otherwise made available under this heading for the economic revitalization program in Bosnia and Herzegovina, and local currencies generated by such funds (including the conversion of funds appropriated under this heading into currency used by Bosnia and Herzegovina as local currency and local currency returned or repaid under such program)—

(1) the Administrator of the Agency for International Development shall provide written approval for grants and loans prior to the obligation and expenditure of funds for such purposes, and prior to the use of funds that have been returned or repaid to any lending facility or grantee; and

(2) the provisions of section 531 of this Act shall apply.

(f) With regard to funds appropriated under this heading that are made available for economic revitalization programs in Bosnia and Herzegovina, 50 percent of such funds shall not be available for obligation unless the President determines and certifies to the Committee on Appropriations that the Federation of Bosnia and Herzegovina has complied with article III of annex 1-A of the General Framework Agreement for Peace in Bosnia and Herzegovina concerning the withdrawal of foreign forces, and that intelligence cooperation on training, investigations, and related activities between Iranian officials and Bosnian officials has been terminated.

(g) Not to exceed $200,000,000 of the funds appropriated under this heading may be made available for Bosnia and Herzegovina.

(h) Not to exceed $7,000,000 of the funds made available for Bosnia and Herzegovina may be made available for the cost, as defined in section 502 of the Congressional Budget Act of 1974, of modifying direct loans and loan guarantees for said country.

Mr. FOLEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to enter into a colloquy with the distinguished gentleman from Alabama [Mr. CALLAHAN].

Mr. Chairman, I recently traveled to Haiti in order to get a firsthand look at the political and economic conditions there. It is my concern that if the current political and economic impasse in

that country continues, there could be a social explosion that leads to a mass immigration of Haitian refugees to Florida. As certain factions inside Haiti are blocking reforms to further their own political agenda, vital measures are being stalled that could lead to more private investment in Haiti and ultimately to stabilization of this country. Economic reform in Haiti, particularly in the privatization of state-owned enterprises, is a necessary step in the improvement of Haiti's economy.

During my trip I took particular note of the inaccurate and antiquated power and telecommunication systems in Haiti. Without a modern infrastructure it is ludicrous to expect that Haiti will attract significant private investment. Therefore, the Haitian government must privatize these industries.

It is my understanding, Mr. Chairman, that the Subcommittee on Foreign Operations this year has inserted language which emphasizes that aid for Haiti is being provided with the clear understanding that it will only be provided if the Haitian government is actually implementing a meaningful restructuring of the Haitian public sector.

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Am I correct in that assumption?

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Alabama.

Mr. CALLAHAN. Mr. Chairman, the gentleman from Florida is absolutely correct. The privatization of parastatal companies and strict accountability for the effective use of donor resources are core reforms which were promised but not accomplished in prior years.

The committee recommends that assistance to the government of Haiti provided in this act be made contingent upon the privatization of at least three parastatal enterprises. I might add that the subcommittee, traveled to Haiti and that we shared the gentleman's concern, and we also expressed a strong concern to President Preval.

Mr. FOLEY. Mr. Chairman, let me thank the chairman for the clarification, and commend him on his efforts to ensure that the United States aid to Haiti is being properly utilized.

As I witnessed the strength of the people of Haiti and their desire to have economic opportunity, it became clear to me that the government needs to lead by example. I suggested to President Preval that he take a stronger stand in forcing the privatization of the utilities and other areas.

Even if the United States could provide the Haitian government with all the money in the world, it would come to no avail without reform of the Haitian economy. So I would suggest this Congress and this committee has a strong responsibility to work closely with the current government in Haiti and try and see that these economic reforms become reality, so those people in Haiti can have jobs, opportunity, growth and prosperity.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

(a) For necessary expenses to carry out the provisions of chapter 11 of part I of the Foreign Assistance Act of 1961 and the FREEDOM Support Act, for assistance for the new independent states of the former Soviet Union and for related programs, $625,000,000, to remain available until September 30, 1999: *Provided*, That the provisions of such chapter shall apply to funds appropriated by this paragraph.

(b) None of the funds appropriated under this heading shall be transferred to the Government of Russia—

(1) unless that Government is making progress in implementing comprehensive economic reforms based on market principles, private ownership, negotiating repayment of commercial debt, respect for commercial contracts, and equitable treatment of foreign private investment; and

(2) if that Government applies or transfers United States assistance to any entity for the purpose of expropriating or seizing ownership or control of assets, investments, or ventures.

(c) Funds may be furnished without regard to subsection (b) if the President determines that to do so is in the national interest.

(d) None of the funds appropriated under this heading shall be made available to any government of the new independent states of the former Soviet Union if that government directs any action in violation of the territorial integrity or national sovereignty of any other new independent state, such as those violations included in the Helsinki Final Act: *Provided*, That such funds may be made available without regard to the restriction in this subsection if the President determines that to do so is in the national security interest of the United States: *Provided further*, That the restriction of this subsection shall not apply to the use of such funds for the provision of assistance for purposes of humanitarian, disaster and refugee relief.

(e) None of the funds appropriated under this heading for the new independent states of the former Soviet Union shall be made available for any state to enhance its military capability: *Provided*, That this restriction does not apply to demilitarization or nonproliferation programs.

(f) Funds appropriated under this heading shall be subject to the regular notification procedures of the Committees on Appropriations.

(g) Funds made available in this Act for assistance to the new independent states of the former Soviet Union shall be subject to the provisions of section 117 (relating to environment and natural resources) of the Foreign Assistance Act of 1961.

(h) In issuing new task orders, entering into contracts, or making grants, with funds appropriated under this heading or in prior appropriations Acts, for projects or activities that have as one of their primary purposes the fostering of private sector development, the Coordinator for United States Assistance to the New Independent States and the implementing agency shall encourage the participation of and give significant weight to contractors and grantees who propose investing a significant amount of their own resources (including volunteer services and in-kind contributions) in such projects and activities.

(i) Funds appropriated under this heading or in prior appropriations Acts that are or have been made available for an Enterprise Fund may be deposited by such Fund in interest-bearing accounts prior to the disbursement of such funds by the Fund for program purposes. The Fund may retain for such program purposes any interest earned on such deposits without returning such interest to the Treasury of the United States and without further appropriation by the Congress. Funds made available for Enterprise Funds shall be expended at the minimum rate necessary to make timely payment for projects and activities.

(j)(1) None of the funds appropriated under this heading may be made available for Russia unless the President determines and certifies in writing to the Committees on Appropriations that the Government of Russia has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs, or ballistic missile capability.

(2) Fifty percent of the funds appropriated under this heading that are allocated for Russia may be made available notwithstanding paragraph (1) if the President determines that making such funds available is vital to the national security interest of the United States. Any such determination shall cease to be effective six months after being made unless the President determines that its continuation is vital to the national security interest of the United States.

(k)(1) Funds appropriated under this heading may not be made available for the Government of Ukraine if the President determines and reports to the Committees on Appropriations that the Government of Ukraine is engaged in military cooperation with the Government of Libya.

(2) Paragraph (1) shall not apply if the President determines that making such funds available is vital to the national security interest of the United States. Any such determination shall cease to be effective six months after being made unless the President determines that its continuation is vital to the national security interest of the United States.

(l) Funds made available under this Act or any other Act may not be provided for assistance to the Government of Azerbaijan until the President determines, and so reports to the Congress, that the Government of Azerbaijan is taking demonstrable steps to cease all blockades and other offensive uses of force against Armenia and Nagorno-Karabakh: *Provided*, That the restriction of this subsection and section 907 of the FREEDOM Support Act shall not apply to activities promoting democracy or assistance under title V of the FREEDOM Support Act and section 1424 of Public Law 104-201: *Provided further*, That none of the funds appropriated or otherwise made available under this Act may be utilized by the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the Trade and Development Agency to provide financing (including direct loans, loan guarantees, and insurance) or other assistance contrary to the provisions of section 907 of the FREEDOM Support Act.

(m) Funds appropriated under this heading shall be made available for humanitarian assistance through nongovernmental organizations for refugees, displaced persons, and

needy civilians in conflictive zones throughout the Trans-Caucasus, including Nagorno-Karabagh, notwithstanding any other provision of this or any other Act.

(n) Of the funds appropriated under this heading that are allocated for Ukraine, 50 percent shall be withheld from obligation and expenditure until the Secretary of State certifies to the Committees on Appropriations that the Government of Ukraine: (1) is enforcing the April 10, 1997 Anti-Corruption decree of President Kuchma; (2) has substantially completed the privatization of state owned agricultural storage, distribution, equipment and supply monopolies; and (3) has fully resolved most of the commercial disputes involving complaints by United States investors to the Embassy in Kiev as of April 30, 1997 and established a permanent legal mechanism for commercial dispute resolution.

INDEPENDENT AGENCIES

INTER-AMERICAN FOUNDATION

For necessary expenses to carry out the functions of the Inter-American Foundation in accordance with section 401 of the Foreign Assistance Act of 1969, and to make such contracts and commitments without regard to fiscal year limitations, as provided by 31 U.S.C. 9014, $20,000,000.

AFRICAN DEVELOPMENT FOUNDATION

For necessary expenses to carry out title V of the International Security and Development Cooperation Act of 1980, Public Law 96–533, and to make such contracts and commitments without regard to fiscal year limitations as provided by 31 U.S.C. 9104, $11,500,000: *Provided*, That funds made available to grantees may be invested pending expenditure for project purposes when authorized by the President of the Foundation: *Provided further*, That interest earned shall be used only for the purposes for which the grant was made: *Provided further*, That this authority applies to interest earned both prior to and following enactment of this provision: *Provided further*, That notwithstanding section 505(a)(2) of the African Development Foundation Act, in exceptional circumstances the board of directors of the Foundation may waive the $250,000 limitation contained in that section with respect to a project: *Provided further*, That the Foundation shall provide a report to the Committee on Appropriations after each time such waiver authority is exercised.

PEACE CORPS

For expenses necessary to carry out the provisions of the Peace Corps Act (75 Stat. 612), $222,000,000, including the purchase of not to exceed five passenger motor vehicles for administrative purposes for use outside of the United States: *Provided*, That none of the funds appropriated under this heading shall be used to pay for abortions: *Provided further*, That funds appropriated under this heading shall remain available until September 30, 1999.

Mr. MICA. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I had planned to offer an amendment in this title, and I am not going to do that at this time. I think I would be remiss as a Member of Congress and someone who has spoken out about some of the funding for one of the agencies funded in this appropriations measure if I did not personally address what I consider a program that has room for improvement.

I do not mean to distract or to in any way denounce the work of this Committee on Appropriations subcommittee. I know they have an important task, and trying to come up with a foreign ops appropriations measure is a difficult task.

But I had proposed to offer an amendment here and had the support of many colleagues to reduce AID's administrative costs by about 5 percent, or $19 million. That is just a small, token amount, really, but that money would have been put in the child survival and disease program fund, which would establish further protection of children throughout the world, and eradication of diseases.

Most people do not realize it, but 33,000 children die every day across the world, and an estimated 12 million children die under 5 years of age across the world every year from various diseases.

Mr. Chairman, I have been around the world and worked in international trade, and I would not be critical of AID if I had not seen firsthand some of the problems that we have with that agency. Again, I know this committee is trying to do its utmost to get this operation in order. But let me give the Members also my perspective as chairman of the Subcommittee on Civil Service of the Committee on Government Reform and Oversight, just an idea of how personnel in AID are stratified.

If Members think we are spending all of our money and funds in helping children and the needy in foreign countries where there is need of our assistance for those individuals, just listen to this. AID staffing has 2,916 employees. Overseas there are 1,096. In Washington, D.C., or this immediate area, there are 1,717 AID employees.

So those Members who are compassionate, those who are interested in trying to get our AID dollars going to where they can help the children, where they can help the truly needy, this budget appropriates again and will fund 1,717 positions just in the Washington, D.C. area for this agency.

Overall, AID has almost 8,000 employees, if we count in contract and foreign nationals that are hired. The entire Department of Education only has 5,000 employees.

Mr. Chairman, I will not get into all the issues of waste and mismanagement in AID, but I had met sometime ago overseas with the president of the U.S. Chamber of Commerce in an eastern bloc country. This is an American. He said Americans in AID, their AID program is the laughingstock of some of the eastern bloc and emerging nations, because the United States spends $100 to give away $1. That is my concern, that we put money where it can do the most good.

When we have 33,000 children dying every day, we can choose as to how this money is appropriated. My amendment would not have taken a penny out of what we are putting into the program, but it would redirect it as a national policy for these funds to go into child survival programs that are beneficial. That was the proposal that I had.

I will not offer it because I want the process to move forward. But Mr. Chairman, I ask the chairman and my colleagues and members of this panel to look very closely at how these funds are being spent and the policy that we are establishing: Does the money go where it should go? Do we take care of folks and children around the world that need help, or is it going to spend a tremendous amount of money in overhead on a bureaucracy in Washington, D.C.?

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL

For necessary expenses to carry out section 481 of the Foreign Assistance Act of 1961, $230,000,000: *Provided*, That during fiscal year 1998, the Department of State may also use the authority of section 608 of the Act, without regard to its restrictions, to receive non-lethal excess property from an agency of the United States Government for the purpose of providing it to a foreign country under chapter 8 of part I of that Act subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That none of the funds made available under this heading may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence to believe such unit has committed gross violations of human rights unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking steps to bring the responsible members of the security forces unit to justice.

POINT OF ORDER

Mr. BARR of Georgia. Mr. Chairman, I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. BARR of Georgia. Mr. Chairman, I make a point of order that the language beginning with "provided" on page 24, line 8, through "justice" on line 16 violates clause 2(b) of rule XXI of the rules of the House of Representatives.

Clause 2(b) of rule XXI states that in general, no provision changing existing law shall be reported in any general appropriations bill.

Mr. Chairman, I respectfully submit that the language reported in this general appropriations bill changes existing law in that it imposes duties such as the duty to make determinations or decisions on the Secretary of State, and that these are new duties not required in existing law.

Although the language is part of the relevant appropriations act for the current fiscal year, that act would not apply in the fiscal year covered by the pending bill, and under the precedents of this House, it is not considered as being "existing law" for the purpose of the relevant rule.

The CHAIRMAN. Does any other Member wish to be heard on the point of order?

Mr. CALLAHAN. Mr. Chairman, I concede the point of order.

The CHAIRMAN. The point of order is conceded.

That portion of the bill is stricken.

Mr. TORRES. Mr. Chairman, I want to speak in opposition to the point of order raised against the important counternarcotics human rights provision in this bill.

The CHAIRMAN. The Chair had ruled on the point of order since it was conceded by the Chairman.

Does the gentleman wish to be heard further on the point of order?

Mr. TORRES. Mr. Chairman, I was standing on my feet in opposition to the point of order.

PARLIAMENTARY INQUIRY

Mr. BARR of Georgia. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. BARR of Georgia. Mr. Chairman, is it proper to entertain further remarks on a point of order after the point of order has been sustained by the Chair?

The CHAIRMAN. Argument on a point of order is at the discretion of the Chair. The Chair will entertain the comments of the gentleman from California [Mr. TORRES] and withhold his ruling.

The Chair recognizes the gentleman from California [Mr. TORRES].

Mr. TORRES. Mr. Chairman, the bill currently contains the so-called Leahy provision which was enacted last year. The Leahy amendment stipulates that if the Secretary of State finds credible evidence implicating a foreign military unit of gross human rights violations, and no steps have been taken to bring those responsible to justice, then the unit, not the whole country, would be cut off from some form of U.S. counternarcotics aid.

I supported the effort to have this provision included in last year's bill. U.S. taxpayer dollars must not be spent on murderers. The situation today in Colombia is severe. Colombia has the worst human rights record in the Western Hemisphere, with an average of 10 Colombians murdered every day for political or ideological reasons. Approximately 65 percent of those killings are attributed to the military and their paramilitary allies.

Colombian units, military units, responsible for some of the worst human rights violations and atrocities in recent years were also those that received U.S. assistance. Joint army paramilitary operations have displaced thousands of civilians, mostly peasant farmers. Earlier this year inhabitants of more than 15 municipalities or communities in the municipality of Choco were forced to leave their communities by paramilitary groups. They were told they had 5 days, 5 days to abandon their homes. Otherwise, they would be killed. Several communities were bombed by military forces. Many people have fled to other regions, to neighboring Panama. There is reason to believe, and to be seriously concerned about the safety of the civilian population as these operations continue.

Mr. Chairman, I ask my colleagues, the Leahy provisions are the very minimum standards we utilize before releasing $1 million of military aid to combat narco-trafficking. Using this procedure, making a point of order to strike the Leahy provision is a backdoor attempt to do away with a critical component of counternarcotics assistance accountability, and we must not allow that to happen.

Mr. BARRETT of Wisconsin. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The Chair controls the time. The Chair has recognized the gentleman from California [Mr. TORRES] briefly to talk on the point of order.

Is the gentleman from California [Mr. TORRES] finished on his comments?

Mr. TORRES. I yield to the gentleman from Wisconsin.

The CHAIRMAN. The gentleman is not able to yield.

□ 2030

Mr. BARRETT of Wisconsin. Mr. Chairman, I rise in opposition to the point of order.

The CHAIRMAN. The Chair will entertain further brief comments on the point of order.

Mr. BARRETT of Wisconsin. Mr. Chairman, I also rise in opposition to the point of order. This provision, which was first authored by Senator LEAHY, prevents foreign security forces from using our aid to commit gross violations of human rights. That is the language. Gross violations of human rights.

I think we would all agree, Democrats and Republicans, that our foreign aid should not be used by foreign security forces to kill, kidnap, or torture their own citizens. That is a principle which I would think would go unchallenged here today. The bill in its current form provides that no international narcotics control funds can be used to provide any aid to any unit of a security force of a foreign country if the Secretary of State has credible evidence to believe that unit has committed gross violations of human rights.

It has been suggested, and wrongly so, that any nongovernmental organization can hamstring our international narcotics assistance by bringing unfounded allegations of human rights. This is simply not true. The Leahy provision gives the Secretary of State the right to determine whether an allegation of gross human rights abuses is credible. Even if the Secretary of State concludes that such an allegation is credible, she can allow assistance to flow if she determines that the foreign government is taking steps to bring the responsible members of the security forces unit to justice.

Mr. Chairman, where is the problem? This is a carefully, narrowly drawn provision which gives the Secretary of State the discretion to assess reports of human rights abuses and to assess the efforts of foreign governments to control their security forces. Mr. Chairman, this does not provide or does not place any additional obligations on this use of money because this use of money or the use of Federal dollars is also controlled in other forms of Federal dollars.

In other words, we have the Leahy amendment in other types of assistance so the same type of analysis would be put on this type of assistance. I find it ironic that the gentleman from Georgia who has raised this point of order argued in committee that this is an issue that we should be debating, that Congress should be acting on this issue. Yet when we come to the floor he wants to completely stymie debate. This is an issue that should be debated on this floor because the basic issue, the basic issue again, Mr. Chairman, is whether we should be giving aid to units of government that commit gross violations of human rights.

Mr. FARR of California. Mr. Chairman, I rise to speak on the point of order.

The CHAIRMAN. The Chair will entertain further brief comments on the point of order.

Mr. FARR of California. Mr. Chairman, I concur with the gentleman that has just spoken. It makes no sense to give money or weapons to militaries without making sure that they are used for the right purposes. This provision just does that. It is a one sentence provision. It is totally permissive. It ensures that our resources are not misused by human rights violators.

I rise as a former member of the U.S. Peace Corps serving in Colombia. I know that there are human rights violations because a lot of the paramilitary down there we have no jurisdiction over have been using the military equipment that we have sent to Colombia. We need to make sure that we do not throw money at the problem of drugs if it puts human rights and innocent people at risk because, if we do that, we do not stand for anything. The credibility of America is gone. The provision is responsible and fair and should be kept in the final bill.

I urge the Chair to rule against the points of order because this is made in one sentence that is permissive and does not mandate that expenditure has to be done as such.

Ms. PELOSI. Mr. Chairman, I rise to speak briefly in opposition to the point of order.

The CHAIRMAN. The Chair recognizes the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Chairman, I rise in opposition to the point of order and would like to make two points in regard to it.

First, it is unfortunate that this rule came to the floor this way not protecting this language as was requested by our committee. Let our membership debate this issue and vote one way or another. But to leave this issue exposed this way is, I think, a disservice to the Members of this House because the actual point of order that the gentleman makes, I believe, is based on a mistake, the mistaken impression that has been circulating here that we have been withholding funds from the Colombian national police. That is not true.

We have been withholding funds from the military but the United States has been assisting the Colombian national police in the battle against narcotics. Therefore, we would welcome the debate on the language that is in the bill which withholds funds from the units of the military which have committed gross human rights violations. I wish that the rule would have allowed our colleagues to hear the debate. Vote it up or down. I urge the Chair to reject the point of order.

The CHAIRMAN. The Chair is prepared to rule.

The provision requires the Secretary of State to evaluate "credible" evidence and to make reports not required by existing law. The point of order has been conceded by the gentleman from Alabama and the Chair sustains the point of order. The provision is in violation of clause 2 of rule XXI and is stricken from the bill.

The Clerk will read:

The Clerk read as follows:

MIGRATION AND REFUGEE ASSISTANCE

For expenses, not otherwise provided for, necessary to enable the Secretary of State to provide, as authorized by law, a contribution to the International Committee of the Red Cross, assistance to refugees, including contributions to the International Organization for Migration and the United Nations High Commissioner for Refugees, and other activities to meet refugee and migration needs; salaries and expenses of personnel and dependents as authorized by the Foreign Service Act of 1980; allowances as authorized by sections 5921 through 5925 of title 5, United States Code; purchase and hire of passenger motor vehicles; and services as authorized by section 3109 of title 5, United States Code, $650,000,000: *Provided*, That not more than $12,000,000 shall be available for administrative expenses.

REFUGEE RESETTLEMENT ASSISTANCE

For necessary expenses for the targeted assistance program authorized by title IV of the Immigration and Nationality Act and section 501 of the Refugee Education Assistance Act of 1980 and administered by the Office of Refugee Resettlement of the Department of Health and Human Services, in addition to amounts otherwise available for such purposes, $5,000,000.

UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSISTANCE FUND

For necessary expenses to carry out the provisions of section 2(c) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 260(c)), $50,000,000, to remain available until expended: *Provided*, That the funds made available under this heading are appropriated notwithstanding the provisions contained in section 2(c)(2) of the Migration and Refugee Assistance Act of 1962 which would limit the amount of funds which could be appropriated for this purpose.

NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS

For necessary expenses for nonproliferation, anti-terrorism and related programs and activities, $118,000,000, to carry out the provisions of chapter 8 of part II of the Foreign Assistance Act of 1961 for anti-terrorism assistance, section 504 of the FREEDOM Support Act for the Nonproliferation and Disarmament Fund, section 23 of the Arms Export Control Act for demining activities, notwithstanding any other provision of law, including activities implemented through nongovernmental and international organizations, section 301 of the Foreign Assistance Act of 1961 for a voluntary contribution to the International Atomic Energy Agency (IAEA) and a voluntary contribution to the Korean Peninsula Energy Development Organization (KEDO): *Provided*, That of this amount not to exceed $15,000,000, to remain available until expended, may be made available for the Nonproliferation and Disarmament Fund, notwithstanding any other provision of law, to promote bilateral and multilateral activities relating to nonproliferation and disarmament: *Provided further*, That such funds may also be used for such countries other than the new independent states of the former Soviet Union and international organizations when it is in the national security interest of the United States to do so: *Provided further*, That such funds shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That funds appropriated under this heading may be made available for the International Atomic Energy Agency only if the Secretary of State determines (and so reports to the Congress) that Israel is not being denied its right to participate in the activities of that Agency: *Provided further*, That not to exceed $25,000,000 may be made available to the Korean Peninsula Energy Development Organization (KEDO) only for administrative expenses and heavy fuel oil costs associated with the Agreed Framework: *Provided further*, That such funds may be obligated to KEDO only if, thirty days prior to such obligation of funds, the President certifies and so reports to Congress that (1)(A) the parties to the Agreed Framework are taking steps to assure that progress is made on the implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula and the implementation of the North-South dialogue, and (B) North Korea is complying with the other provisions of the Agreed Framework between North Korea and the United States and with the Confidential Minute; (2) North Korea is cooperating fully in the canning and safe storage of all spent fuel from its graphite-moderated nuclear reactors and that such canning and safe storage is scheduled to be completed by the end of fiscal year 1998; and (3) North Korea has not significantly diverted assistance provided by the United States for purposes for which it was not intended: *Provided further*, That the President may waive the certification requirements of the preceding proviso if the President determines that it is vital to the national security interests of the United States: *Provided further*, That no funds may be obligated for KEDO until 30 calendar days after submission to Congress of the waiver permitted under the preceding proviso: *Provided further*, That the obligation of any funds for KEDO shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That the Secretary of State shall submit to the appropriate congressional committees an annual report (to be submitted with the annual presentation for appropriations) providing a full and detailed accounting of the fiscal year request for the United States contribution to KEDO, the expected operating budget of the Korean Peninsula Energy Development Organization, to include unpaid debt, proposed annual costs associated with heavy fuel oil purchases, the amount of funds pledged by other donor nations and organizations to support KEDO activities on a per country basis, and other related activities.

TITLE III—MILITARY ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL MILITARY EDUCATION AND TRAINING

For necessary expenses to carry out the provisions of section 541 of the Foreign Assistance Act of 1961, $50,000,000: *Provided*, That funds appropriated under this heading for grant financed military education and training for Indonesia and Guatemala may only be available for expanded international military education and training: *Provided further*, That none of the funds appropriated under this heading may be made available to support grant financed military education and training at the School of the Americas unless (1) the Secretary of Defense certifies that the instruction and training provided by the School of the Americas is fully consistent with training and doctrine, particularly with respect to the observance of human rights, provided by the Department of Defense to United States military students at Department of Defense institutions whose primary purpose is to train United States military personnel, (2) the Secretary of Defense certifies that the Secretary of State, in consultation with the Secretary of Defense, has developed and issued specific guidelines governing the selection and screening of candidates for instruction at the School of the Americas, and (3) the Secretary of Defense submits to the Committees on Appropriations a report detailing the training activities of the School of the Americas and a general assessment regarding the performance of its graduates during 1996.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to the order of the House of Thursday, July 24, 1997, proceedings will now resume on those amendments on which further proceedings were postponed in the following order:

Amendment No. 13 offered by the gentleman from California [Mr. ROYCE]; and amendment No. 36 offered by the gentleman from Texas [Mr. PAUL].

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 13 OFFERED BY MR. ROYCE

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California [Mr. ROYCE] on

which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 156, noes 272, not voting 6, as follows:

[Roll No. 346]

AYES—156

Andrews
Armey
Bachus
Barr
Barrett (WI)
Bartlett
Bass
Blagojevich
Bonior
Boswell
Burr
Burton
Buyer
Campbell
Canady
Chabot
Chambliss
Chenoweth
Coble
Coburn
Collins
Condit
Conyers
Cook
Costello
Cox
Crane
Crapo
Cubin
Cunningham
Deal
DeFazio
Dellums
Diaz-Balart
Dickey
Doyle
Duncan
Ehrlich
Ensign
Eshoo
Farr
Fawell
Foley
Fowler
Fox
Franks (NJ)
Ganske
Gibbons
Gillmor
Goodlatte
Goodling
Goss
Graham
Greenwood
Gutknecht
Hastert
Hayworth
Hefley
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Hulshof
Hunter
Hutchinson
Istook
Jackson (IL)
Jones
Kanjorski
Kaptur
Kasich
Kingston
Klug
Kucinich
Largent
LaTourette
Leach
Lewis (GA)
Linder
Lipinski
LoBiondo
Luther
Markey
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
Meehan
Mica
Miller (FL)
Molinari
Myrick
Nethercutt
Neumann
Ney
Norwood
Obey
Pallone
Pappas
Pascrell
Paul
Paxon
Pease
Peterson (MN)
Petri
Pitts
Portman
Poshard
Pryce (OH)
Radanovich
Ramstad
Riggs
Rivers
Roemer
Rogan
Rohrabacher
Ros-Lehtinen
Royce
Ryun
Salmon
Sanders
Sanford
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Smith (MI)
Smith (NJ)
Smith (TX)
Smith, Linda
Solomon
Souder
Stearns
Strickland
Sununu
Talent
Taylor (MS)
Thune
Tiahrt
Tierney
Traficant
Visclosky
Wamp
Watkins
Watts (OK)
Weldon (PA)
Whitfield
Woolsey

NOES—272

Abercrombie
Ackerman
Aderholt
Allen
Archer
Baesler
Baker
Baldacci
Ballenger
Barcia
Barrett (NE)
Barton
Bateman
Becerra
Bentsen
Bereuter
Berman
Berry
Bilbray
Bilirakis
Bishop
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Borski
Boucher
Boyd
Brady
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Callahan
Calvert
Camp
Cannon
Capps
Cardin
Carson
Castle
Christensen
Clay
Clayton
Clement
Clyburn
Combest
Cooksey
Coyne
Cramer
Cummings
Danner
Davis (FL)
Davis (IL)
Davis (VA)
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dreier
Dunn
Edwards
Ehlers
Emerson
Engel
English
Etheridge
Evans
Everett
Ewing
Fattah
Fazio
Filner
Flake
Foglietta
Ford
Frank (MA)
Frelinghuysen
Frost
Furse
Gallegly
Gejdenson
Gekas
Gephardt
Gilchrest
Gilman
Goode
Gordon
Granger
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastings (FL)
Hastings (WA)
Hefner
Herger
Hill
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Houghton
Hoyer
Hyde
Inglis
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kim
Kind (WI)
King (NY)
Kleczka
Klink
Knollenberg
Kolbe
LaFalce
LaHood
Lampson
Lantos
Latham
Lazio
Levin
Lewis (CA)
Lewis (KY)
Livingston
Lofgren
Lowey
Lucas
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McDermott
McGovern
McNulty
Meek
Menendez
Metcalf
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Nadler
Neal
Northup
Nussle
Oberstar
Olver
Ortiz
Owens
Oxley
Packard
Parker
Pastor
Payne
Pelosi
Peterson (PA)
Pickering
Pickett
Pombo
Pomeroy
Porter
Price (NC)
Quinn
Rahall
Rangel
Redmond
Regula
Reyes
Riley
Rodriguez
Rogers
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Sánchez
Sandlin
Sawyer
Saxton
Schumer
Scott
Serrano
Sessions
Sherman
Shimkus
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (OR)
Smith, Adam
Snowbarger
Snyder
Spence
Spratt
Stabenow
Stenholm
Stokes
Stump
Stupak
Tanner
Tauscher
Tauzin
Thomas
Thompson
Thornberry
Thurman
Torres
Towns
Turner
Upton
Velázquez
Vento
Walsh
Waters
Watt (NC)
Waxman
Weldon (FL)
Weller
Wexler
Weygand
White
Wicker
Wise
Wolf
Wynn
Yates
Young (FL)

NOT VOTING—6

Forbes
Gonzalez
Schiff
Stark
Taylor (NC)
Young (AK)

□ 2057

Ms. DEGETTE, Mr. DOOLITTLE, Ms. SLAUGHTER, and Messrs. CUMMINGS, SESSIONS and SAXTON, and Mrs. MCCARTHY of New York changed their vote from "aye" to "no."

Messrs. CONYERS, BUYER and GILLMOR changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 36 OFFERED BY MR. PAUL

The CHAIRMAN. The pending business is the demand for a recorded voted on the amendment offered by the gentleman from Texas [Mr. PAUL] on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 40, noes 387, not voting 7, as follows:

[Roll No. 347]

AYES—40

Bachus
Barr
Bartlett
Burton
Campbell
Chabot
Chenoweth
Coble
Coburn
Crapo
Deal
DeLay
Doolittle
Duncan
Ensign
Hayworth
Hilleary
Hoekstra
Hostettler
Hunter
Istook
Markey
McIntosh
Paul
Pease
Petri
Pombo
Rohrabacher
Royce
Ryun
Sanford
Scarborough
Sensenbrenner
Shadegg
Smith (MI)
Smith, Linda
Stearns
Taylor (MS)
Traficant
Wamp

NOES—387

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Archer
Armey
Baesler
Baker
Baldacci
Ballenger
Barcia
Barrett (NE)
Barrett (WI)
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berman
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boswell
Boucher
Boyd
Brady
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burr
Buyer
Callahan
Calvert
Camp
Canady
Cannon
Capps
Cardin
Carson
Castle
Chambliss
Christensen
Clay
Clayton
Clement
Clyburn
Collins
Combest
Condit
Conyers
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
DeFazio
DeGette
Delahunt
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Filner
Flake
Foglietta
Foley
Ford
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hefley
Hefner
Herger
Hill
Hilliard
Hinchey
Hinojosa
Hobson
Holden

Hooley
Horn
Houghton
Hoyer
Hulshof
Hutchinson
Hyde
Inglis
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McDermott
McGovern
McHale
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Molinari
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paxon
Payne
Pelosi
Peterson (MN)
Peterson (PA)
Pickering
Pickett
Pitts
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaefer, Dan
Schaffer, Bob
Schumer
Scott
Serrano
Sessions
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Snowbarger
Snyder
Souder
Spence
Spratt
Stabenow
Stenholm
Stokes
Strickland
Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Thomas
Thompson
Thornberry
Thune
Thurman
Tiahrt
Tierney
Torres
Towns
Turner
Upton
Velázquez
Vento
Visclosky
Walsh
Waters
Watkins
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
White
Whitfield
Wicker
Wise
Wolf
Woolsey
Wynn
Yates
Young (FL)

NOT VOTING—7

Forbes
Gonzalez
Schiff
Solomon
Stark
Taylor (NC)
Young (AK)

□ 2107

Messrs. SANFORD, BACHUS and RYUN changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. CALLAHAN. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTINGS of Washington) having assumed the chair, Mr. THORNBERRY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2159), making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1998, and for other purposes, had come to no resolution thereon.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 695

Mr. BUNNING. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 695.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 695

Mr. HEFLEY. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 695.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

EXPRESSING SENSE OF CONGRESS REGARDING TERRORIST BOMBING IN JERUSALEM

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the concurrent resolution, House Concurrent Resolution 133.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. GILMAN] that the House suspend the rules and agree to the concurrent resolution, House Concurrent Resolution 133, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were— yeas 427, nays 1, not voting 6, as follows:

[Roll No. 348]

YEAS—427

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Archer
Armey
Bachus
Baesler
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berman
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boswell
Boucher
Boyd
Brady
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Cardin
Carson
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clay
Clayton
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Conyers
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Filner
Flake
Foglietta
Foley
Ford
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Hefner
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McDermott
McGovern
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Molinari
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema

Roybal-Allard	Smith (MI)	Tiahrt
Royce	Smith (NJ)	Tierney
Rush	Smith (OR)	Torres
Ryun	Smith (TX)	Towns
Sabo	Smith, Adam	Traficant
Salmon	Smith, Linda	Turner
Sanchez	Snowbarger	Upton
Sanders	Snyder	Velaquez
Sandlin	Solomon	Vento
Sanford	Souder	Visclosky
Sawyer	Spence	Walsh
Saxton	Spratt	Wamp
Scarborough	Stabenow	Waters
Schaefer, Dan	Stearns	Watkins
Schaffer, Bob	Stenholm	Watt (NC)
Schumer	Stokes	Watts (OK)
Scott	Strickland	Waxman
Sensenbrenner	Stump	Weldon (FL)
Serrano	Stupak	Weldon (PA)
Sessions	Sununu	Weller
Shadegg	Talent	Wexler
Shaw	Tanner	Weygand
Shays	Tauscher	White
Sherman	Tauzin	Whitfield
Shimkus	Taylor (MS)	Wicker
Shuster	Taylor (NC)	Wise
Sisisky	Thomas	Wolf
Skaggs	Thompson	Woolsey
Skeen	Thornberry	Wynn
Skelton	Thune	Yates
Slaughter	Thurman	Young (FL)

NAYS—1

Paul

NOT VOTING—6

Forbes	Nethercutt	Stark
Gonzalez	Schiff	Young (AK)

□ 2126

So the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 695

Mr. EVERETT. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 695.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Is there objection to the request of the gentleman from Alabama?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1577

Mr. HILL. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 1577.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1998

The SPEAKER pro tempore. Pursuant to the order of the House of Thursday, July 24, 1997, and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2159.

□ 2130

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2159) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1998, and for other purposes, with Mr. THORNBERRY in the chair.

The Clerk read the title of the bill.

□ 2130

The CHAIRMAN. When the Committee of the Whole rose earlier today, the amendment offered by the gentleman from Texas [Mr. PAUL] had been disposed of and the bill has been read through Page 30, Line 3.

Mr. CALLAHAN. Mr. Chairman, I ask unanimous consent that the Amendment No. 1 by the gentleman from New Jersey [Mr. SMITH] provided for under the rule and debatable for 40 minutes and Amendment No. 2 by the gentleman from New York [Mr. GILMAN] provided for by the order of the House of July 24 and debatable for 40 minutes, to title V, and Amendment No. 19 by the gentleman from California [Mr. TORRES], Amendment No. 1 by the gentleman from Massachusetts [Mr. KENNEDY], Amendment No. 30 by the gentleman from Massachusetts [Mr. KENNEDY], and Amendment Nos. 17 and 18 by the gentleman from California [Mr. TORRES] will be in order at a later time during the reading of the bill notwithstanding that title V may be closed.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. CALLAHAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, there will be no more recorded votes tonight. We will set aside all amendments dealing with Population Planning and the School of Americas until tomorrow. We will continue to offer amendments tonight and debate them and roll votes on all amendments that require a vote until tomorrow.

I expect we will be working tonight on this bill until about 10:30 or so, and I urge the Members to stay and offer amendments that were not included in the unanimous-consent request tonight.

Ms. HARMAN. Mr. Chairman, I move to strike the last word, and I rise for the purpose of engaging in a colloquy with my friend and colleague the gentleman from Alabama [Mr. CALLAHAN], chairman of the Subcommittee on Foreign Operations, Export Financing and Related Programs.

I want to commend the committee for including in the foreign operations appropriations bill language conditioning the availability of the funds appropriated for Russia on the certification that Russia has ceased providing assistance to Iran's nuclear and ballistic missile programs.

As my colleague is aware, in the very fluid Russian environment of today certain entities may be engaging in proliferation of ballistic missile technology without the consent of the Russian Government. The bill, as currently formulated, sends a strong message to the Russian Government about its own transactions with Iran, but it is vague on what the United States reaction will be if nongovernmental entities engage in proliferation.

I seek to ensure that in further deliberations in conference and in committee my colleague will explore effective means to prevent Russian entities from engaging in further missile technology trade with Iran, whether they operate with the authorization of the Russian Government or without.

For this purpose as well, Senator KYL and I have introduced a bipartisan concurrent resolution expressing the sense of Congress that proliferation by Russian Governmental and nongovernmental entities must stop. Our resolution calls on the President to impose sanctions if Russia does not halt these activities and to take further action regarding our cooperation with Russia.

Let me clarify finally that the resolution offered by Senator KYL and me is not intended to affect the Cooperative Threat Reduction program, which I fully support, but we need to be clear that those individuals who proliferate will be penalized with the tools the U.S. has available.

Mr. CALLAHAN. Mr. Chairman, will the gentlewoman yield?

Ms. HARMAN. I yield to the gentleman from Alabama.

Mr. CALLAHAN. Mr. Chairman, I fully agree with the gentlewoman from California's concerns regarding media reports of Russian missile transfers to Iran. This is an extremely serious issue, and she is right to draw attention to it. Her earlier discussions with the committee on this issue were greatly appreciated. The committee has focused on this issue under the leadership of the gentleman from California [Mr. PACKARD], and the bill before us contains very tough language on this subject. Last year's public law contained language prohibiting aid to the Government of Russia unless it terminated nuclear transfers to Iran, along with an "important to the national security interest" waiver which the administration has regularly used. This year the committee bill prohibits aid to the Government of Russia if it cooperates with Iran in the nuclear and missile areas. The waiver was raised to vital national security interests, which is a very high standard. If the President does use it, only 50 percent of the funds can be made available. This is very tough language, which reflects the House view, and this is an extremely serious problem.

Mr. Chairman, I appreciate the gentlewoman's leadership and her attention to this issue.

Ms. HARMAN. Mr. Chairman, I thank the gentleman from Alabama for his support and pledge to work with him, the committee and the full House and the other body to ensure that this activity is corrected.

Mr. EWING. Mr. Chairman, I move to strike the last word. I would like to engage in a colloquy with the gentleman from Alabama [Mr. CALLAHAN].

Mr. Chairman, I have filed an amendment to H.R. 2159 to cut funding for Peru under the international military education and training program unless the President reports to Congress that the Government of Peru is working to provide timely, open and fair legal proceedings against American citizens held in jail in Peru. This is done as a result of the unconscionable treatment of Jennifer Davis who has been held for 8 months in a Peruvian prison without any of her proper due process rights.

I will not offer that amendment because it is my understanding it would be ruled in violation of legislating on appropriations rule. However, this amendment was adopted in the Senate, and I strongly encourage the chairman to agree to this amendment during conference with the Senate.

I would like to thank the gentleman for including report language in H.R. 2159 at my request, which expresses the concern of the committee about the fate of American citizens being imprisoned in Peru. This language, coupled with the amendment I just mentioned, should send a strong message to Peru that the United States Congress is finding it more and more difficult to justify sending foreign aid to Peru when that country fails to respect the basic human rights to timely and fair legal actions.

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. EWING. I yield to the gentleman from Alabama.

Mr. CALLAHAN. Mr. Chairman, I share the gentleman's concerns on this very important issue, and I appreciate the gentleman drawing it to the committee's attention. Because of his concerns and concerns voiced by other Members, we have included specific language on this issue in our report. I can assure the gentleman we will consider this issue in conference and we will work closely with the gentleman in conveying our concerns to the State Department and to the government of Peru.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

FOREIGN MILITARY FINANCING PROGRAM

For expenses necessary for grants to enable the President to carry out the provisions of section 23 of the Arms Export Control Act, $3,259,250,000: *Provided*, That funds appropriated by this paragraph that are made available for Israel and Egypt shall be made available only as grants: *Provided further*, That the funds appropriated by this paragraph for Israel shall be disbursed within thirty days of enactment of this Act or by October 31, 1997, whichever is later: *Provided further*, That to the extent that the Government of Israel requests that funds be used for such purposes, grants made available for Israel by this paragraph shall, as agreed by Israel and the United States, be available for advanced weapons systems, of which not less than $475,000,000 shall be available for the procurement in Israel of defense articles and defense services, including research and development: *Provided further*, That funds made available under this paragraph shall be nonrepayable notwithstanding any requirement in section 23 of the Arms Export Control Act: *Provided further*, That none of the funds made available under this heading shall be available for any non-NATO country participating in the Partnership for Peace Program except through the regular notification procedures of the Committees on Appropriations.

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of direct loans authorized by section 23 of the Arms Export Control Act as follows: cost of direct loans, $60,000,000: *Provided*, That these funds are available to subsidize gross obligations for the principal amount of direct loans of not to exceed $657,000,000: *Provided further*, That the rate of interest charged on such loans shall be not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturities: *Provided further*, That funds appropriated under this heading shall be made available for Greece and Turkey only on a loan basis, and the principal amount of direct loans for each country shall not exceed the following: $105,000,000 only for Greece and $150,000,000 only for Turkey.

None of the funds made available under this heading shall be available to finance the procurement of defense articles, defense services, or design and construction services that are not sold by the United States Government under the Arms Export Control Act unless the foreign country proposing to make such procurements has first signed an agreement with the United States Government specifying the conditions under which such procurements may be financed with such funds: *Provided*, That all country and funding level increases in allocations shall be submitted through the regular notification procedures of section 515 of this Act: *Provided further*, That funds made available under this heading shall be obligated upon apportionment in accordance with paragraph (5)(C) of title 31, United States Code, section 1501(a): *Provided further*, That none of the funds appropriated under this heading shall be available for Sudan and Liberia: *Provided further*, That funds made available under this heading may be used, notwitstanding any other provision of law, for activities related to the clearance of landmines and unexploded ordnance, and may include activities implemented through nongovernmental and international organizations: *Provided further*, That only those countries for which assistance was justified for the "Foreign Military Sales Financing Program" in the fiscal year 1989 congressional presentation for security assistance programs may utilize funds made available under this heading for procurement of defense articles, defense services or design and construction services that are not sold by the United States Government under the Arms Export Control Act: *Provided further*, That, subject to the regular notification procedures of the Committees on Appropriations, funds made available under this heading for the cost of direct loans may also be used to supplement the funds available under this heading for grants, and funds made available under this heading for grants may also be used to supplement the funds available under this heading for the cost of direct loans: *Provided further*, That funds appropriated under this heading shall be expended at the minimum rate necessary to make timely payment for defense articles and services: *Provided further*, That not more than $23,250,000 of the funds appropriated under this heading may be obligated for necessary expenses, including the purchase of passenger motor vehicles for replacement only for use outside of the United States, for the general costs of administering military assistance and sales: *Provided further*, That none of the funds appropriated under this heading shall be available for Guatemala: *Provided further*, That not more than $350,000,000 of funds realized pursuant to section 21(e)(1)(A) of the Arms Export Control Act may be obligated for expenses incurred by the Department of Defense during fiscal year 1998 pursuant to section 43(b) of the Arms Export Control Act, except that this limitation may be exceeded only through the regular notification procedures of the Committees on Appropriations.

PEACEKEEPING OPERATIONS

For necessary expenses to carry out the provisions of section 551 of the Foreign Assistance Act of 1961, $77,500,000: *Provided*, That none of the funds appropriated under this paragraph shall be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

TITLE IV—MULTILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL FINANCIAL INSTITUTIONS

CONTRIBUTION TO THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

For payment to the International Bank for Reconstruction and Development by the Secretary of the Treasury, for the United States contribution to the Global Environment Facility (GEF), $35,000,000, to remain available until September 30, 1999.

CONTRIBUTION TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

For payment to the International Development Association by the Secretary of the Treasury, $606,000,000, for the United States contribution to the eleventh replenishment, to remain available until expended: *Provided*, That none of the funds may be obligated until the Secretary of the Treasury certifies to the Committees on Appropriations that procurement restrictions applicable to the United States under the terms of the Interim Trust Fund have been lifted and that the total unobligated balance available for open competition has been released.

CONTRIBUTION TO THE INTER-AMERICAN DEVELOPMENT BANK

For payment to the Inter-American Development Bank by the Secretary of the Treasury, for the United States share of the paid-in share portion of the increase in capital stock, $25,610,667, and for the United States share of the increase in the resources of the Fund for Special Operations, $20,835,000, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the Inter-American Development Bank may subscribe

without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed $1,503,718,910.

CONTRIBUTION TO THE ASIAN DEVELOPMENT BANK

For payment to the Asian Development Bank by the Secretary of the Treasury for the United States share of the paid-in portion of the increase in capital stock, $13,221,596, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the Asian Development Bank may subscribe without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed $647,858,204.

CONTRIBUTION TO THE ASIAN DEVELOPMENT FUND

For the United States contribution by the Secretary of the Treasury to the increases in resources of the Asian Development Fund, as authorized by the Asian Development Bank Act, as amended (Public Law 89-369), $100,000,000, to remain available until expended.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT FUND

For the United States contribution by the Secretary of the Treasury to the increase in resources of the African Development Fund, $25,000,000, to remain available until expended.

CONTRIBUTION TO THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

For payment to the European Bank for Reconstruction and Development by the Secretary of the Treasury, $35,778,717, for the United States share of the paid-in portion of the increase in capital stock, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the European Bank for Reconstruction and Development may subscribe without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed $123,237,803.

NORTH AMERICAN DEVELOPMENT BANK

For payment to the North American Development Bank by the Secretary of the Treasury, for the United States share of the paid-in portion of the capital stock, $56,500,000, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the North American Development Bank may subscribe without fiscal year limitation to the callable capital portion of the United States share of the capital stock of the North American Development Bank in an amount not to exceed $318,750,000.

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

For necessary expenses to carry out the provisions of section 301 of the Foreign Assistance Act of 1961, and of section 2 of the United Nations Environment Program Participation Act of 1973, $194,000,000: *Provided*, That none of the funds appropriated under this heading shall be made available for the United Nations Fund for Science and Technology: *Provided further*, That none of the funds appropriated under this heading that are made available to the United Nations Population Fund (UNFPA) shall be made available for activities in the People's Republic of China: *Provided further*, That not more than $25,000,000 of the funds appropriated under this heading may be made available to the UNFPA: *Provided further*, That not more than one-half of this amount may be provided to UNFPA before March 1, 1998, and that no later than February 15, 1998, the Secretary of State shall submit a report to the Committees on Appropriations indicating the amount UNFPA is budgeting for the People's Republic of China in 1998: *Provided further*, That any amount UNFPA plans to spend in the People's Republic of China in 1998 shall be deducted from the amount of funds provided to UNFPA after March 1, 1998, pursuant to the previous provisos: *Provided further*, That with respect to any funds appropriated under this heading that are made available to UNFPA, UNFPA shall be required to maintain such funds in a separate account and not commingle them with any other funds: *Provided further*, That none of the funds appropriated under this heading may be made available to the Korean Peninsula Energy Development Organization (KEDO) or the International Atomic Energy Agency (IAEA): *Provided further*, That none of the funds appropriated under this heading may be made available to the United Nations development group or any similar organization.

TITLE V—GENERAL PROVISIONS

OBLIGATIONS DURING LAST MONTH OF AVAILABILITY

SEC. 501. Except for the appropriations entitled "International Disaster Assistance", and "United States Emergency Refugee and Migration Assistance Fund", not more than 15 per centum of any appropriation item made available by this Act shall be obligated during the last month of availability.

PROHIBITION OF BILATERAL FUNDING FOR INTERNATIONAL FINANCIAL INSTITUTIONS

SEC. 502. Notwithstanding section 614 of the Foreign Assistance Act of 1961, as amended, none of the funds contained in title II of this Act may be used to carry out the provisions of section 209(d) of the Foreign Assistance Act of 1961.

LIMITATION ON RESIDENCE EXPENSES

SEC. 503. Of the funds appropriated or made available pursuant to this Act, not to exceed $126,500 shall be for official residence expenses of the Agency for International Development during the current fiscal year: *Provided*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

LIMITATION ON EXPENSES

SEC. 504. Of the funds appropriated or made available pursuant to this Act, not to exceed $5,000 shall be for entertainment expenses of the Agency for International Development during the current fiscal year.

LIMITATION ON REPRESENTATIONAL ALLOWANCES

SEC. 505. Of the funds appropriated or made available pursuant to this Act, not to exceed $95,000 shall be available for representation allowances for the Agency for International Development during the current fiscal year: *Provided*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars: *Provided further*, That of the funds made available by this Act for general costs of administering military assistance and sales under the heading "Foreign Military Financing Program", not to exceed $2,000 shall be available for entertainment expenses and not to exceed $50,000 shall be available for representation allowances: *Provided further*, That of the funds made available by this Act under the heading "International Military Education and Training", not to exceed $50,000 shall be available for entertainment allowances: *Provided further*, That of the funds made available by this Act for the Inter-American Foundation, not to exceed $2,000 shall be available for entertainment and representation allowances: *Provided further*, That of the funds made available by this Act for the Peace Corps, not to exceed a total of $4,000 shall be available for entertainment expenses: *Provided further*, That of the funds made available by this Act under the heading "Trade and Development Agency", not to exceed $2,000 shall be available for representation and entertainment allowances.

PROHIBITION ON FINANCING NUCLEAR GOODS

SEC. 506. None of the funds appropriated or made available (other than funds for "Nonproliferation, Anti-terrorism, Demining and Related Programs") pursuant to this Act, for carrying out the Foreign Assistance Act of 1961, may be used, except for purposes of nuclear safety, to finance the export of nuclear equipment, fuel, or technology.

PROHIBITION AGAINST DIRECT FUNDING FOR CERTAIN COUNTRIES

SEC. 507. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance or reparations to Cuba, Iraq, Libya, North Korea, Iran, Sudan, or Syria: *Provided*, That for purposes of this section, the prohibition on obligations or expenditures shall include direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents.

MILITARY COUPS

SEC. 508. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance to any country whose duly elected Head of Government is deposed by military coup or decree: *Provided*, That assistance may be resumed to such country if the President determines and reports to the Committees on Appropriations that subsequent to the termination of assistance a democratically elected government has taken office.

PARLIAMENTARY INQUIRY

Mr. BEREUTER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. BEREUTER. Mr. Chairman, would it be appropriate now for the gentleman to offer an amendment to title V?

The CHAIRMAN. Only to the section being read within title V.

Mr. CALLAHAN. Mr. Chairman, I ask unanimous consent that the remainder of title V of the bill through page 93, line 15 be considered as read and printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

Mr. DINGELL. Reserving the right to object, Mr. Chairman, what is the request?

The CHAIRMAN. The request by the gentleman from Alabama is that the remainder of title V of the bill through

page 93, line 15 be considered as read, printed in the RECORD and open to amendment at any point.

Is there objection to the request of the gentleman from Alabama?

Mr. DINGELL. Further reserving the right to object, Mr. Chairman, as I understood, it opens up the bill through page 93, line 15; is that correct?

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Alabama.

Mr. CALLAHAN. On page 93 through line 15, yes.

Mr. DINGELL. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The text of the bill from page 42, line 3 through page 93, line 15 is as follows:

TRANSFERS BETWEEN ACCOUNTS

SEC. 509. None of the funds made available by this Act may be obligated under an appropriation account to which they were not appropriated, except for transfers specifically provided for in this Act, unless the President, prior to the exercise of any authority contained in the Foreign Assistance Act of 1961 to transfer funds, consults with and provides a written policy justification to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That the exercise of such authority shall be subject to the regular notification procedures of the Committees on Appropriations.

DEOBLIGATION/REOBLIGATION AUTHORITY

SEC. 510. (a) Amounts certified pursuant to section 1311 of the Supplemental Appropriations Act, 1955, as having been obligated against appropriations heretofore made under the authority of the Foreign Assistance Act of 1961 for the same general purpose as any of the headings under title II of this Act are, if deobligated, hereby continued available for the same period as the respective appropriations under such headings or until September 30, 1998, whichever is later, and for the same general purpose, and for countries within the same region as originally obligated: *Provided*, That the Appropriations Committees of both Houses of the Congress are notified fifteen days in advance of the reobligation of such funds in accordance with regular notification procedures of the Committees on Appropriations.

(b) Obligated balances of funds appropriated to carry out section 23 of the Arms Export Control Act as of the end of the fiscal year immediately preceding the current fiscal year are, if deobligated, hereby continued available during the current fiscal year for the same purpose under any authority applicable to such appropriations under this Act: *Provided*, That the authority of this subsection may not be used in fiscal year 1998.

AVAILABILITY OF FUNDS

SEC. 511. No part of any appropriation contained in this Act shall remain available for obligation after the expiration of the current fiscal year unless expressly so provided in this Act: *Provided*, That funds appropriated for the purposes of chapters 1, 8, and 11 of part I, section 667, and chapter 4 of part II of the Foreign Assistance Act of 1961, as amended, and funds provided under the heading "Assistance for Eastern Europe and the Baltic States", shall remain available until expended if such funds are initially obligated before the expiration of their respective periods of availability contained in this Act: *Provided further*, That, notwithstanding any other provision of this Act, any funds made available for the purposes of chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961 which are allocated for cash disbursements in order to address balance of payments or economic policy reform objectives, shall remain available until expended: *Provided further*, That the report required by section 653(a) of the Foreign Assistance Act of 1961 shall designate for each country, to the extent known at the time of submission of such report, those funds allocated for cash disbursement for balance of payment and economic policy reform purposes.

LIMITATION ON ASSISTANCE TO COUNTRIES IN DEFAULT

SEC. 512. No part of any appropriation contained in this Act shall be used to furnish assistance to any country which is in default during a period in excess of one calendar year in payment to the United States of principal or interest on any loan made to such country by the United States pursuant to a program for which funds are appropriated under this Act: *Provided*, That this section and section 620(q) of the Foreign Assistance Act of 1961 shall not apply to funds made available in this Act or during the current fiscal year for Nicaragua and Liberia, and for any narcotics-related assistance for Colombia, Bolivia, and Peru authorized by the Foreign Assistance Act of 1961 or the Arms Export Control Act.

COMMERCE AND TRADE

SEC. 513. (a) None of the funds appropriated or made available pursuant to this Act for direct assistance and none of the funds otherwise made available pursuant to this Act to the Export-Import Bank and the Overseas Private Investment Corporation shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity: *Provided*, That such prohibition shall not apply to the Export-Import Bank if in the judgment of its Board of Directors the benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar, or competing commodity, and the Chairman of the Board so notifies the Committees on Appropriations.

(b) None of the funds appropriated by this or any other Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 shall be available for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States: *Provided*, That this subsection shall not prohibit—

(1) activities designed to increase food security in developing countries where such activities will not have a significant impact in the export of agricultural commodities of the United States; or

(2) research activities intended primarily to benefit American producers.

SURPLUS COMMODITIES

SEC. 514. The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the North American Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or made available pursuant to this Act, for the production or extraction of any commodity or mineral for export, if it is in surplus on world markets and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

NOTIFICATION REQUIREMENTS

SEC. 515. For the purposes of providing the Executive Branch with the necessary administrative flexibility, none of the funds made available under this Act for "Child Survival and Disease Programs Fund", "Development Assistance", "International organizations and programs", "Trade and Development Agency", "International narcotics control", "Assistance for Eastern Europe and the Baltic States", "Assistance for the New Independent States of the Former Soviet Union", "Economic Support Fund", "Peacekeeping operations", "Operating expenses of the Agency for International Development", "Operating expenses of the Agency for International Development Office of Inspector General", "Nonproliferation, anti-terrorism, demining and related programs", "Foreign Military Financing Program", "International military education and training", "Inter-American Foundation", "African Development Foundation", "Peace Corps", "Migration and refugee assistance", shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Appropriations Committees for obligation under any of these specific headings unless the Appropriations Committees of both Houses of Congress are previously notified fifteen days in advance: *Provided*, That the President shall not enter into any commitment of funds appropriated for the purposes of section 23 of the Arms Export Control Act for the provision of major defense equipment, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress or 20 per centum in excess of the quantities justified to Congress unless the Committees on Appropriations are notified fifteen days in advance of such commitment: *Provided further*, That this section shall not apply to any reprogramming for an activity, program, or project under chapter 1 of part I of the Foreign Assistance Act of 1961 of less than 10 per centum of the amount previously justified to the Congress for obligation for such activity, program, or project for the current fiscal year: *Provided further*, That the requirements of this section or any similar provision of this Act or any other Act, including any prior Act requiring notification in accordance with the regular notification procedures of the Committees on Appropriations,

may be waived if failure to do so would pose a substantial risk to human health or welfare: *Provided further*, That in case of any such waiver, notification to the Congress, or the appropriate congressional committees, shall be provided as early as practicable, but in no event later than three days after taking the action to which such notification requirement was applicable, in the context of the circumstances necessitating such waiver: *Provided further*, That any notification provided pursuant to such a waiver shall contain an explanation of the emergency circumstances.

Drawdowns made pursuant to section 506(a)(2) of the Foreign Assistance Act of 1961 shall be subject to the regular notification procedures of the Committees on Appropriations.

LIMITATION ON AVAILABILITY OF FUNDS FOR INTERNATIONAL ORGANIZATIONS AND PROGRAMS

SEC. 516. Notwithstanding any other provision of law or of this Act, none of the funds provided for "International Organizations and Programs" shall be available for the United States proportionate share, in accordance with section 307(c) of the Foreign Assistance Act of 1961, for any programs identified in section 307, or for Libya, Iran, or, at the discretion of the President, Communist countries listed in section 620(f) of the Foreign Assistance Act of 1961, as amended: *Provided*, That, subject to the regular notification procedures of the Committees on Appropriations, funds appropriated under this Act or any previously enacted Act making appropriations for foreign operations, export financing, and related programs, which are returned or not made available for organizations and programs because of the implementation of this section or any similar provision of law, shall remain available for obligation through September 30, 1999.

ECONOMIC SUPPORT FUND ASSISTANCE FOR ISRAEL

SEC. 517. The Congress finds that progress on the peace process in the Middle East is vitally important to United States security interests in the region. The Congress recognizes that, in fulfilling its obligations under the Treaty of Peace Between the Arab Republic of Egypt and the State of Israel, done at Washington on March 26, 1979, Israel incurred severe economic burdens. Furthermore, the Congress recognizes that an economically and militarily secure Israel serves the security interests of the United States, for a secure Israel is an Israel which has the incentive and confidence to continue pursuing the peace process. Therefore, the Congress declares that, subject to the availability of appropriations, it is the policy and the intention of the United States that the funds provided in annual appropriations for the Economic Support Fund which are allocated to Israel shall not be less than the annual debt repayment (interest and principal) from Israel to the United States Government in recognition that such a principle serves United States interests in the region.

PROHIBITION ON FUNDING FOR ABORTIONS AND INVOLUNTARY STERILIZATION

SEC. 518. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for any biomedical research which relates in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be obligated or expended for any country or organization if the President certifies that the use of these funds by any such country or organization would violate any of the above provisions related to abortions and involuntary sterilizations: *Provided*, That none of the funds made available under this Act may be used to lobby for or against abortion.

AUTHORIZATION FOR POPULATION PLANNING

SEC. 518A. Not to exceed $385,000,000 of the funds appropriated in title II of this Act may be made available for population planning activities or other population assistance.

REPORTING REQUIREMENT

SEC. 519. The President shall submit to the Committees on Appropriations the reports required by section 25(a)(1) of the Arms Export Control Act.

SPECIAL NOTIFICATION REQUIREMENTS

SEC. 520. None of the funds appropriated in this Act shall be obligated or expended for Colombia, Haiti, Liberia, Pakistan, Panama, Peru, Russia, Serbia, Sudan, or the Democratic Republic of Congo except as provided through the regular notification procedures of the Committees on Appropriations.

DEFINITION OF PROGRAM, PROJECT, AND ACTIVITY

SEC. 521. For the purpose of this Act, "program, project, and activity" shall be defined at the Appropriations Act account level and shall include all Appropriations and Authorizations Acts earmarks, ceilings, and limitations with the exception that for the following accounts: Economic Support Fund and Foreign Military Financing Program, "program, project, and activity" shall also be considered to include country, regional, and central program level funding within each such account; for the development assistance accounts of the Agency for International Development "program, project, and activity" shall also be considered to include central program level funding, either as (1) justified to the Congress, or (2) allocated by the executive branch in accordance with a report, to be provided to the Committees on Appropriations within thirty days of enactment of this Act, as required by section 653(a) of the Foreign Assistance Act of 1961.

CHILD SURVIVAL AND AIDS ACTIVITIES

SEC. 522. Up to $8,000,000 of the funds made available by this Act for assistance for family planning, health, child survival, and AIDS, may be used to reimburse United States Government agencies, agencies of State governments, institutions of higher learning, and private and voluntary organizations for the full cost of individuals (including for the personal services of such individuals) detailed or assigned to, or contracted by, as the case may be, the Agency for International Development for the purpose of carrying out family planning activities, child survival activities, and activities relating to research on, and the treatment and control of acquired immune deficiency syndrome in developing countries: *Provided*, That funds appropriated by this Act that are made available for child survival activities or activities relating to research on, and the treatment and control of, acquired immune deficiency syndrome may be made available notwithstanding any provision of law that restricts assistance to foreign countries: *Provided further*, That funds appropriated by this Act that are made available for family planning activities may be made available notwithstanding section 512 of this Act and section 620(q) of the Foreign Assistance Act of 1961.

PROHIBITION AGAINST INDIRECT FUNDING TO CERTAIN COUNTRIES

SEC. 523. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated to finance indirectly any assistance or reparations to Cuba, Iraq, Libya, Iran, Syria, North Korea, or the People's Republic of China, unless the President of the United States certifies that the withholding of these funds is contrary to the national interest of the United States.

RECIPROCAL LEASING

SEC. 524. Section 61(a) of the Arms Export Control Act is amended by striking out "1997" and inserting in lieu thereof "1998".

NOTIFICATION ON EXCESS DEFENSE EQUIPMENT

SEC. 525. Prior to providing excess Department of Defense articles in accordance with section 516(a) of the Foreign Assistance Act of 1961, the Department of Defense shall notify the Committees on Appropriations to the same extent and under the same conditions as are other committees pursuant to subsection (c) of that section: *Provided*, That before issuing a letter of offer to sell excess defense articles under the Arms Export Control Act, the Department of Defense shall notify the Committees on Appropriations in accordance with the regular notification procedures of such Committees: *Provided further*, That such Committees shall also be informed of the original acquisition cost of such defense articles.

AUTHORIZATION REQUIREMENT

SEC. 526. Funds appropriated by this Act may be obligated and expended subject to section 10 of Public Law 91-672 and section 15 of the State Department Basic Authorities Act of 1956.

PROHIBITION ON BILATERAL ASSISTANCE TO TERRORIST COUNTRIES

SEC. 527. (a) Notwithstanding any other provision of law, funds appropriated for bilateral assistance under any heading of this Act and funds appropriated under any such heading in a provision of law enacted prior to enactment of this Act, shall not be made available to any country which the President determines—

(1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or

(2) otherwise supports international terrorism.

(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least fifteen days before the waiver takes effect, shall notify the Committees on Appropriations of the waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations.

COMMERCIAL LEASING OF DEFENSE ARTICLES

SEC. 528. Notwithstanding any other provision of law, and subject to the regular notification procedures of the Committees on Appropriations, the authority of section 23(a) of

the Arms Export Control Act may be used to provide financing to Israel, Egypt and NATO and major non-NATO allies for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under such Act.

COMPETITIVE INSURANCE

SEC. 528A. All Agency for International Development contracts and solicitations, and subcontracts entered into under such contracts, shall include a clause requiring that United States insurance companies have a fair opportunity to bid for insurance when such insurance is necessary or appropriate.

STINGERS IN THE PERSIAN GULF REGION

SEC. 529. Except as provided in section 581 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, the United States may not sell or otherwise make available any Stingers to any country bordering the Persian Gulf under the Arms Export Control Act or chapter 2 of part II of the Foreign Assistance Act of 1961.

DEBT-FOR-DEVELOPMENT

SEC. 530. In order to enhance the continued participation of nongovernmental organizations in economic assistance activities under the Foreign Assistance Act of 1961, including endowments, debt-for-development and debt-for-nature exchanges, a nongovernmental organization which is a grantee or contractor of the Agency for International Development may place in interest bearing accounts funds made available under this Act or prior Acts or local currencies which accrue to that organization as a result of economic assistance provided under title II of this Act and any interest earned on such investment shall be used for the purpose for which the assistance was provided to that organization.

SEPARATE ACCOUNTS

SEC. 531. (a) SEPARATE ACCOUNTS FOR LOCAL CURRENCIES.—(1) If assistance is furnished to the government of a foreign country under chapters 1 and 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961 under agreements which result in the generation of local currencies of that country, the Administrator of the Agency for International Development shall—

(A) require that local currencies be deposited in a separate account established by that government;

(B) enter into an agreement with that government which sets forth—

(i) the amount of the local currencies to be generated, and

(ii) the terms and conditions under which the currencies so deposited may be utilized, consistent with this section; and

(C) establish by agreement with that government the responsibilities of the Agency for International Development and that government to monitor and account for deposits into and disbursements from the separate account.

(2) USES OF LOCAL CURRENCIES.—As may be agreed upon with the foreign government, local currencies deposited in a separate account pursuant to subsection (a), or an equivalent amount of local currencies, shall be used only—

(A) to carry out chapters 1 or 10 of part I or chapter 4 of part II (as the case may be), for such purposes as—

(i) project and sector assistance activities, or

(ii) debt and deficit financing; or

(B) for the administrative requirements of the United States Government.

(3) PROGRAMMING ACCOUNTABILITY.—The Agency for International Development shall take all necessary steps to ensure that the equivalent of the local currencies disbursed pursuant to subsection (a)(2)(A) from the separate account established pursuant to subsection (a)(1) are used for the purposes agreed upon pursuant to subsection (a)(2).

(4) TERMINATION OF ASSISTANCE PROGRAMS.—Upon termination of assistance to a country under chapters 1 or 10 of part I or chapter 4 of part II (as the case may be), any unencumbered balances of funds which remain in a separate account established pursuant to subsection (a) shall be disposed of for such purposes as may be agreed to by the government of that country and the United States Government.

(5) CONFORMING AMENDMENTS.—The provisions of this subsection shall supersede the tenth and eleventh provisos contained under the heading "Sub-Saharan Africa, Development Assistance" as included in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 and sections 531(d) and 609 of the Foreign Assistance Act of 1961.

(6) REPORTING REQUIREMENT.—The Administrator of the Agency for International Development shall report on an annual basis as part of the justification documents submitted to the Committees on Appropriations on the use of local currencies for the administrative requirements of the United States Government as authorized in subsection (a)(2)(B), and such report shall include the amount of local currency (and United States dollar equivalent) used and/or to be used for such purpose in each applicable country.

(b) SEPARATE ACCOUNTS FOR CASH TRANSFERS.—(1) If assistance is made available to the government of a foreign country, under chapters 1 or 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961, as cash transfer assistance or as nonproject sector assistance, that country shall be required to maintain such funds in a separate account and not commingle them with any other funds.

(2) APPLICABILITY OF OTHER PROVISIONS OF LAW.—Such funds may be obligated and expended notwithstanding provisions of law which are inconsistent with the nature of this assistance including provisions which are referenced in the Joint Explanatory Statement of the Committee of Conference accompanying House Joint Resolution 648 (H. Report No. 98–1159).

(3) NOTIFICATION.—At least fifteen days prior to obligating any such cash transfer or nonproject sector assistance, the President shall submit a notification through the regular notification procedures of the Committees on Appropriations, which shall include a detailed description of how the funds proposed to be made available will be used, with a discussion of the United States interests that will be served by the assistance (including, as appropriate, a description of the economic policy reforms that will be promoted by such assistance).

(4) EXEMPTION.—Nonproject sector assistance funds may be exempt from the requirements of subsection (b)(1) only through the notification procedures of the Committees on Appropriations.

COMPENSATION FOR UNITED STATES EXECUTIVE DIRECTORS TO INTERNATIONAL FINANCIAL INSTITUTIONS

SEC. 532. (a) No funds appropriated by this Act may be made as payment to any international financial institution while the United States Executive Director to such institution is compensated by the institution at a rate which, together with whatever compensation such Director receives from the United States, is in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, or while any alternate United States Director to such institution is compensated by the institution at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) For purposes of this section, "international financial institutions" are: the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the Asian Development Fund, the African Development Bank, the African Development Fund, the International Monetary Fund, the North American Development Bank, and the European Bank for Reconstruction and Development.

COMPLIANCE WITH UNITED NATIONS SANCTIONS AGAINST IRAQ

SEC. 533. None of the funds appropriated or otherwise made available pursuant to this Act to carry out the Foreign Assistance Act of 1961 (including title IV of chapter 2 of part I, relating to the Overseas Private Investment Corporation) or the Arms Export Control Act may be used to provide assistance to any country that is not in compliance with the United Nations Security Council sanctions against Iraq unless the President determines and so certifies to the Congress that—

(1) such assistance is in the national interest of the United States;

(2) such assistance will directly benefit the needy people in that country; or

(3) the assistance to be provided will be humanitarian assistance for foreign nationals who have fled Iraq and Kuwait.

COMPETITIVE PRICING FOR SALES OF DEFENSE ARTICLES

SEC. 534. Direct costs associated with meeting a foreign customer's additional or unique requirements will continue to be allowable under contracts under section 22(d) of the Arms Export Control Act. Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.

EXTENSION OF AUTHORITY TO OBLIGATE FUNDS TO CLOSE THE SPECIAL DEFENSE ACQUISITION FUND

SEC. 535. Title III of Public Law 103–306 is amended under the heading "Special Defense Acquisition Fund" by striking "1998" and inserting "2000".

CASH FLOW FINANCING

SEC. 536. For each country that has been approved for cash flow financing (as defined in section 25(d) of the Arms Export Control Act, as added by section 112(b) of Public Law 99–83) under the Foreign Military Financing Program, any Letter of Offer and Acceptance or other purchase agreement, or any amendment thereto, for a procurement in excess of $100,000,000 that is to be financed in whole or in part with funds made available under this Act shall be submitted through the regular notification procedures to the Committees on Appropriations.

AUTHORITIES FOR THE PEACE CORPS, THE INTER-AMERICAN FOUNDATION AND THE AFRICAN DEVELOPMENT FOUNDATION

SEC. 537. Unless expressly provided to the contrary, provisions of this or any other Act,

including provisions contained in prior Acts authorizing or making appropriations for foreign operations, export financing, and related programs, shall not be construed to prohibit activities authorized by or conducted under the Peace Corps Act, the Inter-American Foundation Act, or the African Development Foundation Act. The appropriate agency shall promptly report to the Committees on Appropriations whenever it is conducting activities or is proposing to conduct activities in a country for which assistance is prohibited.

IMPACT ON JOBS IN THE UNITED STATES

SEC. 538. None of the funds appropriated by this Act may be obligated or expended to provide—

(a) any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States;

(b) assistance for the purpose of establishing or developing in a foreign country any export processing zone or designated area in which the tax, tariff, labor, environment, and safety laws of that country do not apply, in part or in whole, to activities carried out within that zone or area, unless the President determines and certifies that such assistance is not likely to cause a loss of jobs within the United States; or

(c) assistance for any project or activity that contributes to the violation of internationally recognized workers rights, as defined in section 502(a)(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country: *Provided*, That in recognition that the application of this subsection should be commensurate with the level of development of the recipient country and sector, the provisions of this subsection shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.

RESTRICTIONS ON THE TERMINATION OF SANCTIONS AGAINST SERBIA AND MONTENEGRO

SEC. 539. (a) RESTRICTIONS.—Notwithstanding any other provision of law, no sanction, prohibition, or requirement described in section 1511 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160), with respect to Serbia or Montenegro, may cease to be effective, unless—

(1) the President first submits to the Congress a certification described in subsection (b); and

(2) the requirements of section 1511 of that Act are met.

(b) CERTIFICATION.—A certification described in this subsection is a certification that—

(1) there is substantial progress toward—

(A) the realization of a separate identity for Kosova and the right of the people of Kosova to govern themselves; or

(B) the creation of an international protectorate for Kosova;

(2) there is substantial improvement in the human rights situation in Kosova;

(3) international human rights observers are allowed to return to Kosova; and

(4) the elected government of Kosova is permitted to meet and carry out its legitimate mandate as elected representatives of the people of Kosova.

(c) WAIVER AUTHORITY.—The President may waive the application in whole or in part, of subsection (a) if the President certifies to the Congress that the President has determined that the waiver is necessary to meet emergency humanitarian needs or to achieve a negotiated settlement of the conflict in Bosnia and Herzegovina that is acceptable to the parties.

SPECIAL AUTHORITIES

SEC. 540. (a) Funds appropriated in title II of this Act that are made available for Afghanistan, Lebanon, and Cambodia, and for victims of war, displaced children, displaced Burmese, humanitarian assistance for Romania, and humanitarian assistance for the peoples of Bosnia and Herzegovina, Croatia, and Kosova, may be made available notwithstanding any other provision of law: *Provided*, That any such funds that are made available for Cambodia shall be subject to the provisions of section 531(e) of the Foreign Assistance Act of 1961 and section 906 of the International Security and Development Cooperation Act of 1985.

(b) Funds appropriated by this Act to carry out the provisions of sections 103 through 106 of the Foreign Assistance Act of 1961 may be used, notwithstanding any other provision of law, for the purpose of supporting tropical forestry and energy programs aimed at reducing emissions of greenhouse gases, and for the purpose of supporting biodiversity conservation activities: *Provided*, That such assistance shall be subject to sections 116, 502B, and 620A of the Foreign Assistance Act of 1961.

(c) The Agency for International Development may employ personal services contractors, notwithstanding any other provision of law, for the purpose of administering programs for the West Bank and Gaza.

POLICY ON TERMINATING THE ARAB LEAGUE BOYCOTT OF ISRAEL

SEC. 541. It is the sense of the Congress that—

(1) the Arab League countries should immediately and publicly renounce the primary boycott of Israel and the secondary and tertiary boycott of American firms that have commercial ties with Israel; and

(2) the decision by the Arab League in 1997 to reinstate the boycott against Israel was deeply troubling and disappointing; and

(3) the Arab League should immediately rescind its decision on the boycott and its members should develop normal relations with their neighbor Israel; and

(4) the President should—

(A) take more concrete steps to encourage vigorously Arab League countries to renounce publicly the primary boycotts of Israel and the secondary and tertiary boycotts of American firms that have commercial relations with Israel as a confidence-building measure;

(B) take into consideration the participation of any recipient country in the primary boycott of Israel and the secondary and tertiary boycotts of American firms that have commercial relations with Israel when determining whether to sell weapons to said country;

(C) report to Congress on the specific steps being taken by the President to bring about a public renunciation of the Arab primary boycott of Israel and the secondary and tertiary boycotts of American firms that have commercial relations with Israel and to expand the process of normalizing ties between Arab League countries and Israel; and

(D) encourage the allies and trading partners of the United States to enact laws prohibiting businesses from complying with the boycott and penalizing businesses that do comply.

ANTI-NARCOTICS ACTIVITIES

SEC. 542. (a) Of the funds appropriated or otherwise made available by this Act for "Economic Support Fund", assistance may be provided to strengthen the administration of justice in countries in Latin America and the Caribbean and in other regions consistent with the provisions of section 534(b) of the Foreign Assistance Act of 1961, except that programs to enhance protection of participants in judicial cases may be conducted notwithstanding section 660 of that Act.

(b) Funds made available pursuant to this section may be made available notwithstanding section 534(c) and the second and third sentences of section 534(e) of the Foreign Assistance Act of 1961. Funds made available pursuant to subsection (a) for Bolivia, Colombia and Peru may be made available notwithstanding section 534(c) and the second sentence of section 534(e) of the Foreign Assistance Act of 1961.

ELIGIBILITY FOR ASSISTANCE

SEC. 543. (a) ASSISTANCE THROUGH NONGOVERNMENTAL ORGANIZATIONS.—Restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance in support of programs of nongovernmental organizations from funds appropriated by this Act to carry out the provisions of chapters 1 and 10 and 11 of part I, and chapter 4 of part II, of the Foreign Assistance Act of 1961: *Provided*, That the President shall take into consideration, in any case in which a restriction on assistance would be applicable but for this subsection, whether assistance in support of programs of nongovernmental organizations is in the national interest of the United States: *Provided further*, That before using the authority of this subsection to furnish assistance in support of programs of nongovernmental organizations, the President shall notify the Committees on Appropriations under the regular notification procedures of those committees, including a description of the program to be assisted, the assistance to be provided, and the reasons for furnishing such assistance: *Provided further*, That nothing in this subsection shall be construed to alter any existing statutory prohibitions against abortion or involuntary sterilizations contained in this or any other Act.

(b) PUBLIC LAW 480.—During fiscal year 1998, restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance under the Agricultural Trade Development and Assistance Act of 1954: *Provided*, That none of the funds appropriated to carry out title I of such Act and made available pursuant to this subsection may be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

(c) EXCEPTION.—This section shall not apply—

(1) with respect to section 620A of the Foreign Assistance Act or any comparable provision of law prohibiting assistance to countries that support international terrorism; or

(2) with respect to section 116 of the Foreign Assistance Act of 1961 or any comparable provision of law prohibiting assistance to countries that violate internationally recognized human rights.

EARMARKS

SEC. 544. (a) Funds appropriated by this Act which are earmarked may be reprogrammed for other programs within the same account notwithstanding the earmark

if compliance with the earmark is made impossible by operation of any provision of this or any other Act or, with respect to a country with which the United States has an agreement providing the United States with base rights or base access in that country, if the President determines that the recipient for which funds are earmarked has significantly reduced its military or economic cooperation with the United States since enactment of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991; however, before exercising the authority of this subsection with regard to a base rights or base access country which has significantly reduced its military or economic cooperation with the United States, the President shall consult with, and shall provide a written policy justification to the Committees on Appropriations: *Provided*, That any such reprogramming shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That assistance that is reprogrammed pursuant to this subsection shall be made available under the same terms and conditions as originally provided.

(b) In addition to the authority contained in subsection (a), the original period of availability of funds appropriated by this Act and administered by the Agency for International Development that are earmarked for particular programs or activities by this or any other Act shall be extended for an additional fiscal year if the Administrator of such agency determines and reports promptly to the Committees on Appropriations that the termination of assistance to a country or a significant change in circumstances makes it unlikely that such earmarked funds can be obligated during the original period of availability: *Provided*, That such earmarked funds that are continued available for an additional fiscal year shall be obligated only for the purpose of such earmark.

CEILINGS AND EARMARKS

SEC. 545. Ceilings and earmarks contained in this Act shall not be applicable to funds or authorities appropriated or otherwise made available by any subsequent Act unless such Act specifically so directs.

PROHIBITION ON PUBLICITY OR PROPAGANDA

SEC. 546. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes within the United States not authorized before the date of enactment of this Act by the Congress: *Provided*, That not to exceed $500,000 may be made available to carry out the provisions of section 316 of Public Law 96-533.

USE OF AMERICAN RESOURCES

SEC. 547. To the maximum extent possible, assistance provided under this Act should make full use of American resources, including commodities, products, and services.

PROHIBITION OF PAYMENTS TO UNITED NATIONS MEMBERS

SEC. 548. None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, may be used to pay in whole or in part any assessments, arrearages, or dues of any member of the United Nations.

CONSULTING SERVICES

SEC. 549. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order pursuant to existing law.

PRIVATE VOLUNTARY ORGANIZATIONS—DOCUMENTATION

SEC. 550. None of the funds appropriated or made available pursuant to this Act shall be available to a private voluntary organization which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the Agency for International Development.

PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

SEC. 551. (a) None of the funds appropriated or otherwise made available by this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 40(d) of the Arms Export Control Act. The prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after April 24, 1996.

(b) Assistance restricted by subsection (a) or any other similar provision of law, may be furnished if the President determines that furnishing such assistance is important to the national interests of the United States.

(c) Whenever the waiver of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance. Any such report shall include a detailed explanation of the assistance estimated to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests.

WITHHOLDING OF ASSISTANCE FOR PARKING FINES OWED BY FOREIGN COUNTRIES

SEC. 552. (a) IN GENERAL.—Of the funds made available for a foreign country under part I of the Foreign Assistance Act of 1961, an amount equivalent to 110 percent of the total unpaid fully adjudicated parking fines and penalties owed to the District of Columbia by such country as of the date of enactment of this Act shall be withheld from obligation for such country until the Secretary of State certifies and reports in writing to the appropriate congressional committees that such fines and penalties are fully paid to the government of the District of Columbia.

(b) DEFINITION.—For purposes of this section, the term "appropriate congressional committees" means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives.

LIMITATION ON ASSISTANCE FOR THE PLO FOR THE WEST BANK AND GAZA

SEC. 553. None of the funds appropriated by this Act may be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza unless the President has exercised the authority under section 604(a) of the Middle East Peace Facilitation Act of 1995 (title VI of Public Law 104-107) or any other legislation to suspend or make inapplicable section 307 of the Foreign Assistance Act of 1961 and that suspension is still in effect: *Provided*, That if the President fails to make the certification under section 604(b)(2) of the Middle East Peace Facilitation Act of 1995 or to suspend the prohibition under other legislation, funds appropriated by this Act may not be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza.

EXPORT FINANCING TRANSFER AUTHORITIES

SEC. 554. Not to exceed 5 percent of any appropriation other than for administrative expenses made available for fiscal year 1998 for programs under title I of this Act may be transferred between such appropriations for use for any of the purposes, programs and activities for which the funds in such receiving account may be used, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 25 percent by any such transfer: *Provided*, That the exercise of such authority shall be subject to the regular notification procedures of the Committees on Appropriations.

WAR CRIMES TRIBUNALS

SEC. 555. If the President determines that doing so will contribute to a just resolution of charges regarding genocide or other violations of international humanitarian law, the President may direct a drawdown pursuant to section 552(c) of the Foreign Assistance Act of 1961, as amended, of up to $25,000,000 of commodities and services for the United Nations War Crimes Tribunal established with regard to the former Yugoslavia by the United Nations Security Council or such other tribunals or commissions as the Council may establish to deal with such violations, without regard to the ceiling limitation contained in paragraph (2) thereof: *Provided*, That the determination required under this section shall be in lieu of any determinations otherwise required under section 552(c): *Provided further*, That 60 days after the date of enactment of this Act, and every 180 days thereafter, the Secretary of State shall submit a report to the Committees on Appropriations describing the steps the United States Government is taking to collect information regarding allegations of genocide or other violations of international law in the former Yugoslavia and to furnish that information to the United Nations War Crimes Tribunal for the former Yugoslavia.

LANDMINES

SEC. 556. Notwithstanding any other provision of law, demining equipment available to the Agency for International Development and the Department of State and used in support of the clearing of landmines and unexploded ordnance for humanitarian purposes may be disposed of on a grant basis in foreign countries, subject to such terms and conditions as the President may prescribe.

RESTRICTIONS CONCERNING THE PALESTINIAN AUTHORITY

SEC. 557. None of the funds appropriated by this Act may be obligated or expended to create in any part of Jerusalem a new office of any department or agency of the United States Government for the purpose of conducting official United States Government business with the Palestinian Authority over Gaza and Jericho or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles: *Provided*, That this restriction shall not apply to the acquisition of additional space for the existing Consulate General in Jerusalem: *Provided further*, That meetings between officers and employees of the United States and officials of the Palestinian Authority, or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of

Principles, for the purpose of conducting official United States Government business with such authority should continue to take place in locations other than Jerusalem. As has been true in the past, officers and employees of the United States Government may continue to meet in Jerusalem on other subjects with Palestinians (including those who now occupy positions in the Palestinian Authority), have social contacts, and have incidental discussions.

PROHIBITION OF PAYMENT OF CERTAIN EXPENSES

SEC. 558. None of the funds appropriated or otherwise made available by this Act under the heading "INTERNATIONAL MILITARY EDUCATION AND TRAINING" or "FOREIGN MILITARY FINANCING PROGRAM" for Informational Program activities may be obligated or expended to pay for—

(1) alcoholic beverages;

(2) food (other than food provided at a military installation) not provided in conjunction with Informational Program trips where students do not stay at a military installation; or

(3) entertainment expenses for activities that are substantially of a recreational character, including entrance fees at sporting events and amusement parks.

EQUITABLE ALLOCATION OF FUNDS

SEC. 559. Not more than 18 percent of the funds appropriated by this Act to carry out the provisions of sections 103 through 106 and chapter 4 of part II of the Foreign Assistance Act of 1961, that are made available for Latin America and the Caribbean region may be made available, through bilateral and Latin America and the Caribbean regional programs, to provide assistance for any country in such region.

PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS

SEC. 560. (a) SENSE OF CONGRESS.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

LIMITATION OF FUNDS FOR NORTH AMERICAN DEVELOPMENT BANK

SEC. 561. None of the Funds appropriated in this Act under the heading "North American Development Bank" and made available for the Community Adjustment and Investment Program shall be used for purposes other than those set out in the binational agreement establishing the Bank.

INTERNATIONAL DEVELOPMENT ASSOCIATION

SEC. 562. In order to pay for the United States contribution to the eleventh replenishment of the resources of the International Development Association, there are authorized to be appropriated, without fiscal year limitation, $606,000,000 for payment by the Secretary of the Treasury.

SPECIAL DEBT RELIEF FOR THE POOREST

SEC. 563. (a) AUTHORITY TO REDUCE DEBT.—The President may reduce amounts owed to the United States (or any agency of the United States) by an eligible country as a result of—

(1) guarantees issued under sections 221 and 222 of the Foreign Assistance Act of 1961; or

(2) credits extended or guarantees issued under the Arms Export Control Act.

(b) LIMITATIONS.—

(1) The authority provided by subsection (a) may be exercised only to implement multilateral official debt relief and referendum agreements, commonly referred to as "Paris Club Agreed Minutes".

(2) The authority provided by subsection (a) may be exercised only in such amounts or to such extent as is provided in advance by appropriations Acts.

(3) The authority provided by subsection (a) may be exercised only with respect to countries with heavy debt burdens that are eligible to borrow from the International Development Association, but not from the International Bank for Reconstruction and Development, commonly referred to as "IDA-only" countries.

(c) CONDITIONS.—The authority provided by subsection (a) may be exercised only with respect to a country whose government—

(1) does not have an excessive level of military expenditures;

(2) has not repeatedly provided support for acts of international terrorism;

(3) is not failing to cooperate on international narcotics control matters;

(4) (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights; and

(5) is not ineligible for assistance because of the application of section 527 of the Foreign Relations Authorization Act, fiscal years 1994 and 1995.

(d) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to funds appropriated by this Act under the heading "Debt restructuring".

(e) CERTAIN PROHIBITIONS INAPPLICABLE.—A reduction of debt pursuant to subsection (a) shall not be considered assistance for purposes of any provision of law limiting assistance to a country. The authority provided by subsection (a) may be exercised notwithstanding section 620(r) of the Foreign Assistance Act of 1961.

AUTHORITY TO ENGAGE IN DEBT BUYBACKS OR SALES

SEC. 564. (a) LOANS ELIGIBLE FOR SALE, REDUCTION, OR CANCELLATION.—

(1) AUTHORITY TO SELL, REDUCE, OR CANCEL CERTAIN LOANS.—Notwithstanding any other provision of law, the President may, in accordance with this section, sell to any eligible purchaser any concessional loan or portion thereof made before January 1, 1995, pursuant to the Foreign Assistance Act of 1961, to the government of any eligible country as defined in section 702(6) of that Act or on receipt of payment from an eligible purchaser, reduce or cancel such loan or portion thereof, only for the purpose of facilitating—

(A) debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps; or

(B) a debt buyback by an eligible country of its own qualified debt, only if the eligible country uses an additional amount of the local currency of the eligible country, equal to not less than 40 percent of the price paid for such debt by such eligible country, or the difference between the price paid for such debt and the face value of such debt, to support activities that link conservation and sustainable use of natural resources with local community development, and child survival and other child development, in a manner consistent with sections 707 through 710 of the Foreign Assistance Act of 1961, if the sale, reduction, or cancellation would not contravene any term or condition of any prior agreement relating to such loan.

(2) TERMS AND CONDITIONS.—Notwithstanding any other provision of law, the President shall, in accordance with this section, establish the terms and conditions under which loans may be sold, reduced, or canceled pursuant to this section.

(3) ADMINISTRATION.—The Facility, as defined in section 702(8) of the Foreign Assistance Act of 1961, shall notify the administrator of the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 of purchasers that the President has determined to be eligible, and shall direct such agency to carry out the sale, reduction, or cancellation of a loan pursuant to this section. Such agency shall make an adjustment in its accounts to reflect the sale, reduction, or cancellation.

(4) LIMITATION.—The authorities of this subsection shall be available only to the extent that appropriations for the cost of the modification, as defined in section 502 of the Congressional Budget Act of 1974, are made in advance.

(b) DEPOSIT OF PROCEEDS.—The proceeds from the sale, reduction, or cancellation of any loan sold, reduced, or canceled pursuant to this section shall be deposited in the United States Government account or accounts established for the repayment of such loan.

(c) ELIGIBLE PURCHASERS.—A loan may be sold pursuant to subsection (a)(1)(A) only to a purchaser who presents plans satisfactory to the President for using the loan for the purpose of engaging in debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(d) DEBTOR CONSULTATIONS.—Before the sale to any eligible purchaser, or any reduction or cancellation pursuant to this section, of any loan made to an eligible country, the President should consult with the country concerning the amount of loans to be sold, reduced, or canceled and their uses for debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(e) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to funds appropriated by this Act under the heading "Debt restructuring".

GUATEMALA

SEC. 565. (a) Funds provided in this Act may be made available for the Guatemalan military forces, and the restriction on Guatemala under the heading "Foreign Military Financing Program" shall not apply, only if the President determines and certifies to the Congress that the Guatemalan military is cooperating fully with efforts to resolve human rights abuses which elements of the Guatemalan military forces are alleged to have committed, ordered or attempted to thwart the investigation of, and to implement the peace settlement.

(b) The prohibition contained in subsection (a) shall not apply to funds made available to implement a ceasefire or peace agreement.

(c) Any funds made available pursuant to subsections (a) or (b) shall be subject to the regular notification procedures of the Committees on Appropriations.

SANCTIONS AGAINST COUNTRIES HARBORING WAR CRIMINALS

SEC. 566. (a) BILATERAL ASSISTANCE.—The President is authorized to withhold funds appropriated by this Act under the Foreign Assistance Act of 1961 or the Arms Export Control Act for any country described in subsection (c).

(b) MULTILATERAL ASSISTANCE.—The Secretary of the Treasury should instruct the United States executive directors of the

international financial institutions to work in opposition to, and vote against, any extension by such institutions of financing or financial or technical assistance to any country described in subsection (c).

(c) SANCTIONED COUNTRIES.—A country described in this subsection is a country the government of which knowingly grants sanctuary to persons in its territory for the purpose of evading prosecution, where such persons—

(1) have been indicted by the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, or any other international tribunal with similar standing under international law, or

(2) have been indicted for war crimes or crimes against humanity committed during the period beginning March 23, 1933 and ending on May 8, 1945 under the direction of, or in association with—

(A) the Nazi government of Germany;

(B) any government in any area occupied by the military forces of the Nazi government of Germany;

(C) any government which was established with the assistance or cooperation of the Nazi government; or

(D) any government which was an ally of the Nazi government of Germany.

LIMITATION ON ASSISTANCE FOR HAITI

SEC. 567. (a) LIMITATION.—None of the funds appropriated or otherwise made available by this Act, may be provided to the Government of Haiti until the President reports to Congress that—

(1) the Government is conducting thorough investigations of extrajudicial and political killings that have taken place in Haiti since February 12, 1996; and

(2) the Government has completed privatization of (or placed under long-term private management contract) at least three major public enterprises.

(b) Nothing in this section shall be construed to restrict the provision of humanitarian, law enforcement, antinarcotics, or electoral assistance.

(c) The President may waive the requirements of this section on a semiannual basis if he determines and certifies to the appropriate committees of Congress that it is in the national interest of the United States.

REQUIREMENT FOR DISCLOSURE OF FOREIGN AID IN REPORT OF SECRETARY OF STATE

SEC. 568. (a) FOREIGN AID REPORTING REQUIREMENT.—In addition to the voting practices of a foreign country, the report required to be submitted to Congress under section 406(a) of the Foreign Relations Authorization Act, fiscal years 1990 and 1991 (22 U.S.C. 2414a), shall include a side-by-side comparison of individual countries' overall support for the United States at the United Nations and the amount of United States assistance provided to such country in fiscal year 1997.

(b) UNITED STATES ASSISTANCE.—For purposes of this section, the term "United States assistance" has the meaning given the term in section 481(e)(4) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(4)).

RESTRICTIONS ON VOLUNTARY CONTRIBUTIONS TO UNITED NATIONS AGENCIES

SEC. 569. (a) PROHIBITION ON VOLUNTARY CONTRIBUTIONS FOR THE UNITED NATIONS.—None of the funds appropriated or otherwise made available by this Act may be made available to pay any voluntary contribution of the United States to the United Nations (including the United Nations Development Program) if the United Nations implements or imposes any taxation on any United States persons.

(b) CERTIFICATION REQUIRED FOR DISBURSEMENT OF FUNDS.—None of the funds appropriated or otherwise made available under this Act may be made available to pay any voluntary contribution of the United States to the United Nations (including the United Nations Development Program) unless the President certifies to the Congress 15 days in advance of such payment that the United Nations is not engaged in any effort to implement or impose any taxation on United States persons in order to raise revenue for the United Nations or any of its specialized agencies.

(c) DEFINITIONS.—As used in this section the term "United States person" refers to—

(1) a natural person who is a citizen or national of the United States; or

(2) a corporation, partnership, or other legal entity organized under the United States or any State, territory, possession, or district of the United States.

NORTH KOREA

SEC. 570. Ninety days after the date of enactment of this Act, and every 180 days thereafter, the Secretary of State, in consultation with the Secretary of Defense, shall provide a report in a classified or unclassified form to the Committee on Appropriations including the following information:

(a) a best estimate on fuel used by the military forces of the Democratic People's Republic of Korea (DPRK);

(b) the deployment position and military training and activities of the DPRK forces and best estimate of the associated costs of these activities;

(c) steps taken to reduce the DPRK level of forces; and

(d) cooperation, training, or exchanges of information, technology or personnel between the DPRK and any other nation supporting the development or deployment of a ballistic missile capability.

The CHAIRMAN. Are there amendments to this portion of the bill?

AMENDMENT NO. 53 OFFERED BY MR. BEREUTER

Mr. BEREUTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment No. 53 offered by Mr. BEREUTER:

At the end of the bill, insert after the last section—preceding the short title—the following new section:

SEC. . (a). None of the funds appropriated in this Act may be made available directly to the Government of Cambodia.

Mr. BEREUTER. Mr. Chairman, this Member rises today as the chairman of the Subcommittee on Asia and the Pacific to offer an amendment to this legislation concerning provision of United States assistance to the Government of Cambodia. This Member's amendment would terminate United States foreign assistance to the Government of Cambodia, but is designed to allow continued humanitarian assistance to flow to humanitarian nongovernmental organizations and pro-democracy funds to flow through the National Endowment for Democracy. It would, however, prevent development assistance from going to the tyrants who have seized power in Phnom Penh.

Mr. Chairman, the 4-year-old experiment with democracy in Cambodia is in dire straits, and a tyrant has seized power through the force of arms, intimidation, terror, and summary executions. Few people have experienced as much pain, suffering, and terror as the people of Cambodia have over the last 30 years. Ravaged by the war in Indochina, bled white by the genocidal regime of Pol Pot and the Khmer Rouge, and subjugated by a Communist government fronted by the leader of the coup d'etat, Hen Sen, a former member of the Khmer Rouge himself, Cambodia and the United States find themselves on all too familiar ground.

□ 2145

After nearly $3 billion in aid and assistance in the first democratic elections in the history of this country, Cambodians are again facing the domination of a ruthless tyrant who murders his opponents, terrorizes the population, and profits from narco-trafficking and corruption. Yet, Hun Sen claims that he respects the rule of law and the wishes of the people, who roundly rejected him and his party at the polls, and tells the international community that supplies over 40 percent of the Cambodian budget to mind its own business and to stay out of Cambodian affairs.

Mr. Chairman, the United States continually urges other nations to respect the rule of law, but in the case of Cambodia the Clinton administration is demonstrating that it will ignore a law that is inconvenient. Section 508 of the Foreign Operations Export Financing and Related Programs Appropriations Act of 1997 terminates U.S. assistance to any country whose duly-elected head of government is deposed by a military coup until such time that the President determines that a democratically-elected government has taken office.

The Clinton administration has refused to observe this law regarding Cambodia, claiming that what has happened earlier this month was not really a coup. This Member regrets to say that our articulate, plain-speaking Secretary of State does not at this point seem to have the word "coup" in her vocabulary when it comes to Cambodia.

At a hearing of the Subcommittee on Asia and the Pacific 2 weeks ago on the Cambodian crisis, the State Department witness stated that if the administration actually obeyed the law it would close off too many options for U.S. foreign policy. This Member submits that the administration does not have the option to ignore the provisions of Section 508.

Mr. Chairman, this amendment seeks to cut off all direct U.S. assistance to the Government of Cambodia. The U.S. cannot give any support, political, material, or otherwise, to the illegal regime of Hun Sen. This Member would also like to commend the efforts of the

chairman of the Committee on International Relations, the gentleman from New York [Mr. GILMAN] and the ranking member of that committee, the gentleman from Indiana [Mr. HAMILTON] for joining this Member in leading the effort in the House to address the Cambodian crisis.

This Member would also like to commend the gentleman from California [Mr. ROHRABACHER], the gentleman from Iowa [Mr. LEACH], and the ranking minority member of the Subcomittee on Asia and the Pacific, the gentleman from California [Mr. BERMAN] for their efforts on this issue.

With their support, this Chamber passed House Resolution 195 on Cambodia on Monday, which, among other things, expressed the sense of the House that such aid should be cut off to Hun Sen's regime by the invocation of Section 508. Therefore, this amendment is appropriate.

Mr. Chairman, I urge support of this amendment which prohibits aid to the Government of Cambodia.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. BEREUTER. I yield to the gentleman from New York..

Mr. GILMAN. I thank the gentleman for yielding to me, Mr. Chairman.

Mr. Chairman, I rise in strong support of this amendment to end aid to the Government of Cambodia offered by our distinguished chairman of the Subcommittee on Asia and the Pacific, the gentleman from Nebraska [Mr. BEREUTER].

This timely amendment rightfully cuts off direct aid to the Cambodian Government, which just underwent a violent coup d'tat at the hands of the former Khmer Rouge tyrant, Hun Sen. This unconstitutional act by Hun Sen and his cronies has resulted in the murder of tens of opposition leaders, the arrest of hundreds, and the fleeing of thousands, all of this at a time when the future of Cambodia looked bright.

The United States and this body must show the kind of leadership the world expects of us, and take decisive actions against this illegal and unacceptable forcible removal of the democratically elected Government in Cambodia. Cutting off aid to an assistance-hungry government like Cambodia is an appropriate response and the amendment of the gentleman from Nebraska [Mr. BEREUTER] does just that.

Accordingly, I urge my colleagues to support the amendment of the distinguished gentleman from Nebraska.

Ms. LOFGREN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I share the concern that has just been expressed by the chairman of the subcommittee and the chairman of the full committee about the outrages that are currently going on in Cambodia. Just this week, we read in the Washington Post accounts of what has gone on. These were confirmed by numerous reports of torture, Hun Sen's forces capturing individuals, gouging out the eyes of people who they were interrogating, and then killing them; cases of bodies found with hands tied behind their backs, bullets in the head, fingernails pulled out, tongues yanked from mouths with pliers before the murder was done.

This is the kind of outrage that occurred during the regime of Pol Pot. I hope that our country can act with a great deal of strength this time to prevent the Holocaust from growing.

Mr. Chairman, I feel a personal stake in this in a sense because of the number of individuals I have met in this country, Cambodian Government officials, who have since been murdered. I think of those young individuals who were democrats with a small d, and they have now given their lives for democracy. We need to stand up for them.

I appreciate the amendment being offered by the chairman of the subcommittee. However, I am mindful, I do not know if the gentleman from California [Mr. ROHRABACHER] intends to offer his amendment.

Mr. ROHRABACHER. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from California.

Mr. ROHRABACHER. Mr. Chairman, I do plan to offer my amendment when given the opportunity. It is very similar to that of the gentleman from Nebraska [Mr. BEREUTER], but it goes a little further. I am supporting the amendment offered by the gentleman from Nebraska, but I will be offering mine as well.

Ms. LOFGREN. Reclaiming my time, Mr. Chairman, I understand what the gentleman is doing, but in this case I think that the amendment offered by the gentleman from California [Mr. ROHRABACHER] to the amendment which takes this step a little farther really merits our attention.

Mr. BEREUTER. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, I like the intent of what the gentleman is attempting to do, but I would like to tell the gentlewoman that we cannot cut off aid through the multilateral development organizations. All we can do is direct our executive director to those multilateral development organizations what he or she should do in attempting to cause those organizations to stop aiding Cambodia.

I do not, therefore, think that the gentleman's amendment is implementable when it comes to the multilateral development banks. That is why I believe, while well-intended, what he attempts to do, at least with the MDBs, is not possible. I thank the gentlewoman for yielding.

Ms. LOFGREN. Certainly. Mr. Chairman, I will let the gentleman defend his own amendment, rather than doing it for him. But I would just say that opinions differ.

I really feel in this case, given the dependency that Cambodia has on the international community, including the United States, for their very survival, that the opportunity to greatly influence events there is present, and it may not always be present.

I would like to further state that as we move forward in this effort, we must make sure that our partners, our international partners throughout the world who have also provided aid, stand with us in isolating this lawless government from funds.

I would further say, as we move forward hoping for elections that I would strongly urge must be supervised once again by the United Nations or the international community, we must gain a guarantee that the winner of the election actually gets to take power this time. I think it was a very serious mistake that we failed to do that last time that has helped create this problem.

Mr. Chairman, with that, I do not know if the gentleman from California [Mr. ROHRABACHER] would like to defend his amendment for the comments made that this is beyond our jurisdiction.

Mr. CALLAHAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the pending amendment would cut off funds for Cambodia. Normally I would oppose such an amendment as an infringement upon the President's prerogatives to conduct foreign policy. However, in Cambodia, we have in effect a military coup.

Section 508 of our bill is a longstanding provision that prohibits assistance to a country if a duly-elected head of government is deposed by a military coup or decree. Normally this would be automatically invoked for a situation like Cambodia. However, in Cambodia, we have had one Prime Minister deposing another Prime Minister. Although technically this is not a coup, it has had the same effect.

The United States has a sizable assistance program to Cambodia. I would not support any assistance to the government of a country whose new leader has had at least 40 of his political opponents executed. Clearly, despite our best efforts and those of the international community, democracy does not exist in Cambodia. So I support the gentleman's amendment and ask that it be adopted.

Ms. PELOSI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the gentleman's amendment. I will not take the full 5 minutes. Mr. Chairman, for the information of our colleagues who may have just tuned in, the United States has cut off all assistance for

Cambodia for 30 days following the July 5 incident in Cambodia. All assistance programs that have any connection to the government of Cambodia have been suspended.

Decisions on resumption or reconfiguring of aid are yet to be made, and depend on many factors. Indeed, as reports of atrocities continue to come in, it becomes more difficult to resume support for the current government for reasons that have been mentioned.

I particularly want to commend my colleague, the gentlewoman from California [Ms. LOFGREN], for her interest and leadership on this issue. She and I are both blessed with a Cambodian-American population, are familiar with the situation in Cambodia, and there is a great deal of interest there. I am so pleased she was here to add her support to the amendment offered by the gentleman from Nebraska [Mr. BEREUTER].

It is indeed tragic that the enormous international effort to lift Cambodia from its misery has apparently been usurped, and I therefore recommend that we accept the amendment offered by the gentleman from Nebraska [Mr. BEREUTER].

However, I do think we should continue to assess the situation, because the gentleman's amendment specifically prohibits assistance to the Government of Cambodia. I assume that other forms of assistance through nongovernmental organizations engaged in humanitarian or democracy-building programs would not be prohibited.

The Cambodian people have endured years of suffering under a repressive regime, and they voted in 1993 to bring non-Communist parties to power. As our colleague pointed out, we did not have a clear winner, maybe that was part of the problem, a clear resolution of the election.

We should continue to assess the situation as we move forward on the bill. I, too, will be supporting the Rohrabacher amendment but urge my colleagues now to support the Bereuter amendment.

Mr. ROHRABACHER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do have an amendment that I will be offering after we hopefully get done with the amendment offered by the gentleman from Nebraska [Mr. BEREUTER]. I certainly appreciate the sincerity of the attempt of the gentleman from Nebraska. I sometimes am known as somebody who tries to push things a little bit further, and I think that my amendment, while better, while pushing things a little bit further, should be adopted, but that does not mean that I am opposing the amendment offered by the gentleman from Nebraska [Mr. BEREUTER].

I, in fact, support the amendment, but I would say it needs to be strengthened, because in the gentleman's amendment we have a situation where the amendment states that funds, it says, "None of the funds appropriated in this act shall be made available directly to the Government of Cambodia."

That use of the word "directly" weakens the bill considerably as compared to what I would do. When we are sending a message to the Government of Cambodia, we want to make sure they know that even if they are trying to get money through the back door, we are not supportive of money going through the back door to this murderous regime.

Also it has been argued by the gentleman from Nebraska [Mr. BEREUTER] that my bill would affect the money or would not affect the money, although we are attempting to, that will be going to Cambodia through the International Development Association and the IMF and the Asian Development Bank, and other lending and financial institutions that are supported by American taxpayers.

We may not be able to mandate that money, but we are making our case as the elected representatives of the United States Government to those agencies through this legislation. We are making a statement to those individuals who are making those decisions in these financial institutions that they should not be using that money to provide loans or guarantees for loans to this murderous regime in Cambodia.

So I would ask my fellow colleagues to support the Bereuter amendment, but I would also ask them to support my amendment, which makes that statement, we do not want people investing in Cambodia until democracy is restored. We certainly do not want to guarantee the loans of American businesses doing that.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentlewoman from California.

□ 2200

Ms. LOFGREN. Mr. Chairman, I wanted to ask a clarification question. It is my understanding that the gentleman's amendment would, while doing all that he says, still permit the standard humanitarian aid; is that correct?

Mr. ROHRABACHER. Mr. Chairman, that is correct. My amendment does not prevent us from giving money to the nongovernmental organizations and to other humanitarian efforts. It just prevents us from giving any money to the government directly or indirectly. While, as I say, the Bereuter amendment does make a statement in a positive direction, I think we should go a lot further.

The fact is the Government of Cambodia now is controlled by a murderous man named Hun Sen who is in alliance with drug lords, a man who has got blood all the way up to his elbows, who was a Khmer Rouge trigger man, who overthrew an elected government that we struggled so long and hard to put in place back in 1993.

Many Members of this body have visited Cambodia and supported the United Nations operation back in 1993 and now we have this dictator, this gangster trying to undo what was done. We need to send a strong message immediately. This is the vehicle to do so. The Bereuter amendment sends a message. It is a positive message. It is a message we need to send. I think it needs to be a little stronger, so I support the Bereuter amendment but will also be offering by own amendment shortly.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nebraska [Mr. BEREUTER].

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. BEREUTER. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to the order of the House of Thursday, July 24, 1997, further proceedings on the amendment offered by the gentleman from Nebraska [Mr. BEREUTER] will be postponed.

AMENDMENT OFFERED BY MR. SAXTON

Mr. SAXTON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 printed in House Report 105–184 offered by Mr. SAXTON:

At the end of the bill, insert after the last section (preceding the short title) the following new section:

LIMITATION ON ASSISTANCE TO THE P.L.O. AND THE PALESTINIAN AUTHORITY

SEC. 572. (a) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Palestine Liberation Organization (hereafter the "P.L.O.") should do far more to demonstrate an irrevocable denunciation of terrorism and to ensure a peaceful settlement of the Middle East dispute, and in particular it should—

(1) submit to the Palestinian Council for formal approval the necessary changes to those specific articles of the Palestinian National Charter which deny Israel's right to exist or support the use of violence;

(2) to the maximum extent possible, preempt acts of terror, discipline violators, publicly condemn all terrorist acts, actively work to dismantle other terrorist organizations, and contribute to stemming the violence that has resulted in the deaths of over 230 Israeli and United States citizens since the signing of the Declaration of Principles on Interim Self-Government Arrangements (hereafter the "Declaration of Principles") on September 13, 1993, at the White House;

(3) prohibit participation in the P.L.O. or the Palestinian Authority or its successors of any groups or individuals which promote or commit acts of terrorism;

(4) cease all anti-Israel rhetoric, which potentially undermines the peace process;

(5) confiscate all unlicensed weapons and restrict the issuance of licenses to those with legitimate need;

(6) transfer and cooperate in transfer proceedings relating to any person accused by

Israel or the United States of having committed acts of terrorism against Israeli or United States nationals; and

(7) respect civil liberties, human rights and democratic norms as applied equally to all persons regardless of ethnic, religious, or national origin.

(b) LIMITATION ON ASSISTANCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, funds appropriated or otherwise made available by this Act may be obligated for assistance to the P.L.O. or the Palestinian Authority only for the period beginning 3 months after the date of the enactment of this Act and for 6 months thereafter, and only if—

(A) the President has exercised the authority under section 604(a) of the Middle East Peace Facilitation Act of 1995 (title VI of Public Law 104-107) or any other legislation to suspend or make inapplicable section 307 of the Foreign Assistance Act of 1961 and that suspension is still in effect; and

(B) in addition to the requirements contained in such Act or other legislation, the President prepares and transmits to the Congress a report described in paragraph (2).

(2) REPORT.—A report described in this paragraph is a report containing the following:

(A) A description of all efforts being made to apprehend, prosecute, or have extradited to the United States Mohammad Deif (allegedly responsible for the death of Nachshon Wachsman, a United States citizen), Amjad Hinawi (allegedly responsible for the death of David Boim, a United States citizen), Abu Abbas (responsible for the death of Leon Klinghoffer, a United States citizen), Amid al-Iindi (allegedly responsible for death of David Berger, a United States citizen), and Nafez Mahmoud Sabih (who helped plan the February 1996 attack on a Jerusalem bus in which Jewish Theological Seminary students Sara Duker and Matthew Eisenfeld, both United States citizens, were murdered).

(B) An official, updated, and revised copy of the Palestinian National Charter (Covenant) showing which specific articles have been rescinded by the decision taken on April 24, 1996 by the P.L.O. Executive Committee.

(C) A description of all actions being taken by the Palestinian Authority to eradicate and prevent the use of the map of Israel to represent "Palestine".

(D) A certification that the Palestinian Authority has established a court system that respects due process requirements, including the right to a lawyer, the right to confront witnesses, the right to be informed of the charges under which one is accused, and the right to a jury trial.

(E) A certification that the Palestinian Authority has established humane prison conditions.

(F) A certification that the Palestinian Authority has taken all measures to rescind the death penalty imposed for the sale of land to Jews, has eliminated the practice of incarcerating real estate agents for the sale of land to Jews or Israelis, and has actively sought the perpetrators of such actions.

The CHAIRMAN. Pursuant to the order of House of Thursday, July 24, 1997, the gentleman from New Jersey [Mr. SAXTON] and a Member opposed, the gentleman from Alabama [Mr. CALLAHAN], each will control 5 minutes.

Mr. CALLAHAN. Mr. Chairman, I ask unanimous consent that 3½ minutes of my time be yielded to the gentlewoman from California [Ms. PELOSI] and that she been allowed to further yield time.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. GILMAN], chairman of the authorization committee.

Mr. GILMAN. Mr. Chairman, I rise in support of the Saxton amendment and wish to thank the gentleman from New Jersey for his steadfast support and commitment for true peace in the Middle East.

Mr. Chairman, I rise in support of the Saxton amendment, and wish to thank the gentleman from New Jersey for his steadfast support and commitment for true peace in the Middle East.

Mr. SAXTON's amendment comes on a tragic, but ironically, auspicious day, when as we have seen, the lack of PLO security cooperation with Israel has cost the lives and limbs of many innocent Israelis.

The amendment expresses the sense of the Congress that the PLO/PA would have to take action on the covenant, truly fight against terrorism, truly confiscate weapons, and follow through on commitments to transfer prisoners to Israel, according to the Oslo Accords.

The sense of the Congress language also insists that Arafat and the PA cease incitement toward violence, and improve the abysmal human rights situation in the areas under Palestinian control.

According to Mr. SAXTON's amendment, assistance would be available only for the period beginning 3 months after enactment and for 6 months thereafter only if the President certifies the PLO on critical issues of concern to all Americans.

Once the certification is made, Congress would have to approve the report by joint resolution. The report must describe all efforts taken by the Palestinian Authority to arrest, prosecute or extradite Palestinian killers of American citizens; specify which articles of the covenant have indeed been rescinded; and describe all actions taken by PLO/PA to eradicate and cease usage of a map of all Israel (from 1948 to the present) shown as the State of Palestine. The report must also certify that a Palestinian court system respectful of human rights has been established and due process upheld, that humane prison conditions exist, and that the PA has taken all measures to rescind the death penalty for land sales to Jews or Israelis.

Mr. Chairman, earlier today I noted during consideration of House Concurrent Resolution 133 that the explosions in Jerusalem today are the culmination of a lack of Palestinian security cooperation that goes back a long way. Mr. SAXTON's amendment is the correct response at this time .

Accordingly, I urge support for the Saxton amendment.

Mr. SAXTON. Mr. Chairman, I yield myself such time as I may consume.

This is an amendment which suspends aid, direct aid to the Palestinian Authority. It has been drafted with cooperation of the gentleman from New York [Mr. GILMAN], the gentleman from New York [Mr. ENGEL], the gentleman from Pennsylvania [Mr. FOX], the gentleman from New York [Mr. NADLER], and the gentleman from New York [Mr. FORBES], which obviously makes it a bipartisan amendment.

At the conclusion of the 90-day suspension period, if certain conditions are met and attested to by the United States administration, then aid could resume. I believe this is an absolutely necessary amendment given the events of the past 6 months or so. I know there are others who wish to speak on this.

Mr. Chairman, I reserve the balance of my time.

Ms. PELOSI. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise to speak for peace in the Middle East. Lasting viable peace, with justice for all the people in the area, Jew, Arab, Christian, or of whatever race or religion.

Mr. Chairman, I oppose the amendment offered by the gentleman from New Jersey [Mr. SAXTON], because I do not believe it serves the interests of the Israelis, the Palestinians, or the United States.

Since 1993, our Government has tried mightily to achieve a lasting peace which will allow Israelis, Palestinians, and all Arabs to live with greater security and dignity. In almost 4 years, the Middle East peace process has had many positive developments. Unfortunately, most of the progress has slowed in the past 18 months, the result of provocations, charges and countercharges issued on both sides of the negotiating table. The situation has degenerated so much that not only has the Oslo schedule fallen behind; discussions have virtually stopped, and the United States is being thwarted in its effort to serve as mediator in concert with European and Middle Eastern allies.

The Saxon amendment implicitly lays blame for the recent difficulties squarely upon the Palestinians. Does the Palestinian Authority have some serious problems with civil administration, human rights, and controlling extremism? It certainly does. However, these problems are not unique to Mr. Arafat's government, and American policy has been predicated on the assumption that tightly controlled foreign assistance should be a tool that helps solve these problems while promoting a final accord with the Israelis.

The administration strongly opposes this amendment. In addition to finding it counterproductive to achieving peace, the State Department has concluded that it would go well beyond reasonable limits in imposing new restrictions on Palestinian assistance without meeting the minimal criteria of reason and fair play.

Over the past 10 days, there has been a quiet resumption of talks aimed at jumpstarting

the peace process. The amendment offered by the gentleman from New Jersey would place these efforts in jeopardy, as well as risk another flareup of passions and violence in Israeli and Palestinian neighborhoods.

There are several problems with the amendment. First, it is not balanced. If signed into law, our Government would be unable to provide financial assistance to the Palestinian people for 3 months. Worse yet, United States aid could resume assistance to the Palestinians only if Congress votes to approve a report on the Palestinians which would be submitted by the administration. Unlike other limitations on aid this body has approved in the past, this amendment allows no Presidential waiver, even if the President finds it to be in our national security interest.

No disruption in aid to Israel is contemplated, and there should not be a disruption. However, it is not fair or consistent to tie the State Department's hands on only one side of a very sensitive negotiation. If foreign aid is going to be used as a bargaining chip to achieve our goals on foreign policy, human rights, judicial process, or prison conditions, we must apply a single fair standard to all. This amendment would do just the opposite.

Mr. Chairman, I also am very concerned about the other standards this amendment would apply only to the Palestinian Authority. These provisions include:

A prohibition on any speech which could be somehow deemed anti-Israel if it is believed that such speech undermines the peace process. It is not clear how a violation would be handled, by whom the violation would be judged, or just what constitutes a statement which is anti-Israel. What if Palestinians were to say in negotiations that they question Israel's right to hold all of Jerusalem? What if a Palestinian were to make allegations of unfair treatment under Israeli law? The lack of a clear definition is very troublesome. If such a provision was ever imposed upon our citizens, it would be swiftly condemned as unconstitutional.

A requirement that our Government to certify the viability and fairness of the Palestinian court system. There is no doubt that the nascent Palestinian Authority must continue to pursue a more consistent application of justice. But in the interest of balance, the 1996 State Department Human Rights Report mentions many abuses within the Israeli justice system. The Saxton amendment would not seek a review of these problems.

Rather than turn our backs on the Middle East peace process, Congress should be providing additional tools to the State Department to provide the elusive breakthrough.

The United States has acted boldly in the pursuit of Middle East peace. The Middle East Peace Facilitation Act of 1993, which allows our Government to recognize the Palestinians, work with them, and provide them the help they need to establish security and work for a peaceful existence with Israel, will expire on August 12. Rather than completely obstructing our administration at this most crucial stage by punishing only the Palestinians, I believe it is in our own best interest to extend the Middle East Peace Facilitation Act [MEPFA] for another 180 days so we do not risk the loss of peace—or worse yet—the resumption of war. I am therefore, introducing a bill with the Gentleman from West Virginia [Mr. RAHALL] to extend MEPFA. I urge my colleagues to cosponsor this bill, and if at all possible, for this body to extend MEPFA before we leave for the August recess.

Have no doubt, there are many in Middle East who are paying attention to us this evening. Almost two months ago, this House approved a resolution, House Concurrent Resolution 60, which reasserted the view of this body that Jerusalem should be the exclusive territory of Israel. That action was viewed in the Middle East as a preemptive strike against the successful completion of final status negotiations laid out in the Oslo accords. The result was to spark additional violence and bloodshed, placing in further jeopardy even the modest level of trust which is necessary for an agreement.

A vote for this amendment not only will hurt the Palestinians; it will send the message that this Government no longer cares whether or not a secure peace is achieved. I urge the Palestinian and Israeli people to try to show additional restraint, and know that they still have many friends in America who care more about peace and security for both races.

Let us not jeopardize the peace, let us not jeopardize the long and hard efforts of the United States to bring the parties together in negotiations leading to a peaceful resolution of a long and terrible struggle which has cost thousands of lives.

The events of today, the bombing are terrible, they deserve condemnation of all right thinking human beings. The events of today must not be repeated, but the Saxton amendment rather than reducing the incentives for this kind of terrible action, provides more pressure for violence and terrorism. It provides the kind of frustration, anger and outrage that invites violence and murder.

Do not remove the tools this nation needs to bring about peaceful negotiations, leading to peace in the Middle East which will bless all the people there.

I urge the House to reject the Saxton amendment. Its adoption leads us away from peace and hope.

Ms. PELOSI. Mr. Chairman, I yield 30 seconds to the gentleman from New York [Mr. NADLER].

Mr. NADLER. Mr. Chairman, there can be no peace in the Middle East unless both sides show through both words and deeds that they are sincere in their quest for peace. Israel has shown that sincerity. The Palestinian Authority has not. They sentence Palestinians to death for doing business with Jews. They turn a blind eye or give a green light to acts of terrorism. They think they have a right to play the violence card whenever negotiations are not proceeding to their liking. That is not the path to peace. It is the path of Munich and Ma'alot. We should not stand for it, and I support this amendment.

Mr. Chairman, I rise in support of the Saxton amendment which will cut off direct funds for the Palestinian Authority for 90 days until the PA begins meeting its obligations under the Oslo Peace Accords.

Let there be no question in anyone's mind, the purpose of this amendment is to advance the cause of peace. But, there can be no peace in the Middle East unless both sides show through both words and deeds that they are sincere in this quest for peace.

Israel has more than shown her sincerity and commitment to peace.

Unfortunately, the leaders of the Palestinian Authority have yet to truly commit to peace. They sentence Palestinians to death for doing business with Jews. They turn a blind eye, or even give a green light, to acts of vicious terrorism. They think they have a right to play the violence card whenever the negotiations aren't proceeding to their liking.

Well that's not the path of peace. It's the path of Munich and Ma'alot, and we shouldn't stand for it.

Just yesterday, the 25th of Tammuz, another bomb went off in Jerusalem's Mahaneh Yehuda market, killing 13 innocent civilians and wounding 168.

If the PLO is serious about peace, let them demonstrate their sincerity. Peace means cracking down on the murderers in their midst. Peace means an end to stirring up hatred against their Jewish neighbors with blood libels. Peace means a halt to death sentences against Palestinians who do business with Jews.

Mr. Chairman, I share the heartfelt yearning of the Israeli people for a lasting peace in the Middle East. But the Israelis can't make peace alone. The PLO must join in, or there will be no peace.

We should send Arafat a message. We should vote resoundingly for the Saxton amendment.

Mr. SAXTON. Mr. Chairman, I yield 30 seconds to the gentleman from New York [Mr. ENGEL].

Mr. ENGEL. Mr. Chairman, I rise in strong support of the amendment. Certainly the events of today have shown us that we need to have an amendment. What this simply does is it suspends aid to the Palestinian Authority for 90 days at which point the President has to certify that certain compliance is being met. I think it is fair and it is reasonable. If peace is going to exist, both sides have to fulfill commitments. Mr. Arafat and the Palestinian Authority cannot turn a blind eye to terrorism. They must make sure that terrorism is controlled by cooperation with the Israelis. This is a good step in that direction.

Ms. PELOSI. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from West Virginia [Mr. RAHALL].

Mr. RAHALL. Mr. Chairman, I thank the distinguished ranking member for yielding me the time.

I do rise in opposition to the pending Saxton amendment. I have no illusions as to what the outcome of this vote would be, if such were called, especially in the climate that we exist today and after the most horrendous and stupid acts of the last 24 hours. But, Mr. Chairman, it is important to realize that the Middle East Peace Facilitation Act is a tool which the President uses to conduct foreign policy. We

have one Commander in Chief, one individual in charge of this foreign policy.

In this case it is a means the President uses to stay in touch with both chairman Arafat and the Palestinian people so that he can make the appropriate timely reports to Congress. The collapse of peace talks 4 months ago was because of mutual distrust, recriminations, and provocations. The Saxton amendment will only add to this distrust, recriminations, and provocations.

It continues to be imperative that the U.S. role is allowed to be even-handed, as an honest broker's role should be. Placing additional restrictions only on aid to the Palestinian Authority, only on such aid, fails the test of balance and fairness, because we all know that as the Secretary of State has said, failure to comply with stipulations in the Oslo accords is not confined to just Palestinians.

Press reports indicate that there is documentation that Israel has been found in violation of the Oslo accords as well, a total number of 34 times. And I have such a list of Israeli violations of the Oslo accords as well.

So there have been violations on both sides.

It is not necessary for the Congress to point fingers only at one side.

The White House is strongly opposed to this amendment because it goes way beyond reasonable limits. It imposes new restrictions on Palestinian aid and new requirements on the President. A vote today to cut off aid will stamp out what little economic progress the Palestinians have achieved for a majority of their impoverished and innocent citizens. Even Prime Minister Netanyahu knows this is true. He is quoted as saying this, and it is quoted in a letter to Members of Congress by Americans for Peace Now, and I quote, it is necessary for PLO aid to continue. That is the current Prime Minister Benjamin Netanyahu, urging that aid to the Palestinians continue. His predecessors, Prime Minister Peres and Prime Minister Rabin both are on record as urging continuation of this aid as well.

While there are certainly practices and acts by the Palestinian Authority which are reprehensible and there are serious problems and they should cease, this amendment is not the way to go about it nor to get such a cessation. We can either bolster our government's efforts to achieve a lasting peace in a balanced manner or we can extinguish that hope perhaps for all time by adoption of this amendment.

If we were to extinguish that hope at this most precarious time, then only escalating violence, bloodshed and death may rise from the passage of the Saxton amendment. Given the remarks of our Secretary of State, Madeleine Albright, who I commend for her courageous decisions, not only in regard to Lebanon recently but in the region as a whole, it should be perfectly clear to Members of this House that passage of the Saxton amendment is dangerous and liable to cause further violence in both neighborhoods in the Middle East.

I rise and urge my colleagues to defeat the Saxton amendment.

Mr. SAXTON. Mr. Chairman, I yield myself such time as I may consume.

I would like to respond to the gentleman from West Virginia by saying that to me at least and I think to most other Members of the House, the status quo in Israel and in the Middle East is unacceptable. And inasmuch as we have the responsibility to oversee at least the expenditure of American taxpayers' dollars, it seems to me that what we ought to be doing is to try to find a way to change the dynamic that exists currently in the Middle East to make peace a possibility.

Obviously not only the events of the last 24 hours but the events of the last several months have borne out full well that peace is not at hand in the Middle East. And to the extent that we can affect that, I think we should do that. To me the status quo is not acceptable and I believe that this is a step in the right direction.

I will include for the RECORD, Mr. Chairman, today's article from the Washington Post, Palestinian panel charges widespread corruption by Arafat's entire cabinet, as well as an article from the Washington Times, Arafat's cabinet should be dissolved, lawmakers from Palestine report.

Up to $340 million, half of the Palestinian Authority budget, is estimated to have been misspent or embezzled. Obviously these are very serious charges and during this 90-day period these matters can be looked into as well.

The essence of this amendment, Mr. Chairman, is to provide for an opportunity for our administration to submit various information to this House relative to the Palestinian Council which changes those specific articles of the Palestinian national charter which deny Israel's right to exist or support violence. We also ask to the maximum extent possible to preempt acts of terror, discipline violators, publicly condemn acts of terror and dismantle terrorist organizations.

All of these things were agreed to in the Oslo accords and, of course, agreed to on the lawn of the White House between the Israeli leader and Yasser Arafat. So to the extent that we can effect change in the Middle East, to the extent that we can promote peace by changing the dynamic of the situation there, which obviously is unacceptable to the great majority of the Members of this House, I believe that we should do so. I also believe, Mr. Chairman, that that is a primary reason that agreement has been reached on this amendment.

Mr. Chairman, I include for the RECORD the articles to which I referred:

[From the Washington Post, July 30, 1997]

PALESTINIAN PANEL CHARGES WIDESPREAD CORRUPTION BY ARAFAT'S ENTIRE CABINET

(By Said Ghazali)

RAMALLAH, WEST BANK.—A Palestinian legislative panel today reported wide-ranging corruption—including diversion of foreign aid donations—in all 18 Palestinian ministries. It urged Palestinian leader Yasser Arafat to fire his entire cabinet and called for three ministers to be put on trial.

The panel was formed in response to an official comptroller's report that found $326 million of the Palestinian self-rule administration's $800 million annual budget had been squandered through corruption or mismanagement. While the panel has no legal authority, its report puts Arafat on the spot—compelling him either to repudiate his political allies or face rising public anger over financial abuses.

The Palestinian leader quickly sought to cast the report in a positive light. His spokesman, Marwan Kanafani, praised it and said it provides "a strong basis" for cabinet revisions that Arafat was already planning.

Legislators and some members of Arafat's own administration, however, faulted the panel for failing to investigate whether Arafat played a role in any wrongdoing. "The mismanagement starts from the top—way up on top," declared Husam Khader, a legislator from Nablus.

The five-member investigating panel was made up of members of Arafat's Fatah party and independent members of the legislative council, which has been locked in a power struggle with Arafat over its role as an elected lawmaking body.

Although the report does not fault Arafat personally, analysts say it could jeopardize his standing should he fail to act on it. The panel's findings come at a time of increased anger among Palestinians over brazen shows of wealth by government officials, including the purchase of huge villas and numerous expensive cars.

The report declared that the cabinet had failed to follow up reports of mismanagement, and it urged Arafat to replace it with one "made up of technocrats and qualified people." It also recommended criminal trials for three cabinet ministers, including Nabil Shaath, the chief negotiator in peace talks with Israel, who is accused of charging his home telephone and electric bills to the government.

Among other allegations in the report are: Information Minister Yasser Abed Rabbo used $7,500 in ministry funds to pay for central heating at his home; Transportation Minister Ali Qawasmeh accepted bribes to license cars that did not meet road standards; Civil Affairs Minister Jamal Tarifi allowed illegal exemptions from customs duties for more than 4,300 cars, including a Jaguar for his father; Tarifi's Civil Affairs Ministry and Shaath's Planning Ministry misappropriated funds from unnamed foreign donors.

Besides Shaath, the panel called for putting Tarifi and Qawasmeh on trial. Both strongly denied wrongdoing. Shaath accused the panel of being "out of touch with reality" and said it never approached his ministry for information.

Agriculture Minister Jawad Saleh criticized investigators for stopping short of Arafat's office. "The report is important because it is a first attempt by the legislative council to look into offenses by officials," Saleh said. "But it is not comprehensive and . . .

does not deal with sensitive issues like security organizations and the office of the president. I blame the president."

Arafat's administration has been buffeted by other recent allegations of corruption and mismanagement. In June, attorney general Khaled Kidrah stepped down after being accused of pocketing bail money and taking bribes from prisoners.

Internaitonal donors have pledged $1.5 billion to Arafat's three-year-old administration, including $225 million from the United States. But far less has actually been delivered, in part because of concerns about lack of accountability.

ARAFAT'S CABINET SHOULD BE DISSOLVED, LAWMAKERS REPORT—INQUIRY PANEL FINDS RAMPANT CORRUPTION

(By Julian Borger)

JERUSALEM.—Yasser Arafat's Cabinet is so riddled with corruption that it should be dissolved and some of its ministers put on trial, a Palestinian parliamentary inquiry reported yesterday.

The report was the latest in a series to lambaste the Palestinian leadership for the flaunting of luxury cars and villas, nepotism and bribe-taking amid the poverty of the West Bank and Gaza.

Up to $340 million, half the Palestinian Authority's budget, is estimated to have been misspent or embezzled.

Sa'di al-Krunz, one of the report's authors, said half of the Palestinian Cabinet was implicated in misappropriation of funds. "There are others who do nothing wrong, but on the other hand they do nothing good," he said. "They are old or they do not know about the ministries they are in charge of."

The allegations come at a time when the confidence of major donors is wearing thin and Mr. Arafat desperately needs Western support in his negotiations with the Israelis, due to restart in the next few days.

The latest report was read at an open session of the Palestinian Legislative Council (PLC) by members of a special investigative committee. It called on Mr. Arafat to "dissolve the Cabinet and form a new Cabinet made up of technocrats and qualified people."

"The president of the authority should issue his instructions to punish violators against whom there has been proof of guilt and to punish them immediately and to take them to court in order to restore confidence between the Palestinian Authority and its people," the report said.

The committee's findings singled out Civil Affairs Minister Jamil al-Tarifi, Planning Minister Nabil Shaath and Transport Minister Ali Kawasmeh as the worst offenders. Mr. Shaath is the Palestinians' leading negotiator in talks with the Israeli government.

Mr. Al-Krunz said his committee had come across several cases in which foreign aid had been misappropriated by ministers or senior officials to buy themselves cars or expand and decorate their houses.

"When they knew we have discovered these things, they have tried to give the money back," he said.

Another report earlier this month, commissioned by Mr. Arafat himself, came to similar conclusions and called on the Palestinian leader to "put his house in order."

In May, a 600-page audit of the Palestinian Authority found more than $340 million had been "mismanaged or squandered" in 1996. At the time, Mr. Arafat promised to take stern action against culprits but warned that he would not allow anyone to "kill the embryonic dream, our Palestinian Authority, our last step towards an embryonic state."

The PLC's report is not legally binding on Mr. Arafat, who frequently ignores the council's proceedings and resolutions. However, he is reportedly planning a Cabinet shakeup, which may take recent allegations into account.

Since its creation in 1994, Mr. Arafat's Palestinian Authority has received about $1.5 billion in foreign aid.

Mr. Chairman, I yield 10 seconds to the gentleman from New Jersey [Mr. PAPPAS].

Mr. PAPPAS. Mr. Chairman, I want to commend the gentleman from New Jersey for offering this amendment and stand in strong support of it.

Mr. SAXTON. Mr. Chairman, I yield myself the balance of my time.

I would just like to say in closing my part of the debate that there are many Americans who have watched and prayed about the peace process in the Middle East. Everyone that I know wants it to work. The fact of the matter is, it is not working.

For the concerns of those of us who believe that the agreements are not being lived up to, in spite of everyone's best intentions, this amendment will provide an opportunity during a 90-day period for the President of the United States to take a close look at whatever violations have been alleged and then certify as to whether or not these in fact have been violations and then if necessary and if appropriate and if the House decides further that it is appropriate, then obviously aid to the PA will begin.

Mr. CALLAHAN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mr. SAXTON].

The amendment was agreed to.

□ 2215

Mr. HASTERT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I ask the gentleman from Alabama if he would join with me in a colloquy.

Mr. Chairman, the gentleman from Indiana [Mr. SOUDER] had a proposal to earmark $50 million of INL moneys to purchase four Blackhawk utility helicopters for the Colombian National Police as well as provide a maintenance and support package in order to further the war against drugs, in this case specifically heroin.

Without this added lift capacity the UH-60's will provide the Colombian National Police, they cannot eradicate opium at the high elevation of the Andes Mountains. Colombian heroin is killing our kids. It does not require precursor chemicals, it does not require big labs, and it is nearly impossible to interdict since it comes in deadly one-kilo packages, one at a time and one carrier at a time.

Mr. Chairman, the Colombian National Police have been awarded the Human Rights Watch seal of approval for their respect for human rights and I would ask if the chairman would give me the assurance that he will work with me and others to ensure that this issue is raised in conference; and we are looking for an earmark of $50 million, if that is possible, made available for this purpose.

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. HASTERT. I yield to the gentleman from Alabama.

Mr. CALLAHAN. Mr. Chairman, I will be happy to work with the gentleman on this important issue, and I will personally raise this issue in conference and press for support of the acquisition of these helicopters for the government of Colombia's national police to fight narcotics.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. HASTERT. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I thank the gentleman for yielding to me, and I wanted to associate myself with the remarks of the gentleman from Illinois [Mr. HASTERT], a dedicated drug fighter. I cannot think of a more appropriate use of State INL money than for utility helicopters for the courageous, dedicated Colombian National Police.

They are professional law enforcement officers who sorely need this equipment to fight drugs at their source, especially the opium crops in the Andes, opium from which heroin is derived and which is nearly impossible to interdict in small quantities, for example, one kilo at a time in which it is trafficked.

Eradicating it in the high Andes in the opium stage is the key to combating the new heroin crisis which we are facing from Colombia today, and I urge my colleagues to support the gentleman's proposal.

Ms. PELOSI. Mr. Chairman, will the gentleman yield?

Mr. HASTERT. I yield to the gentlewoman from California.

Ms. PELOSI. Mr. Chairman, I am pleased that the gentleman will yield. However, he may not be happy when he hears what I say.

The distinguished chief deputy majority whip knows the high esteem in which I hold him, so I very regretfully oppose the provision for an additional $50 million for the Blackhawk helicopters. Despite the chairman's remarks, I would not be supportive of that in conference.

I very strongly opposed the rule that left the language on human rights unprotected with respect to narcotics-related assistance, and have serious concerns about that entire issue, and regretfully oppose the $50 million for the Blackhawks.

Mr. HASTERT. Mr. Chairman, reclaiming my time, I thank the gentlewoman for her comments, but I disagree with her.

And, Mr. Chairman, I submit for the RECORD the endorsement of the Human Rights Watch for the Colombian National Police and the work that they do, and would just remind the gentlewoman from California that heroin, which these helicopters would be used to eradicate, is in the high Andes. There is no other way to get there. They cannot get in there with the Huey helicopters the Colombia police use today, and this, in fact, is their only egress to get into that area.

I would certainly think that this is a credible thing, and appreciate the chairman engaging in this colloquy.

Ms. PELOSI. Mr. Chairman, will the gentleman yield?

Mr. HASTERT. I yield to the gentlewoman from California.

Ms. PELOSI. Mr. Chairman, I want to associate myself with the remarks of the gentleman. When I spoke earlier on the point of order on removing the language from the bill, I made the distinction between the Colombian military and the national police. Indeed, I do not oppose the support that we give to the Colombian police in the fight against narcotics.

Mr. HASTERT. Mr. Chairman, reclaiming my time, I would just remind the gentlewoman from California that this is the Colombian National Police.

Ms. PELOSI. Mr. Chairman, if the gentleman will continue to yield, I understand that. That is why I was saying that I agree with the gentleman on the characterization he made about the police. It was not about them, it was about the Blackhawks.

Mr. HASTERT. Mr. Chairman, the extraneous materials I referred to are submitted for the RECORD in support of this colloquy, as follows:

Date: 07/16/97.
Time: 02:28:07 pm
To: International Relations, John Mackey.
Fax No: 2022252035.

DEAR JOHN: This is a statement we made today in Colombia regarding US military aid to fight drugs. In it, we state very clearly that we are not opposing aid to the Anti-Narcotics Police because of their good human rights record, but continue to oppose aid to the Army (point 7).

Mark can probably parse out the Spanish for a quick read, but I'd be happy to give you the exact wording in English if you need it.

You're fully welcome to refer to this as the HRW "Seal of Approval" for police aid, if you wish. Hang onto it—it doesn't come often!

Best,

ROBIN KIRK,
Research Associate.

The UH-60L Blackhawk "Utility" Helicopter will provide the Colombian National Police with:

1. Increased range.
2. Increased speed.
3. Increased lift capability.
4. Increased operational hours.
5. A demonstrated capability to operate in the higher altitudes of the Andean mountain range to eradicate opium poppies.
6. Improved crew survivability in high threat environments.

The overall superiority of the UH-60L Blackhawk helicopter vs. the UH-1H 'Huey' helicopter is without question. The 'Huey' is today an almost obsolete airframe in comparison to the "Blackhawk".

H.R. 2159

OFFERED BY: MR. SOUDER

AMENDMENT NO. 74: Page 16, line 25, after "$625,000,000" insert "(decreased by $50,000,000)".

Page 23, line 26, after "$230,000,000" insert "(increased by $50,000,000)".

H.R. 2159

OFFERED BY: MR. SOUDER

AMENDMENT NO. 75: Page 24, line 16, insert before the period the following: ": *Provided further*, That not less than $50,000,000 shall be available only for the procurement in the United States of four UH-60 Blackhawk utility helicopters, including maintenance and support for such helicopter, to be made available to the DANTI anti-narcotics unit of the Colombian National Police for the purpose of carrying out counternarcotics activities".

AMENDMENT OFFERED BY MR. MCGOVERN

Mr. McGOVERN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 printed in House Report 105-184 offered by Mr. MCGOVERN:

At the end of the bill, insert after the last section (preceding the short title) the following new section:

SENSE OF THE CONGRESS RELATING TO INTERNATIONAL ADOPTION LAWS AND PRACTICES OF PARAGUAY

SEC. 572. It is the sense of the Congress that the President and the Secretary of State should use all opportunities and means to express directly to all appropriate officials of the Government of Paraguay that—

(1) the United States respects and supports the commitment of the Government of Paraguay to reform its laws and practices regarding international adoptions;

(2) the pending international adoption cases filed by United States families at or prior to the establishment by the Government of Paraguay of a moratorium on international adoptions, including the 11 adoption cases commonly referred to as the "window of opportunity" adoption cases, should be allowed to continue and complete the adoption process in a fair, unbiased, and timely fashion;

(3) such United States adoption cases should be determined on the basis of the two key tenets for international adoption in Paraguay, namely the fitness of the petitioning family to be parents and what is in the best interests and welfare of the child; and

(4) any international adoption reform legislation approved by the Government of Paraguay should allow such United States adoption cases to complete the adoption process.

The CHAIRMAN. Pursuant to the order of the House of Thursday, July 24, 1997, the gentleman from Massachusetts [Mr. MCGOVERN] and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MCGOVERN].

Mr. McGOVERN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, an urgent situation confronts American families attempting to adopt children from Paraguay. In September 1995 the Government of Paraguay imposed a moratorium on all international adoptions so that it might reform its laws and regulations and clean up the corruption that had so plagued the system.

Many U.S. families were caught in various stages of the adoption process at the time the moratorium was imposed. It has been 23 months since the moratorium was imposed, and over three dozen American families still find their petitions for international adoptions pending.

While our Embassy personnel in Paraguay have been sympathetic to these families, not once has the Paraguayan Government heard from our highest officials about the right of these United States families to receive fair, timely due process. Not once have they expressed concern for the welfare of these children. This amendment seeks to ensure that such communication take place.

Let me be very clear, Mr. Chairman. This amendment means no disrespect for Paraguay and, indeed, expresses support for its reform process. This amendment is aimed at moving the highest officials of our own Government to speak out on behalf of these families and to do it quickly, before all hope is lost.

One of these families caught in the moratorium, Donald and Elaine Berube, live in Seekonk, MA, and hope to adopt a little girl. Three years ago they successfully adopted a little boy from Paraguay. They want to provide him with a baby sister of similar heritage.

Since they were familiar with the Paraguayan adoption process, and had already been approved once as desirable parents by the Paraguayan courts, they chose to return to Paraguay in 1995 and file for the adoption of a little girl. A few months later the moratorium was imposed, and for the Berubes, the judicial process in Paraguay turned into an emotional nightmare.

Like all the American families, the Berubes have struggled to have their case proceed through the Paraguayan courts in a fair and unbiased manner. They have always acted in a manner respectful of the Paraguayan system, and in return they have been subjected to delays, arbitrary rulings, appeals and what often appears to be anti-American bias and prejudice on the part of the Paraguayan press, courts, and some of the judges.

After reviewing their case and others, it appears to me that the Berubes and all of these families have been subjected to special scrutiny, with government attorneys and judges searching for every and any reason to deny these cases the possibility of proceeding.

For nearly 2 years the Berubes have bonded with the little girl they hope to

adopt. They are deeply concerned about her health and her welfare. At 20 months she weighs less than 17 pounds, a victim of neglect she has experienced at the hands of the Paraguayan state and agencies. I firmly believe that without the direct involvement of United States officials at the very highest levels, these cases will proceed no further and all these children will be doomed to lives of neglect.

Mr. Chairman, these children need families, they need love, and they need a healthy environment where they will be well-nourished physically, emotionally, and spiritually.

I hope this amendment will be viewed by all Members of the House as noncontroversial. I urge my colleagues to support it, and I would also like to thank the chairman, the gentleman from Alabama [Mr. CALLAHAN] for his support and generosity in allowing this issue to come forward for debate.

Mr. Chairman, I yield the balance of my time to the gentleman from Wisconsin, Mr. JAY JOHNSON.

Mr. JOHNSON of Wisconsin. Mr. Chairman, I rise tonight in support of the McGovern amendment, in support of the children of Paraguay and the families in my district and across the United States, like those in Mr. McGovern's district, like those in my district and many other places who are trying to adopt these children.

The Jandourek and Pappas families in my district have experienced firsthand similar trials and hardships in trying to adopt children from Paraguay.

The Pappas family has been trying to adopt a young girl from Paraguay since May 1995. They have faced roadblocks from agents, lawyers, and the courts, claiming irregularities in the case. They may not be able to adopt. I am told the young girl they are trying to adopt has just turned 3 years old. Almost 3 years of waiting, not knowing about her future.

The Jandourek family has experienced similar difficulties. They are just beginning their efforts.

Mr. Chairman, I urge my colleagues to support this amendment and help address some of the difficulties that not only families in Wisconsin are having, but the difficulties families across the United States are experiencing in trying to adopt children from Paraguay. These families have waited long enough. I ask for my colleagues' support of adopting families and the children of Paraguay. Adopt the McGovern amendment.

Mr. MATSUI. Mr. Chairman, I rise in strong support of the McGovern amendment. I believe it is critical that the Congress make its voice heard on the difficult situation facing a number of American families attempting to adopt children in Paraguay.

Among these families are Richard and Donna Moser, who reside in my district. some 26 months ago, in May 1995, the Mosers began their efforts to adopt a Paraguayan child. On September 18 of that year, the Government of Paraguay imposed a moratorium on international adoptions in order to reform its laws in this area. Like other families with adoption cases pending when the moratorium took effect, the Mosers have since faced a seemingly endless series of hurdles and delays in their efforts to complete the adoption process.

The language of this amendment makes it quite clear that no Member of this body is questioning the absolutely legitimate efforts of the Paraguayan Government to reform its laws governing international adoptions. The supporters of this amendment are merely asking that cases initiated prior to the moratorium, including the so-called window of opportunity cases, will be allowed to proceed without delay under the current legal situation and within the provisions of any forthcoming new adoption law in Paraguay.

As my colleagues can imagine, the families who have persevered through the very halting and uncertain process since the moratorium was announced have made tremendous commitments of their time and emotional energies. They have a right to expect a reasonable, comprehensible adoption process. The children these families seek to adopt face great hardships in Paraguay. They too deserve to have fairness prevail here.

By passing this amendment, the Congress is making a plea to the Government of Paraguay on behalf of this very limited group of families seeking the right to finish a process that they could not possibly have anticipated would be so terribly arbitrary when they chose this path. I believe we are also sending a message to the U.S. State Department that this issue merits and requires the highest level of attention. I urge my colleagues to join in making this greatly needed statement.

Mr. SAXTON. Mr. Chairman, I rise in strong support of the amendment offered today by my colleague from Massachusetts, Mr. MCGOVERN. I would like to thank Mr. MCGOVERN for offering this amendment and I would like to thank Chairman CALLAHAN for his strong support for allowing this amendment to come to the floor.

This amendment will help families in America who have sought international adoptions from Paraguay.

Let me take a quick moment to express how important this is, especially to the children waiting to be adopted. A family from Berlin, NJ, Lori and Ira Bussison have been working to adopt a child named Alex since his birth almost 3 years ago.

Despite the fact that Alex's biological father abandoned his mother during her pregnancy and his biological mother placed the child up for adoption immediately after giving birth, the Paraguayan court system refuses to let this adoption to become finalized.

While Lori and Ira remain hopeful, each time it seems like Alex will be allowed to come to America with his new parents, the family is told of another unknown technicality preventing this adoption from becoming finalized.

Recently, Lori spend 3 months living with young Alex in a hotel, thinking the adoption case would soon be finalized. Heartbreakingly, when it became apparent that the court system would continue to stall, Lori, financially drained, had to return to America without Alex yet again.

We must look at the best interest of the family and especially the children. A boy like Alex deserves loving parents like Lori and Ira. Passage of this amendment will show that the U.S. Congress cares about these families and is willing to do its part in finalizing these adoption cases.

I strongly support the McGovern amendment.

Mr. PAPPAS. Mr. Chairman, I rise in support of the McGovern amendment. In my own district, a physician and his wife, fully qualified to love and support a child, having been waiting for almost 2 years for the process to be finalized so they can bring their adopted son home to New Jersey. During this time, one or the other of these parents has been in Paraguay with the child to nurture and care for him, causing great disruption and expense to their family in New Jersey.

Inappropriate and frustrating delays coupled with procrastination by officials in Paraguay have turned the joyful and rewarding experience of adopting a child into a problem of enormous and unnecessary proportions. I would hope that the Government of the United States, and the Government of Paraguay working together will be able to quickly work through the maze of regulations and make it possible for all the children waiting to finally be welcomed by loving families. Let's stop being bystanders, and become an active part of the process which will help these adoptions be complete.

I would like to thank the gentleman from Massachusetts on his leadership on this issue and I urge every Member to support this amendment. Let's prove we are a family-friendly Congress and Nation and support adoption of children in Paraguay.

I thank the chairman and I yield back the balance of my time.

Mr. TIERNEY. Mr. Chairman, I thank my good friend and colleague from Massachusetts for offering this amendment. Mr. Chairman, I have tremendous respect for countries such as Paraguay that make significant efforts to improve their government. I understand that Paraguay is making strong efforts to reform its adoption laws.

However, there are instances when their judicial system seems not to be providing objective due process to international adoptions despite the fact that applicants are doing everything in their power to pursue these applications legally.

Mr. Chairman, I have a constituent named Maria Saiz who has been trying desperately for 2 years to adopt a little girl named Sara. She has done everything possible and legal in her control and still receives unfounded excuses for why the process has not gone forward favorably.

I am happy to report now that the case has been re-routed to the lower courts for further processing, but we have no guarantee of how that will result.

Mr. Chairman, this amendment strongly articulates the respect that the United States has for Paraguay's efforts to reform its laws, but at the same time, it sends a clear message that the courts should fairly determine

these United States adoption cases based on the fitness of the petitioners as parents and the best interest of the child only.

We must participate in these efforts with the hope that soon these children can be adopted by loving parents. I urge my colleagues to vote for the McGovern amendment and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. MCGOVERN].

The amendment was agreed to.

Mr. LAZIO of New York. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I had prepared an amendment to reduce foreign aid to Egypt, but I will suspend that for a moment.

I have serious concern about the objectives and the part Egypt has been playing in terms of its constructive role in the peace process in the Middle East. Egypt, as we know, has been historically a partner in the pursuit of peace in the Middle East, but its recent actions have run contrary to our interests.

First, Egypt openly advocated for Libya, a well-known terrorist state. It urged the U.N. Security Council to accept Lybia's request to try the Pan Am 103 bombing suspects in front of an international tribunal. That is opposed to the United States policy.

Second, Egypt is openly encouraging cutbacks to the economic and trade sanctions imposed on Libya in 1992. Egypt permitted Colonel Qaddafi to fly into Egypt and attend an Arab League summit in Cairo, in open violation of the United Nations ban on Libyan air travel. Terrorists will never respond to sanctions such as isolation if our allies assist Colonel Qaddafi in participating in such a pivotal meeting.

Third, Egypt acted as host of the June 1996 Arab League summit. That meeting provided a platform for Arab leaders opposed to peace to threaten the halt of normalization of relations between Israel and the Arab countries wanting peace.

Fourth, Egypt, as the leading Arab country, has taken an inappropriately active role in lobbying other Arab States to slow the normalization of their ties with Israel. Over the last few years, Cairo has hosted several meetings with one common aim: The isolation of Israel. Egypt even supported the renewal of the boycott of Israel at the April 1997 meeting of the Arab League.

Fifth, in March of this year, Egypt was the only country to block an important United States proposal. We were trying to bypass the U.N. Security Council condemnation of Israel's construction of a Jewish neighborhood in Har Homa. Once again, Egypt's position directly conflicted with our Nation's policy.

And, finally, earlier this month Egypt led an effort to propose a U.N. resolution that threatened Israel's participation in the U.N. General Assembly. This is one of a series of resolutions introduced this year which attempts to isolate Israel and slow the peace process in the Middle East.

To say the least, Egypt's efforts to create momentum and revitalize negotiations between Israel and the Palestinians have not been consistent. Egyptian public statements that call into question the peace process encourage radical Palestinians to harden their Hebron negotiating position.

For example, last October, when violence erupted in the West Bank, President Mubarak was the only leader to decline the President's invitation to attend a summit in Washington. That summit put the peace process back on track and reduced the violence in Israel.

While Egypt has been, and certainly may remain a strong ally in the Middle East, recent actions undercutting their support for peace are alarming. Reducing foreign aid to them will emphasize that the United States Congress expects Egypt to play a constructive and positive role in the Middle East, a role which ensures security for Israel and durable peace and prosperity for the entire region.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. LAZIO of New York. I yield to the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I thank the gentleman for yielding to me, and I want to take the opportunity to thank the gentleman from New York for expressing his concern about Egypt and its relationship with our Nation and with Israel, and its involvement in the Middle East peace process and other regional concerns of critical United States interest.

During consideration of our foreign aid bill, our House Committee on International Relations included language which spoke to the growing disappointment among Members of Congress regarding Egypt's activities in a broadening spectrum of issue areas, some of which the gentleman has already recited here tonight.

That language reiterated that Egypt's assistance, of which $1.3 billion is military assistance and $850 million is economic assistance, is based upon its implementation of the Camp David Accords, notably establishing relationships with Israel that are normal to states at peace with each other, and found Egypt's fulfillment of these obligations disappointing.

□ 2230

Many Members of Congress believe that future assistance to Egypt should, therefore, be predicated on Egypt's full implementation of its campaign obligations and promotion of peace with Israel and other critical United States interests.

And while I have been informed that the gentleman from New York [Mr. LAZIO] may consider withdrawing his amendment, he can be certain that we share many of his concerns that our Committee on International Relations will continue to closely monitor Egypt's performance on a wide variety of issues that he raised. And I thank the gentleman from New York [Mr. LAZIO] for raising these issues before us this evening.

Mr. LAZIO of New York. Mr. Chairman, reclaiming my time, I thank the gentleman from New York [Mr. GILMAN], the distinguished chairman of the Committee on International Relations, and based on the gentleman's representations, I will not offer this amendment.

But I do want to reiterate the strong concerns that many Members of Congress have, including this Member, about Egypt's actions and the lack of engaging in a constructive role in the Middle East and that the foreign aid account should not be considered sancrosanct when it comes to considering this issue.

AMENDMENT NO. 73 OFFERED BY MR. MENENDEZ

Mr. MENENDEZ. Mr. Speaker, I offer an amendment.

The CHAIRMAN. Is the amendment printed in the RECORD?

Mr. MENENDEZ. Yes, Mr. Chairman, it is.

The Clerk read as follows:

Amendment No. 73 offered by Mr. MENENDEZ:

At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. 572. None of the funds appropriated or otherwise made available by this Act under the heading "NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS" that are made available for the International Atomic Energy Agency shall be made available for programs and projects of such Agency in Cuba.

Mr. MENENDEZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. MENENDEZ. Mr. Chairman, my amendment seeks to limit the use of U.S. taxpayer dollars to the International Atomic Energy Agency for programs and projects in Cuba. Over the next 3 years, Cuba will receive more than $1.7 million from the IAEA, even though Cuba has continuously refused to sign the Treaty on Non-Proliferation of Nuclear Weapons, ratify the Treaty of Tlatelolco, negotiate full-scope safeguards or incorporate internationally accepted nuclear safety standards.

In addition to those glaring aberrations, the Castro dictatorship has decided that a dangerous Soviet-era nuclear plant in Juragua, near Cienfuegos, Cuba, should be completed and

operated. Already the IAEA has provided nearly $700,000 to Cuba to support the Juragua Nuclear Power Plant.

A letter to me from President Clinton stated that:

The United States opposes the construction of the Juragua nuclear power plant because of our concerns about Cuba's ability to ensure the safe operation of the facility and because of Cuba's refusal to sign the Nuclear Non-proliferation Treaty or ratify the Treaty of Tlatelolco.

The State Department, the Nuclear Regulatory Commission, and the Department of Energy have also expressed concerns about the construction and operation of Cuba's proposed nuclear reactors.

Dr. Edward Purvis, who headed the United States Department of Energy's investigation of Cuba's reactors has this to say:

An accident in the Cuban VVER-440 is probable. It is just a question of when. I don't know if they are the most dangerous reactors in the world, but they are the most dangerous reactors anywhere close to the United States.

In a report to Congress, the General Accounting Office outlined concerns among nuclear energy experts about deficiencies in the Cienfuegos nuclear plant project. They included: A lack in Cuba both of a nuclear regulatory scheme and an adequate infrastructure to ensure the plant's safe operation, maintenance, and adequate training of program operators.

Reports by a former technician from Cuba who, by examining with x rays, weld sites believed to be part of the auxiliary plumbing system for the plant, found that 10 to 15 percent of those were defective. This technician, Mr. Jose Oro, was quoted as saying, "The operation of this reactor will be criminal. The construction was being performed in a completely negligent manner."

According to the U.S. Geological Survey, the Caribbean plate, where this reactor sits, is in fact subject to seismic risks to Cuba in the reactor cite and may produce large to moderate earthquakes and in fact may produce large to moderate earthquakes. In fact, on May 25, 1992, the Caribbean plate produced an earthquake numbering 7 on the Richter scale.

Finally, I would like members who are from the State of Texas, Louisiana, Arkansas, Mississippi, Alabama, Florida, Georgia, Tennessee, South Carolina, North Carolina, Maryland, Virginia, and here in Washington, DC, to consider the following: We are talking about in those States over 80 million Americans, Mr. Chairman, almost one in three Americans to my right on this chart.

According to a study by the National Oceanic and Atmospheric Administration, summer winds could carry radioactive pollutants from a nuclear accident at the power plant throughout all of Florida and parts of the States on the gulf coast as far as Texas and northern winds could carry the pollutants as far northeast as Virginia and Washington, DC. Many more states would be affect in the time.

So we should point out that this is not a question of nuclear safety where we might be interested in supporting the IAEA here, because there is at present no nuclear material at the Juragua power plant. But what the IAEA is doing is preserving the plant so that construction can be renewed at a point in time in which Cuba acquires sufficient financing a plant that we have said that we do not want a plant, that the President has said he is concerned about a plant, that the GAO says that does not make any sense and is a risk and that the National Oceanic and Atmospheric Administration says is a risk.

So the question is whether or not you believe that the United States taxpayer dollars should be supporting the preservation of this dangerous plant with our tax dollars, particularly whether Cuba will likely never have the resources to complete it and if it did would pose a very serious national security threat to the United States.

I believe it is in our national interest not to be having resources go in this way. If there was a plant that was up and running and a plant that we said did not pose a threat to us, yes, let us have the IAEA produce the opportunity for oversight but let us not give them money to mothball a plant that we never want to see take place in the first place.

I hope that the committee will accept the amendment, and certainly I ask my colleagues to support it.

Ms. PELOSI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, our distinguished colleague, the gentleman from New Jersey [Mr. MENENDEZ] said at the end of his remarks that he understands that the committee will accept the amendment, and that is my understanding as well. But I would like to just take a moment to put a couple of observations on the RECORD without commenting on the Committee's rule.

My colleagues, I understand your preference to shut down the IAEA's activity in Cuba. As we know, that is not necessarily achieveable by simply cutting off U.S. participation. The IAEA functions as an international body with contributions from many sources, and consequently its program decisions are not made by the United States alone.

I do not necessarily disagree with the gentleman from New Jersey [Mr. MENENDEZ] on the issue of renewing the construction of the power plant in Cuba. I oppose that in fact, and the U.S. opposes that. In fact, the United States has regularly pleaded with our allies not to help Cuba revive this project. So far, that effort has succeeded.

Unilateral efforts such as this pose a problem for us in achieving our credibility in achieving our goal in these multilateral, multinational bodies. I am concerned, therefore, how this action would affect our credibility with the IAEA on other matters. For years the United States, at the urging of Congress, fought with other nations who were attempting to exclude Israel from IAEA.

Our point was that an international organization was unfair to single out one country for discriminatory treatment. This amendment puts us in a position of doing that. We are presently depending on the work of the IAEA to be the eyes and ears of the world when it comes to monitoring the activities of North Korea, Iraq, and other countries that we might not consider to be within the realm of countries that are operating in a way with respect for their citizens. We are counting on the IAEA to be the eyes and ears, as I said, with respect to nuclear programs.

The U.S. has a vital stake in this ongoing work, and we should not jeopardize that. That is why I want to put on the RECORD my concern for passing unilateral prohibitions such as this one. It puts us in an uncomfortable position when comes to influencing IAEA or countries like North Korea, where vital U.S. interests are also at stake.

So, as I say, I am not disagreeing with the gentleman from New Jersey [Mr. MENENDEZ] on the substance of his amendment, but I do in terms of my responsibilities to the subcommittee and our other activities want to put some of these concerns on the RECORD.

Mr. MENENDEZ. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I yield to the gentleman from New Jersey.

Mr. MENENDEZ. Mr. Chairman, I appreciate the statements of the gentlewoman from California [Ms. PELOSI] and I appreciate her support, notwithstanding her concerns. I just want to address her concerns and say that it is my understanding that in all years except one, actually this was written into the law up to 1994, and subsequently to that, we have sought through amendments to do what in fact we are doing here again tonight; and that has not in any way created a difficulty for us as a country with the IAEA.

As a matter of fact, we made contributions to what they call a special account that in fact is directly for this purpose. So I think that we will continue to have a good relationship with the IAEA, we will continue to make sure that they provide for nuclear safeguards and in many places throughout the world in which they do excellent work, but still send a very clear message that we do not want this power plant.

I appreciate the concerns of the gentlewoman from California [Ms. PELOSI].

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mr. MENENDEZ].

The amendment was agreed to.

AMENDMENT NO. 12 OFFERED BY MR. ROHRABACHER

Mr. ROHRABACHER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Has the amendment been printed in the RECORD?

Mr. ROHRABACHER. Yes, Mr. Chairman, it has.

The Clerk read as follows:

Amendment No. 12 offered by Mr. ROHRABACHER:

At the end of the bill, insert after the last section (preceding the short title) the following new section:

PROHIBITION OF ASSISTANCE TO CAMBODIA

SEC. . (a) None of the funds appropriated in this Act may be made available to the Government of Cambodia.

(b) None of the funds appropriated in this Act for the International Development Association, the International Monetary Fund, or the Asian Development Bank may be used for any loan to the Government of Cambodia.

Mr. ROHRABACHER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ROHRABACHER. Mr. Chairman, the amendment that I am offering is a second amendment we have had tonight on Cambodia. It is a bit tougher than the last amendment. Although I appreciate the efforts of the gentleman from Nebraska [Mr. BEREUTER] in the last amendment.

The reason why my amendment is a bit tougher than the last one is that it puts the United States Congress on record as supporting the denial of any funds that are appropriated by this act for international lending institutions, such as International Monetary Fund and Asian Development Bank.

This measure is essential. Because, while direct United States foreign aid is a small portion of the Cambodian regimes, and we are now talking about a rogue Cambodian regime, international donations account for half of that government's revenues. It is essential that the dictator, the strongman there, Hun Sen, realize that American representatives to these lending institutions are being directed by Congress to press for withholding of these funds. Even if the prohibition of these funds is not immediately possible, at least our people will be making the case. And if abuses in Cambodia continues, the U.S. position will be strengthened.

Thus, I would ask my colleagues to join me in supporting this amendment, which, as I say, is a bit tougher and sends a message that we are not going to permit aid to come through the back door to this gangster that shot his way into power and who has brutally murdered his opposition. We are taking a tough stand on Cambodia, and that is exactly what we should do, to send a message that we want a return to democracy and we are not going to be supportive of that regime until the regime goes back on track toward a Democratic election in May.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, I thank the gentleman from California [Mr. ROHRABACHER] for yielding.

Mr. Chairman, I rise in support of the Rohrabacher amendment. I really believe that on both sides of the aisle we are of one mind on the outrage that is going on in Cambodia. We want to take a strong stand. I appreciate the Bereuter amendment, and I support this further step.

I understand, I am not a member of this committee, that the Bereuter amendment, comments on it might be technically correct. But I think this takes a stand, as my colleague has noted, the international community, in addition to this Congress, needs to stand up for human rights and for democracy and against a repeat of the killing fields in Cambodia.

In addition to this, I hope that our administration is listening tonight so that they may take those steps necessary to rally around the international community, our allies that are also contributing that half of revenue into Cambodia. We need to act internationally to prevent an even greater disaster that has yet occurred and to insist that civility be returned to Cambodia, that democracy exist in that country, and that we will stand by those Cambodians who have risked their lives and their families and the lives of their families in behalf of freedom.

□ 2245

Mr. ROHRABACHER. Reclaiming my time, I appreciate the efforts of the gentleman from Nebraska [Mr. BEREUTER], I appreciate the support of others on the committee. This is a truly bipartisan effort as are most of the human rights efforts made in this Congress, and ever increasingly made in this Congress.

My bill is a bit tougher than the other amendment that has been offered regarding American support to Cambodia. It is tougher because it puts Congress on record of supporting the denial of U.S. funds appropriated in this act for international lending institutions, such as the International Monetary Fund and the Asian Development Bank. This measure is essential because while direct United States foreign aid is a small portion of the regime's funding, international donations account for half of the Government of Cambodia's revenues. It is essential that Hun Sen realize that American representatives to these lending institutions will press for withholding of these funds, even if the prohibition of these funds is not immediately possible. If abuses in Cambodia continue the United States position will be strengthened.

This provision was requested by exiled members of the elected Cambodian Government, by many members of the Cambodian-American community and in consultation with Steven Solarz, the Clinton administration's special envoy for Cambodia.

It is my intention that funding be restored after a democratic government constituted through the framework of the 1991 Paris accords is restored, including: the return of all elected members of government and leaders of democratic opposition parties currently in exile to safely campaign for a free and fair election; the disbanding of all private armies and militias; the creation of national election laws and an independent judiciary system; and certification by the President that adequate safeguards are in place to assure free and fair elections, including penalty provisions for any further abuses.

Ms. PELOSI. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentlewoman from California.

Ms. PELOSI. Because the hour is late, I thank the gentleman for yielding, and I thank him for his leadership on this important issue. I once again reiterate my support for the gentleman's amendment. I thank the gentlewoman from California for her leadership as well.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. ROHRABACHER].

The amendment was agreed to.

Mr. FOX of Pennsylvania. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to engage the chairman's assistance for NATO expansion. It is my understanding that this bill contains funds for new countries to join NATO at the invitation of the organization this summer in Madrid.

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. FOX of Pennsylvania. I yield to the gentleman from Alabama.

Mr. CALLAHAN. The answer is yes.

Mr. FOX of Pennsylvania. Under this provision, Mr. Chairman, are the funding levels adequate for these new countries to join NATO and to maintain NATO standards, in the gentleman's opinion?

Mr. CALLAHAN. The answer is once again yes.

Mr. FOX of Pennsylvania. Further, Mr. Chairman, do we have the chairman's assurance that he will support and protect this provision in conference and do everything in his power to follow through from the Madrid conference and make sure that these same new countries will be asked to join and will be helped in maintaining complete NATO standards?

Mr. CALLAHAN. Yes.

Mr. FOX of Pennsylvania. Mr. Chairman, I thank the gentleman from Alabama [Mr. CALLAHAN] very much. As the chairman of the committee, I want to thank the gentleman for his leadership, for the time and assistance he has given to this and other issues important to our country in our international relations. I would like to add that I wholeheartedly support this program and will take all measures necessary to see that we do invite the nations chosen in Madrid to join NATO at the earliest possible date and that we continue to invite new NATO members in the future.

Mr. COX of California. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the administration's stated intention in funding KEDO was to gain international monitoring and supervision of North Korea's nuclear program and specifically to assist in preventing North Korea from developing nuclear weapons. A further goal of the Clinton administration's support for KEDO was to require North Korea to submit to third-party inspection of its nuclear facilities, to provide an accounting for its plutonium stocks, particularly any highly enriched weapons-grade plutonium, and to minimize the future production of weapons-grade plutonium from its nuclear power plants. I would ask the chairman whether that is the committee's understanding.

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Alabama.

Mr. CALLAHAN. Yes, that is my understanding, and I think the committee as well, that these were the stated intentions of the administration when they requested funding for KEDO.

Mr. COX of California. I thank the chairman. I wonder if I might inquire whether it is the chairman's further understanding that KEDO is assuming substantial debts with some estimates that these debts total over $40 million?

Mr. CALLAHAN. Yes, I am very much concerned about the reports that KEDO has been accruing large debts to support the purchase of heavy fuel oil for North Korea which are well above the funds made available by appropriations by the Congress for this purpose. The information that the gentleman has furnished me is very disturbing to me.

Mr. COX of California. I thank the chairman once again.

Mr. Chairman, an amendment to strike the funding in the bill for KEDO was made in order. My amendment was prompted by reports that North Korea has in fact developed nuclear weapons, that it has thus far failed to permit third-party inspections of its nuclear facilities adequate to account for its stocks of highly enriched weapons-grade plutonium and that KEDO has sought to borrow funds in excess of its direct international funding. Since the committee's inclusion of KEDO funding is premised on the administration's representations about these very matters, I once again inquire, will the chairman be willing to revisit the provision of this bill at a future date if the reports to which I have referred prove to be true?

Mr. CALLAHAN. The committee's understanding is that the administration's intention in funding KEDO is to deter North Korea's production of nuclear weapons. If it is confirmed that North Korea has in fact developed nuclear weapons and is continuing to do so, or that North Korea has failed to account to the international community for its plutonium stocks, or that KEDO is engaged in borrowings not anticipated by our original agreement to provide financial support, then yes, I think the committee would indeed wish to revisit our support, because the United States should not provide even indirect support for North Korea's energy programs under such circumstances.

Mr. COX of California. Mr. Chairman, in light of the committee's intention to terminate U.S. funding of KEDO if the original premises are no longer valid, my amendment is rendered unnecessary, and I would withdraw it.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Nebraska.

Mr. BEREUTER. I thank the gentleman for yielding. I want to compliment him and the chairman on the understanding they have reached. As the chairman of the authorizing subcommittee, I certainly agree with the premises of the gentleman's comments and colloquy from the chairman. I commend the gentleman on it.

Mr. COX of California. I wish in turn to recognize the efforts of the chairman on this very subject and I look forward to working with the gentleman.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from New York.

Mr. GILMAN. I thank the gentleman from California for bringing this matter to our attention. While I certainly support food aid to North Korea that the gentleman initially was concerned about, and as long as it is adequately monitored I share the gentleman's concerns about KEDO and will raise this in our Committee on International Relations. I would not support an amendment cutting off food aid but would support the gentleman's concerns about KEDO. I commend the gentleman for raising the issue.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to enter into a colloquy with the gentleman from Alabama [Mr. CALLAHAN] and the gentlewoman from California [Ms. PELOSI]. I would like to thank the gentleman from Alabama [Mr. CALLAHAN] and the distinguished ranking member for engaging me in this very important colloquy. According to the State Department, Ethiopia's government limits freedom of association and refuses to register several nongovernmental organizations. Societal discriminations and violence against women and abuse of children remain problems. The apparent act of female genital mutilation is nearly universal. Domestic violence including wife beating and rape are pervasive social problems. Nationwide, thousands of criminal suspects remain in detention without charge or trial at the close of 1996. Most often these detentions resulted from the severe shortage and limited training of judges, prosecutors and attorneys.

Mr. CALLAHAN. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Alabama.

Mr. CALLAHAN. Mr. Chairman, I would like to thank the gentlewoman from Texas for once again bringing this very important matter to the attention of the Subcommittee on Foreign Operations, Export Financing and Related Programs of the Committee on Appropriations.

Human rights is important around the world, but it is especially important in Africa. We need to closely monitor Ethiopia's human rights record. I would be very happy to work closely with the gentlewoman to make certain the State Department pursues this issue aggressively and the Government of Ethiopia responds to your concerns.

Ms. JACKSON-LEE of Texas. I thank the gentleman for his kindness and recognizing the very important issue that this is.

Ms. PELOSI. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentlewoman from California, the ranking member who has a distinguished record on human rights.

Ms. PELOSI. Mr. Chairman, I thank the gentlewoman for yielding. I want to join our distinguished chairman in thanking the gentlewoman from Texas for her leadership in bringing this matter to the subcommittee's attention and will join our chairman in working with her to monitor the State Department's actions on this. I again commend the gentlewoman for her leadership on this issue.

Mr. GILMAN. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from New York and thank the gentleman because we worked so closely together during the authorization period. I thank him for his leadership.

Mr. GILMAN. I thank the gentlewoman from Texas for her longtime interest in Ethiopia and African issues in

general. Africa receives far less attention from this body than it deserves. However, I wanted to make certain that we recognize the gentlewoman's efforts on behalf of Ethiopia. The Agency for International Development does take into account human rights issues when it decides on the level of assistance for Ethiopia as it does for other nations in Africa and elsewhere. Ethiopia, of course, does not have a perfect record on human rights issues, but many of its neighbors in Africa and other regions have far worse records and we are not singling them out.

The gentlewoman's raising this issue before this body is worthy of our attention. I want to assure the gentlewoman our committee will continue to monitor the events in Ethiopia. I thank the gentlewoman for her concern.

Ms. JACKSON-LEE of Texas. I thank the gentleman very much. He is very right. Africa must rise very high on our barometer screen and we must recognize the importance of improving their human rights position.

Again I would like to thank both the chairman and the distinguished ranking member. I bring this to the attention of the Subcommittee on Foreign Operations, Export Financing and Related Programs of the Committee on Appropriations and the whole House because I think we must be concerned about how countries treat their citizens if we are doling out the public's money every year. The American people need to know that the maternal mortality rate is extremely high, due in part to food taboos for pregnant women, early marriage, and birth complications related to female genital mutilation. For example, I am particularly interested and concerned about Ethiopia's treatment toward women. It is true that clitoridectomies are typically performed 7 days after birth and excision of the labia and the infibulation are the most dangerous and extreme.

Again I would like to urge the Congress to monitor the human rights record of Ethiopia as it relates to obligating funds for fiscal years 1998 and 1999, and I think collectively we can improve all conditions in Africa and particularly improve conditions in Ethiopia.

Mr. BEREUTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I want to thank the chairman, the ranking member and all the staff here this evening for their indulgence. I would like to engage the chairman in a colloquy on two issues.

Mr. Chairman, I would like to thank first of all the gentleman from Alabama [Mr. CALLAHAN] and the subcommittee for its recommendations with respect to international agricultural assistance. This Member is pleased that the committee report recommends continued support for a number of collaborative research support programs and calls for increased support for the agricultural development assistance in USAID's budget. However this Member would request that the chairman of the Appropriations Subcommittee enter into a colloquy to further clarify this matter.

Mr. Chairman, the committee report specifically mentions support for six collaborative research support programs. Certainly all of the CRSP programs make major contributions in helping agrarian-based nations develop their economies and increase their readiness for private investment through their contributions in human resource development, education, training, health and nutrition and in improving the human capital capacity of agricultural research and development institutions.

Mr. Chairman, in addition to the six CRSPs specifically mentioned in the committee report, is it also the committee's intention to support the sorghum millet CRSP and the integrated pest management CRSP in their efforts to promote sustainable agricultural practices in the developing world?

Mr. CALLAHAN. Mr. Chairman, will the gentleman yield?

Mr. BEREUTER. I yield to the gentleman from Alabama.

Mr. CALLAHAN. The response is yes, it is our intention.

Mr. BEREUTER. I thank the gentleman very much. I want to thank the gentleman for his clarification.

On the second matter, Mr. Chairman, I would like to comment on the report of the distinguished Commission on International Trade Development and Cooperation which calls for a funding level of at least $500 million for international agriculture and rural development programs in the USAID appropriation for fiscal year 1998. It seems like a reasonable goal to me, given the importance of the programs to the development of future markets for our U.S. farmers and the need to reverse the decline in these programs at USAID in recent years.

Does the gentleman agree that there has been a relative decline in funds for this important program and that a target of $500 million or a relevant percentage increase in funding would be appropriate over the next several years?

Mr. CALLAHAN. Yes, I do agree that agricultural decline has been too much and that we should work together to establish an appropriate goal consistent with other priorities.

Mr. BEREUTER. Mr. Chairman, that is all I can ask. I do appreciate the distinguished gentleman for his cooperation on this effort and for his effort tonight in general.

□ 2300

Mr. CALLAHAN. Mr. Chairman, I am sure you will be pleased to hear that we are going to rise.

We thank our entire staff for their patience and their understanding and cooperation that we have received, and I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore [Mr. PEASE] having assumed the chair, Mr. THORNBERRY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2159), making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1998, and for other purposes, had come to no resolution thereon.

EXTENDING ORDER OF THE HOUSE OF MAY 7, 1997, THROUGH SEPTEMBER 10, 1997

Mr. FOX of Pennsylvania. Mr. Speaker, I ask unanimous consent that the order of the House of May 7, 1997, as extended on July 15, 1997, be further extended through Wednesday, September 10, 1997.

The SPEAKER pro tempre. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 1997, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

THE LAST TIME THERE WAS A BALANCED FEDERAL BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut [Mr. SHAYS] is recognized for 5 minutes.

Mr. SHAYS. Mr. Speaker, I want to kind of catch my breath and to say to you after the budget agreement was passed in this Chamber I went back to my office, and on the back of my chair was this statement. It was from any staff, and I would like to read it.

It said:

The last time there was a balanced federal budget only four members of your staff were alive. You and your wife Betsy were teaching in the Peace Corps in the Fiji Islands. Your press secretary still had training wheels. Your chief of staff was drinking out of a bottle. Your scheduler had just graduated from high school. Your assistant manager was still using a typewriter. Half a million people were enjoying Woodstock, and John Kasich was probably one them. Richard Nixon was President. Neil Armstrong became the first man to walk on the moon. The Academy Award winner was Midnight Cowboy. The song of the year was Jesus Is Coming Soon. And Newt was getting his Ph.D. We have a lot to look forward to, and we will all benefit from the good work of this House.

Mr. Speaker, this was a momentous day for so many people, and I just want to thank all the staffs throughout this Congress working here in this Chamber, the staffs that work for Members' personal offices, the staffs that work on all our committees for the tremendous work they have done year in and year out to help us get to this day.

TRIBUTE TO TERESA B. STAERK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. FOX] is recognized for 5 minutes.

Mr. FOX of Pennsylvania. Mr. Speaker, I rise tonight to salute a young lady from my district Teresa Staerk who was a very special person and for me a role model. She died suddenly and tragically at 41 this past Saturday. She had great courage and strength. Her honesty and forthright manner were a model for others, her loyalty and generosity, her skill and desire to overcome her own disability to reach out to others in need. She was wheelchair bound, but she did not think of herself as having a disability. She worked for those who were disabled, and she was the pioneer in Pennsylvania for making sure that we had opportunities for transportation and mass transit for those who were in wheelchairs permanently. She worked on making sure that at our train stations we had ramps, that we had bridge plates to get individuals from the ramp into the train. She worked to make sure that our transit systems had chair lifts for especially equipped buses so those who wanted to maintain their mobility and independence could do so. She testified to our State capital in Harrisburg, Pennsylvania to make sure that she was a strong voice for others who could not speak or were not as committed or did not really have the will that she had. She was a very special person. Then she came to Washington do the same thing, to speak out on transit opportunities for the disabled.

She helped everyone, and she really was a trailblazer. Not only did she work to improve mass transit and to help inspire those who have some disabilities, but overcome them like she has, but she worked to organize our Toys for Tots program at our marine base. She worked to help support the Rosalyn Boys and Girls Club in our home county. She also worked to support the Girls and Boy Scouts programs.

She took every stumbling block that life gave her and turned into a stepping stone to help her community but not to help herself. She had a thirst of life that was unquenchable, and she accomplished more in her short 41 years than most people do that are lucky enough to live twice at long.

So I am hoping that those who hear about Terry Staerk and those who have the opportunity to meet her and who will later hopefully read about her life who want to be like her, a cross between Eleanor Roosevelt and Mother Theresa, who had a compassion and a vision, someone who was as selfless as can be and only was happy when we kept on trying.

She did not understand the word no. She used to say to people what part of no do you not understand because she knew that things that were difficult just took longer but never gave up.

So am hoping that her indomitable spirit, which is in the great historic dreams of America, will be lived on by others.

Her mother said at the funeral last night:

Teresa lived her life day by day, moment by moment. For her each day, each moment, was rich and full despite the obstacles she encountered. This was due not only to her own determination, courage and zest for life, but also to you, those of her family friends. She was a vibrant, beautiful women who was like the wind, free to travel, to learn and to see all that there is to see, and for her dreams that were unfulfilled, I hope that we can continue her dream.

I yield to the gentleman from Connecticut.

Mr. SHAYS. I appreciate the gentleman yielding. Just as I finished my statement on something my staff had written about what was life was like 20 years ago, the staff member said I just returned last night from visiting the wall where there are over 50,000 American soldiers who lost their life in Vietnam, and I could have added that 20 years ago we had soldiers in Vietnam who answered their country's call when the last time we had a balanced budget, and a number of those men who were sent to Vietnam never came back to see the day we have today where we are once again going to have a balance budget, and I thank the gentleman for allowing me that opportunity.

Mr. FOX of Pennsylvania. Mr. Speaker, I appreciate the comments of the very sensitive from the Congressman from Connecticut because we would not have the opportunity to be here in Congress to serve in a great privilege as it is if those people who had not fought in Vietnam and in other wars for this country to give us the right to serve here in peace. So to each of them I salute them and join the gentleman from Connecticut [Mr. SHAYS] in that additional tribute which is very fitting for today and this historic setting.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. JACKSON-LEE of Texas) to revise and extend their remarks and include extraneous material:)

Mr. DEFAZIO, for 5 minutes, today.

Mr. JEFFERSON, for 5 minutes, today.

Mr. STRICKLAND, for 5 minutes, today.

(The following Members (at the request of Mr. FOX of Pennsylvania) to revise and extend their remarks and include extraneous material:)

Ms. ROS-LEHTINEN, for 5 minutes, on August 1.

Mr. METCALF, for 5 minutes, today.

Mr. SHAYS, for 5 minutes, today.

Mr. FOX of Pennsylvania, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. FOX of Pennsylvania) to revise and extend their remarks and include extraneous matter:)

Mr. DAVIS.
Mr. CALLAHAN.
Mr. SKEEN.
Mr. FORBES.
Mr. WELLER.
Mr. QUINN.
Mr. HILL.
Mr. BARRETT of Nebraska.
Ms. ROS-LEHTINEN.
Mrs. ROUKEMA.
Mr. SMITH of New Jersey.

(The following Members (at the request of Ms. JACKSON-LEE of Texas) to revise and extend their remarks and include extraneous matter:)

Mr. HAMILTON.
Mr. FARR of California.
Mr. WAXMAN.
Ms. NORTON.
Mr. MCHALE.
Mr. KUCINICH.
Mr. SABO.
Ms. KAPTUR.
Mr. KENNEDY of Rhode Island.
Mr. BLUMENAUER.
Mr. BAESLER.
Mr. POSHARD.
Mr. BORSKI.
Mrs. MALONEY of New York.
Ms. JACKSON-LEE of Texas.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 430. An act of June 20, 1910, to protect the permanent trust funds of the State of New Mexico from erosion due to inflation and modify the basis on which distributions are made from those funds.

S. 670. An act to amend the Immigration and Nationality Technical Corrections Act of 1994 to eliminate the special transition rule for issuance of a certificate of citizenship for certain children born outside the United States.

ADJOURNMENT

Mr. FOX. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 10 minutes p.m.), the House adjourned until tomorrow, Thursday, July 31, 1997, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4433. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving U.S. exports to Morocco, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking and Financial Services.

4434. A letter from the AMD—Performance Evaluation and RECORDS Management, Federal Communications Commission, transmitting the Commission's final rule—Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges [CC Docket No. 96-262; 94-1; 91-213; 95-72] received July 29, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

4435. A letter from the Director, Regulations Policy Management Staff, Office of Policy, Food and Drug Administration, transmitting the Administration's final rule—Indirect Food Additives: Adhesives and Components of Coatings [Docket No. 96F-0384] received July 30, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

4436. A letter from the Director, Regulations Policy Management Staff, Office of Policy, Food and Drug Administration, transmitting the Administration's final rule—Indirect Food Additives: Paper and Paperboard Components [Docket No. 93F-0428] received July 30, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

4437. A letter from the Director, Regulations Policy Management Staff, Office of Policy, Food and Drug Administration, transmitting the Administration's final rule—Indirect Food Additives: Paper and Paperboard Components [Docket No. 96F-0291] received July 30, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

4438. A letter from the Director, Regulations Policy Management Staff, Office of Policy, Food and Drug Administration, transmitting the Administration's final rule—Changes to an Approved Application [Docket No. 95N-0329] (RIN: 0910-AA57) received July 30, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

4439. A letter from the Director, Defense Security Assistance Agency, transmitting a copy of Transmittal No. 12-97 constituting a Request for Final Authority (RFA) to conclude a Memorandum of Understanding (MOU) with the United Kingdom related to the TRIMARAN Demonstrator Project, pursuant to 22 U.S.C. 2767(f); to the Committee on International Relations.

4440. A letter from the Acting Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 12-113, "Health Insurance Portability and Accountability Federal Law Conformity Temporary Act of 1997" received July 29, 1997, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform and Oversight.

4441. A letter from the Acting Chairman, Council of the District of Columbia, transmitting a copy of Council Resolution 12-202, "Sense of the Council of the District of Columbia in Opposition to the Death Penalty Emergency Resolution of 1997" received July 29, 1997, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform and Oversight.

4442. A letter from the Acting Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 12-109, "Business Improvement Districts Amendment Act of 1997" received July 29, 1997, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform and Oversight.

4443. A letter from the Acting Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 12-108, "Closing of a Public Alley in Square 484 S.O. 90-272, Reinstatement Act of 1997" received July 29, 1997, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform and Oversight.

4444. A letter from the Acting Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 12-107, "Closing of a Public Alley in Square 253, S.O. 88-107, Reinstatement Act of 1997" received July 29, 1997, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform and Oversight.

4445. A letter from the Employee Benefits Manager, AgFirst Farm Credit Bank, transmitting the annual report of the AgFirst Farm Credit Bank for the year ending December 31, 1996, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Reform and Oversight.

4446. A letter from the Administrator, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Atlantic Tuna Fisheries; Regulatory Adjustments [Docket No. 960816226-7144-04; I.D. 060597A] (RIN: 0648-AJ04) received July 1, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

4447. A letter from the Acting Director, Office of Surface Mining Reclamation and Enforcement, transmitting the Office's final rule—Missouri Regulatory Program [SPATS No. MO-032-FOR] received July 30, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

4448. A letter from the Acting Director, Office of Surface Mining Reclamation and Enforcement, transmitting the Office's final rule—Utah Regulatory Program and Utah Abandoned Mine Land Reclamation Plan [UT-035-FOR] received July 30, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

4449. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revised Structural Loads Requirements for Transport Category Airplanes (Federal Aviation Administration) [Docket No. 28312; Amdt. No. 25-91] (RIN: 2120-AF70) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4450. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Amendment to Class D Airspace; Miami Opa Locka Airport, FL, and Hollywood North Perry Airport, FL (Federal Aviation Administration) [Airspace Docket No. 97-ASO-7] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4451. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Silver City, NM (Federal Aviation Administration) [Airspace Docket No. 96-ASW-21] received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4452. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Modification of Class D Airspace and Establishment and Modification of Class E Airspace; Grand Forks, ND, Grand Forks International Airport (Federal Aviation Administration) [Airspace Docket No. 97-AGL-17] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4453. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Modification of Class E Airspace; Mitchell, SD, Mitchell Municipal Airport (Federal Aviation Administration) [Airspace Docket No. 97-AGL-13] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4454. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Establishment of Class E Airspace; Bismarck, ND, Bismarck Municipal Airport (Federal Aviation Administration) [Airspace Docket No. 97-AGL-14] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4455. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Modification of Class E Airspace; Medford, WI, Medford, Taylor County Airport (Federal Aviation Administration) [Airspace Docket No. 97-AGL-15] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4456. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Establishment and Modification of Class E Airspace; Ironwood, MI, Ironwood Gogebic County Airport (Federal Aviation Administration) [Airspace Docket No. 97-AGL-16] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4457. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Establishment of Class E Airspace; St. Cloud, MN (Federal Aviation Administration) [Airspace Docket No. 96-AGL-34] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4458. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Establishment of Class E Airspace; Perham, MN, Perham Municipal Airport (Federal Aviation Administration) [Airspace Docket No. 97-AGL-8] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4459. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Establishment of Class E Airspace; Harvey, ND, Harvey Municipal Airport (Federal Aviation Administration) [Airspace Docket No. 97-AGL-10] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4460. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class D Airspace; Little Rock, AFB, AR (Federal Aviation Administration) [Airspace Docket No. 97-ASW-02] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4461. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Clarksville, AR (Federal Aviation Administration) [Airspace Docket No. 96-ASW-43] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4462. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Olney, TX (Federal Aviation Administration) [Airspace Docket No. 96-ASW-42] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4463. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Reserve, LA (Federal Aviation Administration) [Airspace Docket No. 96-ASW-38] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4464. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Paragould, Ar (Federal Aviation Administration) [Airspace Docket No. 96-ASW-39] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4465. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Establishment of Class E Airspace; Grants, NM (Federal Aviation Administration) [Airspace Docket No. 96-ASW-41] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4466. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; DeQueen, AR (Federal Aviation Administration) [Airspace Docket No. 96-ASW-37] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4467. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Weslaco, TX (Federal Aviation Administration) [Airspace Docket No. 96-ASW-36] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4468. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Killeen, TX (Federal Aviation Administration) [Airspace Docket No. 96-ASW-35] (RIN: 2120-AA66) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4469. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Louis L'Hotellier, S.A., Ball and Swivel Joint Quick Connectors (Federal Aviation Administration) [Docket No. 92-CE-41-AD; AD 97-08-06 R1] (RIN: 2120-AA64) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4470. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Models E33, F33, G33, E33A, F33A, E33C, F33C, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, V35TC, V35ATC, V35BTC, 36, A36, A36TC, B36TC, 50, B50, C50, 95-55, 95A55, 95B55, 95C55, D55, E55, 56TC, A56TC, 58, 58TC, 95, B95, B95A, D95A, and E95 Airplanes (Federal Aviation Administration) [Docket No. 96-CE-34-AD; Amdt. 39-10073; AD 97-14-15] (RIN: 2120-AA64) Received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4471. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; AlliedSignal Inc. TPE331 Series Turboprop Engines (Federal Aviation Administration) [Docket No. 96-ANE-13; Amdt. 39-10084; AD 97-15-10] (RIN: 2120-AA64) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4472. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Burkhart Grob, Luft- und Raumfahrt, Model G 109 Sailplanes (Federal Aviation Administration) [Docket No. 95-CE-03-AD; Amdt. 39-10086; AD 97-15-12] (RIN: 2120-AA64) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4473. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Standard Instrument Approach Procedures; Miscellaneous Amendments (Federal Aviation Administration) [Docket No. 28957; Amdt. No. 1806] (RIN: 2120-AA65) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4474. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Raytheon Aircraft Company (formerly Beech Aircraft Corporation) Models 1900, 1900C, and 1900D Airplanes (Federal Aviation Administration) [Docket No. 96-CE-60-AD; Amdt. 39-10087; AD 97-15-13] (RIN: 2120-AA64) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4475. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Standard Instrument Approach Procedures; Miscellaneous Amendments (Federal Aviation Administration) [Docket No. 28958; Amdt. No. 1807] (RIN: 2120-AA65) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4476. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Correction (Federal Aviation Administration) [Docket No. 25910; Amdt. Nos. 61-103 and 141-9] (RIN: 2120-AE71) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4477. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Requirements for Tax Exempt Section 501(c)(5) Organizations [TD 8726] (RIN: 1545-AT95) received July 28, 1997, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

4478. A letter from the Acting Comptroller General, General Accounting Office, transmitting a report entitled, "FINANCIAL AUDIT: Capitol Preservation Fund's Fiscal Years 1996 and 1995 Financial Statements" (GAO/AIMD-97-99), pursuant to Public Law 101—576, section 305 (104 Stat. 2853); jointly to the Committees on House Oversight and Government Reform and Oversight.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SOLOMON: Committee on Rules. House Resolution 202. Resolution waiving points of order against the conference report to accompany the bill (H.R. 2015) to provide for reconciliation pursuant to subsections (b)(1) and (c) of section 105 of the concurrent resolution on the budget for fiscal year 1998 (Rept. 105-218). Referred to the House Calendar.

Mr. DIAZ-BALART: Committee on Rules. House Resolution 203. Resolution providing for consideration of a joint resolution waiving certain enrollment requirements with respect to two specified bills of the 105th Congress (Rept. 105-219). Referred to the House Calendar.

Mr. ARCHER: Committee of conference. Conference report on H.R. 2014. A bill to provide for reconciliation pursuant to subsections (b)(2) and (d) of section 105 of the concurrent resolution on the budget for fiscal year 1998 (Rept. 105-220). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. PORTMAN (for himself and Mr. CARDIN):

H.R. 2292. A bill to restructure the Internal Revenue Service, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Government Reform and Oversight, the Budget, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TAYLOR of North Carolina:

H.R. 2293. A bill to eliminate attorney fee awards and limit relief available in suits against certain public entities; to the Committee on Transportation and Infrastructure.

By Mr. COBLE (by request):

H.R. 2294. A bill to make improvements in the operation and administration of the Federal courts, and for other purposes; to the Committee on the Judiciary.

By Mr. HASTERT (for himself, Mr. SOUDER, Mr. PORTMAN, Mr. SESSIONS, Mr. MICA, and Mr. LATOURETTE):

H.R. 2295. A bill to amend the National Narcotics Leadership Act of 1988 to extend the authorization for the Office of National

Drug Control Policy until September 30, 1998; to the Committee on Government Reform and Oversight.

By Ms. ROS-LEHTINEN (for herself, Mr. DIAZ-BALART, Mr. SMITH of New Jersey, Mr. MCCOLLUM, Mr. DEUTSCH, and Mr. BURTON of Indiana):

H.R. 2296. A bill to withhold foreign assistance to Caribbean Basin Initiative countries that support membership for the Government of Cuba into the Caribbean Community [CARICOM] or the Central American Common Market [CACM], and for other purposes; to the Committee on International Relations, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BAKER:

H.R. 2297. A bill to amend the Fair Housing Act, and for other purposes; to the Committee on the Judiciary.

By Mr. COBURN (for himself, Mr. BURR of North Carolina, Mr. STUPAK, Ms. DEGETTE, and Mr. DEUTSCH):

H.R. 2298. A bill to improve the regulation of radiopharmaceuticals; to the Committee on Commerce.

By Mr. COBURN:

H.R. 2299. A bill to direct the Secretary of the Army to convey lands acquired for the Candy Lake project, Osage County, OK; to the Committee on Transportation and Infrastructure.

H.R. 2300. A bill to direct the Secretary of the Army to convey lands acquired for the Sallisaw Creek project, Sequoyah County, OK; to the Committee on Transportation and Infrastructure.

By Ms. DANNER:

H.R. 2301. A bill to establish a program to improve the control of fraud and abuse in the Medicare Program, to increase the amount of civil monetary penalties which may be assessed against individuals and entities committing fraud against the Medicare Program, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DIAZ-BALART (for himself, Ms. ROS-LEHTINEN, Mr. GILMAN, Mr. SMITH of New Jersey, Mr. MCINTOSH, Mr. SOUDER, Mr. KING of New York, Mr. GUTIERREZ, Mr. MENENDEZ, Mrs. MEEK of Florida, Mr. DEUTSCH, Mr. PASTOR, and Mr. BERMAN):

H.R. 2302. A bill to amend the Immigration and Nationality Act to clarify the relief available under current law, and to provide additional relief and procedural rights for certain aliens who would otherwise be ineligible for such procedural rights; to the Committee on the Judiciary.

By Mr. GALLEGLY:

H.R. 2303. A bill to establish voluntary national guidelines for the safety and training of State correctional officers; to the Committee on the Judiciary.

By Mr. GOSS:

H.R. 2304. A bill to direct the Secretary of the Interior to make technical corrections to a map relating to the Coastal Barrier Resources System; to the Committee on Resources.

By Mr. HALL of Ohio (for himself and Mr. JONES):

H.R. 2305. A bill to establish a commission to assist in commemoration of the centennial of powered flight and the achievements of the Wright brothers; to the Committee on Government Reform and Oversight.

By Mr. HILL:

H.R. 2306. A bill to authorize construction of the Fort Peck Reservation Rural Water System in the State of Montana, and for other purposes; to the Committee on Resources.

By Mr. KENNEDY of Massachusetts (by request):

H.R. 2307. A bill to facilitate the effective and efficient management of the homeless assistance programs of the Department of Housing and Urban Development, including the merger of such programs into one performance fund, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. MCDADE:

H.R. 2308. A bill to amend the Fair Housing Act to assure the power of States and localities to limit group homes for recovering drug and alcohol abusers; to the Committee on the Judiciary.

By Mr. POMEROY:

H.R. 2309. A bill to permit the leasing of mineral rights, in any case in which the Indian owners of an allotment that is located within the boundaries of the Fort Berthold Indian Reservation and held in trust by the United States have executed leases to more than 50 percent of the mineral estate of that allotment; to the Committee on Resources.

By Mr. PORTER:

H.R. 2310. A bill to amend the Internal Revenue Code of 1986 to exclude from income capital gain from the sale of a principal residence; to the Committee on Ways and Means.

By Mr. BOB SCHAFFER (for himself, Mr. CUNNINGHAM, Ms. DEGETTE, Mr. HEFLEY, Mr. MCINNIS, Mr. DAN SCHAEFER of Colorado, and Mr. SKAGGS):

H.R. 2311. A bill to amend section 435(d)(1)(A)(ii) of the Higher Education Act of 1965 with respect to the definition of an eligible lender; to the Committee on Education and the Workforce.

By Mr. SCHUMER:

H.R. 2312. A bill to amend section 1584 of title 18, United States Code, to clarify that forcing immigrants into slave labor by withholding immigration documents, or by threatening to involve immigration authorities, is a violation of such section; to the Committee on the Judiciary.

By Mr. SOLOMON:

H.R. 2313. A bill to prohibit the construction of any monument, memorial, or other structure at the site of the Iwo Jima Memorial in Arlington, VA, and for other purposes; to the Committee on Resources.

By Mr. WATKINS:

H.R. 2314. A bill to restore Federal Indian services to members of the Kickapoo Tribe of Oklahoma residing in Maverick County, TX, to clarify U.S. citizenship status of such members, to provide trust land for the benefit of the Tribe, and for other purposes; to the Committee on Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KENNEDY of Rhode Island (for himself, Mr. LEACH, Mr. DELAHUNT, Mr. STARK, Mr. MCNULTY, Mr. EVANS, and Ms. WOOLSEY):

H.J. Res. 89. Joint resolution calling on the President to continue to support and fully participate in negotiations at the United Nations to conclude an international agreement to establish an international criminal court; to the Committee on International Relations.

By Mr. LANTOS (for himself, Mr. GILMAN, Mr. GEPHARDT, Mr. HAMILTON, Mr. ACKERMAN, Mr. BERMAN, Mr. CARDIN, Ms. DELAURO, Mr. DEUTSCH, Mr. ENGEL, Mr. FOX of Pennsylvania, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEJDENSON, Mr. KENNEDY of Massachusetts, Mrs. LOWEY, Mr. MARTINEZ, Mr. NADLER, Mr. ROTHMAN, Mr. SANDERS, Mr. SCHUMER, Mr. WELLER, Mr. WEXLER, Mr. YATES, Mr. WAXMAN, Mr. HORN, Mr. FALEOMAVAEGA, and Mr. SHERMAN):

H. Con. Res. 133. Concurrent resolution expressing the sense of the Congress regarding the terrorist bombing in the Jerusalem market on July 30, 1997; to the Committee on International Relations, discharged; considered and agreed to.

By Mr. BILIRAKIS (for himself, Mr. GILMAN, Mr. PAPPAS, Mrs. MALONEY of New York, Mr. KLINK, Mr. VISCLOSKY, Mr. LOBIONDO, Ms. ROS-LEHTINEN, Mr. DIAZ-BALART, Mrs. MYRICK, Mr. PALLONE, Mr. BLAGOJEVICH, Mr. LAFALCE, Mr. ACKERMAN, Mr. BROWN of Ohio, Mr. BATEMAN, Mr. CAPPS, Mr. FILNER, Mr. COYNE, Mr. DEUTSCH, Mr. DOYLE, Mr. EVANS, Mr. FRANKS of New Jersey, Mr. GREEN, Ms. HARMAN, Mr. HOLDEN, Mr. HORN, Mrs. KELLY, Mr. KENNEDY of Massachusetts, Mr. KENNEDY of Rhode Island, Mr. LANTOS, Mr. LEVIN, Mrs. LOWEY, Mr. MANTON, Mr. MATSUI, Mr. MCGOVERN, Mr. MCNULTY, Mr. MEEHAN, Mr. MENENDEZ, Ms. PELOSI, Mr. SHERMAN, Mr. WELDON of Pennsylvania, and Mr. BONIOR):

H. Con. Res. 134. Concurrent resolution authorizing the use of the rotunda of the Capitol to allow Members of Congress to greet and receive His All Holiness Patriarch Bartholomew; to the Committee on House Oversight.

By Mr. PAYNE (for himself, Ms. PELOSI, and Mr. OWENS):

H. Con. Res. 135. Concurrent resolution congratulating the people of the Republic of Liberia for holding multiparty elections; to the Committee on International Relations.

By Mr. BALDACCI:

H. Res. 204. Resolution expressing the sense of the House of Representatives that a postage stamp should be issued in honor of Samantha Smith; to the Committee on Government Reform and Oversight.

By Mr. LAMPSON:

H. Res. 205. Resolution calling for the prosecution of Pol Pot for crimes against humanity; to the Committee on International Relations.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII.

Mr. LEWIS of Georgia introduced a bill (H.R. 2315) for the relief of John Edward Armstrong Denney; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 15: Mrs. MINK of Hawaii.

H.R. 54: Mr. BOB SCHAFFER.
H.R. 80: Mr. MCHALE.
H.R. 127: Mr. PAUL.
H.R. 164: Ms. DANNER, Mr. RANGEL, Mr. BURR of North Carolina, Ms. CHRISTIAN-GREEN, Mr. NEAL of Massachusetts, Mr. CLEMENT, Mr. DINGELL, Mrs. MYRICK, Mr. ALLEN, Mr. JACKSON, Mr. DEUTSCH, Mr. JEFFERSON, Mr. SANDERS, Mr. ANDREWS, Mr. SCHUMER, Mr. BENTSEN, Mr. KLECZKA, and Mrs. CHENOWETH.
H.R. 195: Mr. CAPPS.
H.R. 292: Mr. SALMON.
H.R. 312: Mr. PETERSON of Pennsylvania.
H.R. 347: Mr. PETERSON of Minnesota.
H.R. 599: Mr. FARR of California, Mr. CLAY, Ms. KAPTUR, and Mr. BARRETT of Wisconsin.
H.R. 620: Mr. RAHALL.
H.R. 631: Mrs. KELLY.
H.R. 632: Mr. GRAHAM.
H.R. 695: Mr. TAYLOR of North Carolina, Mr. WALSH, and Mr. NUSSLE.
H.R. 705: Mr. TRAFICANT.
H.R. 815: Mr. MCDADE, Mr. GRAHAM, and Mr. CAMP.
H.R. 875: Mr. GRAHAM.
H.R. 878: Mrs. MALONEY of New York, Mr. MARKEY, and Ms. WOOLSEY.
H.R. 928: Mr. GIBBONS.
H.R. 959: Mr. SABO, Mr. CAPPS, and Ms. SLAUGHTER.
H.R. 974: Mr. LAZIO of New York.
H.R. 977: Mr. COSTELLO.
H.R. 986: Mr. STUMP, Mr. CUNNINGHAM, and Mr. CALVERT.
H.R. 1002: Mr. PASCRELL and Mr. BONIOR.
H.R. 1010: Mr. RADANOVICH AND MR. DAN SCHAEFER of Colorado.
H.R. 1023: Mr. MCDADE, Mr. BALLENGER, and Mr. TAUZIN.
H.R. 1060: Mr. EWING.
H.R. 1061: Mr. SPENCE, Mr. MENENDEZ, Mrs. MORELLA, and Mr. GRAHAM.
H.R. 1075: Mr. WALSH and Mr. SANDERS.
H.R. 1129: Mr. BILBRAY, Mr. NETHERCUTT, and Mr. BONIOR.
H.R. 1140: Mr. STRICKLAND.
H.R. 1151: Ms. JACKSON-LEE, Mr. FAZIO of California, Ms. KILPATRICK, and Ms. EDDIE BERNICE JOHNSON of Texas.
H.R. 1154: Mr. FILNER, Ms. LOFGREN, and Mr. MARTINEZ.
H.R. 1165: Mr. KUCINICH.
H.R. 1334: Mr. FALEOMAVAEGA.
H.R. 1355: Mr. WISE.
H.R. 1362: Mr. BENTSEN and Mr. STENHOLM.
H.R. 1378: Mr. MICA.
H.R. 1424: Mr. REDMOND.
H.R. 1534: Mr. UNDERWOOD, Mr. INGLIS of South Carolina, Mr. SKEEN, Mr. CHAMBLISS, Mr. WICKER, Mr. SCHIFF, Mr. EHRLICH, Mr. SHADEGG, Mr. GIBBONS, Mr. PARKER, Mr. FOLEY, Mr. BALLENGER, Mr. UPTON, Mr. WATKINS, Mr. SMITH of New Jersey, Mr. HUNTER, Mr. TAUZIN, Mr. HASTERT, Mr. JONES, Mr. CALLAHAN, Mr. KINGSTON, Mr. LOBIONDO, Mr. MARTINEZ, Mr. COOK, Mr. METCALF, Mr. ORTIZ, Mr. SPENCE, Mr. WAMP, Mr. REGULA, Ms. GRANGER, Mrs. ROUKEMA, Mr. THOMAS, Mr. SAXTON, Mr. KNOLLENBERG, Mr. DICKEY, Mr. COBLE, Mr. BONO, Mr. POMBO, Mr. MCCRERY, Mr. ROHRABACHER, Mr. SAM JOHNSON, Mr. BURTON of Indiana, and Mr. BAKER.
H.R. 1574: Mr. SNOWBARGER.
H.R. 1614: Mr. YATES.
H.R. 1624: Mr. FARR of California and Mr. KLECZKA.
H.R. 1689: Mr. SHAW and Mr. UPTON.
H.R. 1704: Mr. GRAHAM.
H.R. 1711: Mr. CAMP, Mr. HASTINGS of Washington, and Mr. GRAHAM.
H.R. 1719: Mr. RADANOVICH.
H.R. 1726: Mr. OWENS.
H.R. 1733: Mr. BONIOR.
H.R. 1743: Mr. SNOWBARGER.
H.R. 1761: Mr. WEXLER and Mr. SHERMAN.
H.R. 1767: Mr. BROWN of California, Mr. THORNBERRY, and Mr. SABO.
H.R. 1786: Mr. DELLUMS, Mr. FRANK of Massachusetts, and Mr. CUMMINGS.
H.R. 1816: Mr. GRAHAM.
H.R. 1839: Mr. KLECZKA.
H.R. 1843: Mr. RADANOVICH.
H.R. 1854: Mr. RUSH and Mr. DAVIS of Illinois.
H.R. 1904: Mr. BOYD, Mrs. EMERSON, and Mr. KUCINICH.
H.R. 1951: Mr. HINCHEY, Mr. DOOLEY of California, Ms. PELOSI, and Mr. PRICE of North Carolina.
H.R. 1984: Mr. BARRETT of Nebraska, Mr. DUNCAN, Mr. LATOURETTE, Mr. RADANOVICH, Mr. BISHOP, Mr. COBURN, and Mr. POMBO.
H.R. 2004: Mr. FROST.
H.R. 2025: Mr. ENGEL.
H.R. 2038: Mr. EHLERS, Mr. STEARNS, Mr. LEWIS of Kentucky, Mrs. CHENOWETH, and Mr. BUNNING of Kentucky.
H.R. 2040: Mr. DAN SCHAEFER of Colorado.
H.R. 2064: Mr. SAWYER.
H.R. 2120: Mr. REGULA.
H.R. 2129: Mr. OXLEY, Ms. NORTON, Mr. SPENCE, and Mrs. THURMAN.
H.R. 2140: Mr. COBURN and Mr. KLUG.
H.R. 2196: Mr. HUNTER.
H.R. 2200: Mr. DELLUMS.
H.R. 2202: Mr. GOSS, Mr. KLUG, Mr. YOUNG of Alaska, Mrs. FOWLER, Mr. BURTON of Indiana, Mr. RANGEL, Mr. KING of New York, Mr. VISCLOSKY, Mr. OWENS, Mr. MCKEON, Mr. EVANS, Mr. TAYLOR of Mississippi, Ms. DEGETTE, Ms. RIVERS, Mrs. MORELLA, and Ms. LOFGREN.
H.R. 2222: Mr. STARK.
H. Con. Res. 65: Ms. MCKINNEY, Mr. MICA, Mr. PAPPAS, Mr. CARDIN, Mr. BROWN of California, and Mr. SANDERS.
H. Con. Res. 100: Mr. HOBSON, Mr. MILLER of Florida, Mr. WATTS of Oklahoma, Mr. PRICE of North Carolina, Mr. STARK, Ms. PRYCE of Ohio, Mr. PORTMAN, Mr. TALENT, Mr. MCNULTY, and Mr. CANADY of Florida.
H. Res. 37: Mr. DOOLEY of California, Mrs. MEEK of Florida, and Mr. MCNULTY.
H. Res. 139: Mr. RADANOVICH.
H. Res. 183: Mr. WATT of North Carolina and Mrs. MCCARTHY of New York.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 695: Mr. BUNNING of Kentucky, Mr. EVERETT, and Mr. HEFLEY.
H.R. 1577: Mr. HILL.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 2159

OFFERED BY: MR. CAMPBELL OF CALIFORNIA

AMENDMENT NO. 76: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. 572. The amounts otherwise provided by this Act are revised by reducing the amount made available for "ECONOMIC SUPPORT FUND", and increasing the amount made available for "CONTRIBUTION TO THE AFRICAN DEVELOPMENT FUND" (as authorized by Section 526(c) Public Law 103-306; 108 Stat. 1632), by $25,000,000.

H.R. 2159

OFFERED BY: MR. PITTS

AMENDMENT NO. 77: Add a new section at the end of the bill:

CHILD SURVIVAL ENHANCEMENT

(a) Notwithstanding the provisions of Title II and section 518A, not more than $1,067,000,000 is appropriated for Development Assistance, of which not more than $285,000,000 may be made available for population planning activities or other population assistance.

(b) In addition to the amounts appropriated in Title II under the heading "CHILD SURVIVAL AND DISEASE PROGRAMS FUND," $100,000,000 is appropriated for child survival activities pursuant to Section 104(c)(2) of Public Law 87-195, the Foreign Assistance Act of 1961.

H.R. 2159

OFFERED BY: MR. SAXTON

(Substitute Amendment to Amendment No. 64)

AMENDMENT NO. 78: Strike out the text of the amendment and insert instead:

"Page 1, strike line 1 and all that follows and insert the following:

'SEC. 572. None of the funds made available under the heading "DEVELOPMENT ASSISTANCE" may be used to support or promote illegal hunting or the illegal trade in elephant ivory, elephant hides, or rhinoceros horns,' ".

H.R. 2159

OFFERED BY: MR. TRAFICANT

AMENDMENT NO. 79: At the end of the bill, insert the following new section:

SEC. . None of the funds in this Act may be used to pay for NATO Expansion not authorized by law.

H.R. 2159

OFFERED BY: MR. TRAFICANT

AMENDMENT NO. 80: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. 572. None of the funds appropriated or otherwise made available by this Act may be made available for the Palestine Liberation Organization (P.L.O.), the Palestinian Authority, or successor entities until the President reports to the Congress that an agreement has been concluded among the Palestinian Authority, the Cairo Amman Bank of Gaza, the Overseas Private Investment Corporation, and any and all American companies that provides for any repayment of claims made by the Overseas Private Investment Corporation.

H.R. 2159

OFFERED BY: MR. TRAFICANT

AMENDMENT NO. 81: At the end of the bill, insert after the last section (preceding the short title) the following new section:

SEC. 572. Not more than $73,000,000 of the funds appropriated or otherwise made available by this Act may be made available for the Palestine Liberation Organization (P.L.O.), the Palestinian Authority, or successor entities until the President reports to the Congress that an agreement has been concluded among the Palestinian Authority, the Cairo Amman Bank of Gaza, the Overseas Private Investment Corporation, and any and all American companies that provides for any repayment of claims made by the Overseas Private Investment Corporation.

H.R. 2264

OFFERED BY: MS. JACKSON-LEE OF TEXAS

AMENDMENT NO. 24: In the item relating to "NATIONAL INSTITUTES OF HEALTH—NATIONAL

LIBRARY OF MEDICINE'', insert after the first dollar amount (before the comma) ''(reduced by $2,500,000)''.

In the item relating to ''OFFICE OF THE SECRETARY—GENERAL DEPARTMENTAL MANAGEMENT'', insert after the first dollar amount (before the comma) ''(increased by $2,000,000)''.

EXTENSIONS OF REMARKS

R.J. REYNOLDS STILL TARGETS OUR YOUTH AND YOUNG ADULTS

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 30, 1997

Mr. WAXMAN. Mr. Speaker, I rise today to share with the Members of this House an article that appeared in the May 28, 1997, edition of the Cleveland Free Times concerning R.J. Reynolds' new strategy to lure young people to smoke Camel cigarettes.

Given the retirement of Joe Camel, you may have thought that RJR was going to put an end to its promotional campaign aimed at our kids. But this Cleveland Free Times article discloses that R.J. Reynolds has developed a multimillion-dollar cigarette marketing campaign that targets bars and clubs frequented by youth and young adults. The goal of the program is to create an alternative marketing campaign and cigarette distribution network that operates under the radar. The campaign's targets include clubs—some of which are all-age concert clubs—and coffee houses. In exchange for cash, these bars and clubs give RJR exclusive rights to promote and sell Camel cigarettes in their establishment. As part of this promotion strategy, RJR-paid personnel mingle in the clubs to associate Camel cigarettes with what is cool.

This insightful Cleveland Free Times article gives us fair warning that the tobacco industry will continue to use its own particular marketing genius to target our kids. This must be foremost in our mind as we begin to consider tobacco legislation and how we can best achieve our goal of reducing the deadly toll exacted by tobacco on the people of our country.

Mr. Speaker, I ask that the full text of the article be printed in the RECORD so that my colleagues may have an opportunity to read about RJR's club marketing strategy.

CAMEL CLUBBING

(By Mark Naymik)

They do not wait in lines, show IDs, pay cover charges or purchase concert tickets to gain access to Cleveland's most popular bars and clubs. Once inside these venues, they are treated like low-budget celebrities, sometimes drawing a small crowd, several handshakes, and admiring nods from bar and club staff members.

They are Cleveland's Camel Club kids, a small group of twenty-something clubgoers, including Twig, Sheff, Ma-Ma, Frankie Boy and Don Vega, as they are known.

On most nights, these fashionable men and woman, each armed with a black canvas bag filled with Camel cigarettes, slip in and out of more than thirty area bars and clubs, from the Grog Shop, a small East side concert club, to the Phantasy, Lakewood's industrial-music dance club, to Ufia, Cleveland's largest gay club located on the West Side. Their job: blend in with the bar and club patrons, make friends with the bar staff and offer smokers free Camel cigarettes, R.J. Reynolds' premium brand.

These Camel Club kids should not be compared to those candy-striped cigarette girls or miniskirt-clad alcohol peddlers, who attract a lot of attention but can be more annoying than effective in enticing bar patrons to try their product. Camel Club kids look like they belong. They are R.J. Reynolds' ambassadors of cool. And they are the frontline workers in a relatively new, multimillion-dollar cigarette marketing campaign known as the Camel Club Program.

The goal of the Camel Club Program—beyond the obvious aim to increase sales of Camel cigarettes—is to create an altenative marketing campaign and cigarette distribution network, one that will not be affected by changing federal regulations or the scores of tobacco-related lawsuits clogging the courts. In other words, R.J. Reynolds wants to create a sales program that no longer relies on Joe Camel, obnoxious givaways and promotions, or even vending machines to move its smokes.

Cleveland is only one of about a dozen cities in which R.J. Reynolds has begun to market its cigarettes through bars and clubs frequented by the twentysomething smoking crowd.

A Free Times examination of the Camel Club Program in Cleveland reveals that R.J. Reynolds already has a near monopoly on the sale of cigarettes in most of Cleveland's bars and clubs that cater to young crowds. R.J. Reynolds created this monopoly by spending more than $120,000 on marketing agreements with club owners, who, in turn, give Camel Club kids exclusive access to their establishments. R.J. Reynolds also has targeted coffeehouses—havens for young smokers—and concert clubs that feature all-ages shows.

MONEY FOR NOTHING

Several months ago, representatives from R.J. Reynolds and KBA Marketing, the young and progressive Chicago-based marketing firm that manages the Camel Club Program, came to Cleveland in search of trendy bars, restaurants, coffeehouses and concert clubs. About forty area nightspots made the scouting team's hit list.

Next, KBA hired two Cleveland clubgoers with a knowledge of the city's nightlife scene and rented for them an office in the Bradley Building in Cleveland's Warehouse District. These clubgoers became KBA's Cleveland "city managers." Their job was to contact club owners on the hit list and sign them to a one-year contract giving R.J. Reynolds exclusive rights to promote and sell Camel cigarettes in their establishments.

By mid-February, the city managers easily signed thirty bars and clubs to the program. Bar and club owners would have been foolish not to sign. First, R.J. Reynolds offered them cash, between $1,000 and $18,000, depending on the club's size and traffic flow. For instance, the Drip Stick, a sleepy coffeehouse in the Warehouse District, received $1,000, while the Odeon, a concert club that features local and national rock and alternative acts, received $17,800, according to club industry insiders. R.J. Reynolds puts no restrictions on how the money can be used.

On top of the cash, R.J. Reynolds agrees to supply the bar owners with Camel beverage napkins, ashtrays, personalized matchbooks and bar paraphernalia like neon lights, a marketing tactic similar to promotions traditionally done with beer and liquor products through local distributors. R.J. Reynolds also buys regular full-page advertisements in an entertainment publication in each city to collectively promote the clubs and helps in the printing of expensive glossy flyers featuring their concerts and special events.

After the city managers signed the Cleveland bar and club owners to a contract, they arranged a meeting with staff members of each venue to outline what they would get out of the program.

Every bar or club staff member who smokes receives free Camel cigarettes, usually a couple of packs, each time a Camel Club kid visits. The staff receives Camel promotional items like Zippo lighters, MagLite flashlights, T-shirts and hats. In return, R.J. Reynolds expects these bar staffers to promote Camel cigarettes by smoking Camel products while they work, and by displaying individual Camel cigarettes behind the bar. "You notice more people asking to purchase cigarettes from you, increasing your tips." the city managers are supposed to tell the bar staff at their orientation meeting, according to KBA marketing materials.

DEATH OF VENDING MACHINES

Another goal of the Camel Club Program is the elimination of vending machines, which display competitors' cigarettes, such as Philip Morris' Marlboro brands. To do this, KBA's city managers encourage bar and club owners to discontinue selling cigarettes in vending machines, and instead, exclusively sell Camel cigarettes displayed in small lighted kiosks placed behind their bars. Nearly all of the bars and clubs in the program have placed Camel kiosks, which hold forty packs of cigarettes, behind their bars. Here, too, R.J. Reynolds' sales pitch was hard to refuse: Eliminate the cigarette and vending machine distributors—the middle men—and pocket more cash.

Using vending machines, bars and clubs earn roughly between 25 and fifty cents on a pack of cigarettes that retails in the machine for about $2.75. R.J. Reynolds charges the clubs $1.52 per pack. So clubs that sign on with R.J. Reynolds can earn 97.5 percent profit on a pack of cigarettes that retails for $3 behind the bar. That's $60 profit every time they empty a kiosk. R.J. Reynolds also offers better service than traditional vendors. The Camel Club kids are on call to service the kiosk at all hours. If, for example, the club runs out of cigarettes in the middle of a concert, the bar manager can call one of the club kids, who will deliver fresh packs immediately.

If a bar owner has a pre-existing contract with other cigarette companies and vending machine distributors, R.J. Reynolds expects the bar's owner to request from the vending machine operator that it "convert the top 11 columns" of the machine to Camel brands.

New FDA regulations that will take effect later this summer prohibit all bars, clubs

and restaurants that serve patrons under 21 from selling cigarettes in vending machines. By getting club owners to agree now to sell Camel exclusively, R.J. Reynolds is effectively locking out other cigarette makers from entering the bar when the regulations take effect.

THE "UNDER THE RADAR APPROACH"

KBA launched the Camel Club Program in late 1994 in Chicago, and quickly introduced it into New York, Dallas and Los Angeles. The Camel Club Program's style has a lot to do with KBA and its founder, Kevin Berg, a former club owner.

Berg does not hire "suit and tie" corporate types; he hires men and women who have nightclub experience and who are on the cutting-edge of fashion and pop culture. People with such experience and style are easily accepted into the club scene and carry far more "credibility" than the often stiff corporate cigarette representative.

Twig, for instance, on a recent visit to the Odeon concert club, wore thick, black-rim, retro-styled glasses, a leather coat that hung below his waist, wide-leg blue jeans, and red shoes. His demeanor was relaxed, as he made little effort to distribute the cigarettes. He gave a few packs of Camel cigarettes to Odeon staff, laughing with them as if he were an old fraternity buddy. He then took a seat for the show. During a recent visit to the Brillo Pad, a dimly lighted lounge with a soothing beat, Camel Club kid Don Vega walked behind the bar and served himself an orange juice, passed a few packs of cigarettes to friends and the bartender, played a game of chess with the owner, and left.

Being associated with a "cool" scene is the image R.J. Reynolds wants to build. "By operating in the nightlife scene, the objective is to directly reach trend influencers, the people that start and maintain trends. Our association with trend influencers * * * will have a lasting impact on clubgoers who will begin to associate Camel with what is 'cool'" reads KBA's marketing material.

KBA believes by using the Camel Club kids and "interacting with the club patrons using a low-key, under the radar approach, is our best way to establish that we understand and are a part of the scene."

Once in the scene, Camel Club kids, who are paid hourly and typically work 4 to 6 hours a night, try to convert smokers to Camel by offering smokers fresh, full packs of Camels in exchange for their remaining non-Camel cigarettes. In return, the smokers are supposed to fill out an address card, known as the "name generation" card, which is passed back to R.J. Reynolds.

According to KBA's marketing plan, "This personal approach to selling is designed to, if executed effectively, convert the smoker to Camel and show the adult smoker that Camel is 'cool' by the way we establish this subtle interchange."

KBA declined to comment for this story and instead, asked R.J. Reynolds to respond to the *Free Times*. R.J. Reynolds did not contact the paper before deadline.

BIG HAIR AND BUBBLE GUM

If R.J. Reynolds' stated goal is to influence trendsetters and be associated with "cool," one has to wonder why KBA city managers targeted and signed Club 1148, a discotheque in the Flats.

Club 1148 is anything but hip, the only trendsetters that hang out here are those left over from the '80s. On a recent Saturday night, for example, hairsprayed women in tight frosted jeans flounced around the dance floor as bare-chested men in vests watched form the sidelines. Many of the club's smokers chewed gum while they took long, rehearsed drags on Camel cigarettes.

So why is R.J. Reynolds paying Club 1148 $5,000 for the right to distribute its cigarettes? The answer may lie in the club's demographics. The club is open to 19-year-olds. And while KBA marketing materials state its goal is to "convert adult smokers at least 21-years-old," R.J. Reynolds needs to influence existing young smokers because they are less brand loyal, and therefore, more willing to try and then possibly stay with Camel cigarettes.

Reaching young smokers is perhaps the same reason R.J. Reynolds is interested in coffeehouses, which attract young smokers. Coffeehouses are far more trendy than Club 1148.

The clubs that receive the most money from R.J. Reynolds are the concert clubs, including the Agora, Peabody's DownUnder, Grog Shop and the Odeon, which often feature all-ages shows. It also invests heavily in promoting bands on behalf of these venues. Club tie-ins and joint sponsorship of bands are the cornerstones of the Camel Club Program. This is R.J. Reynolds' way of reinforcing the message that it is supporting the "scene."

"Camel events are the single most important way that we leverage our relationship with [Camel Club Program] venues," says the KBA marketing plan.

Dan Kemer, senior director of advertising and marketing for Belkin Productions, the concert promotion company that owns the Odeon, says the Camel Club Program helps promote artists he wants to showcase. "It's another good marketing tool . . . the biggest bonus to us is the program helps get the word out on the street," says Kemer about the additional advertising dollars and printed flyers he receives through the program.

Asked if he thought R.J. Reynolds could reach minors by promoting all age-shows, Kemer says he uses the program to tie into events that appeal to an older population, like the recent Me'shell Ndege'ocello concert.

"It's a great program for us," says Kathy Simkoff, who runs the Grog Shop on Coventry and received $7000 from R.J. Reynolds. She says the Camel Club Program's primary goal is to help clubs with promotion, not distribute cigarettes to patrons. Simkoff says the Camel Club kids have been "very careful" not to distribute cigarettes to minors attending concerts and she often does not know they are in the club.

"They don't get in your face like the Jagermeister girls," she says, referring to hired models who troll Cleveland bars, pushing the sweet alcoholic Jagermeister shooter.

Similarly, John Michalek of Peabody's DownUnder, an all-ages concert club in the Flats which reportedly received $9,000 from R.J. Reynolds, says the program helps him promote shows and he "has not seen any problems" with the distribution of cigarettes to minors.

But anti-smoking groups see the Camel Club Program as a campaign to attract underage smokers.

"R.J. Nabisco's Camel Club Program is just another strategy to seduce young people both over and under the age of 18 to use their deadly product, and is another indication as to why independent oversight of tobacco industry advertising and promotion is essential," says Lucinda Wykle-Rosenberg, research director for INFACT, a national corporate watchdog organization. INFACT is currently sponsoring a boycott of products made by R.J. Reynolds—which owns Nabisco foods—because of its cigarette marketing campaigns. Wykle-Rosenberg says the Camel Club Program is a campaign to get around anticipated regulations.

What has long upset this group and other dedicated anti-tobacco groups are the alarming death rates associated with smoking and the rate of addiction among teenagers. The Centers For Disease Control says 400,000 Americans die every year from tobacco-related diseases, and has reported that smoking rates for students in grades 9–12 increased from 27.5 percent in 1991 to 34.8 percent in 1995. A 1996 University of Michigan study released in 1996 showed smoking among high school seniors has increased to the highest level in 17 years. And it is the demographic group, anti-tobacco advocates worry, that is attracted to such campaigns as the Camel Club Program.

"It's the Camel blitz," says one local bartender and Camel Club Program participant, who does not smoke. "The Camel kiosks are everywhere."

Editors' note: In the spirit of full disclosure, we want to point out that the Free Times has run cigarette ads periodically. But as Mark Naymik's piece demonstrates, our business policy to accept such ads has had no impact on our editorial policy.

Area bars and clubs participating in the Camel Club program include: Agora, Euclid Tavern, Grog Shop, Peabody's DownUnder, U4iA, Odeon, Phantasy Complex, Club Visions, Whisky, Wilbert's, 6th Street Under, Galaxy Lounge, Brillo Pad, Club 1148, Edison's Pub, Lincoln Park Pub, Treehouse, Market Avenue Wine Bar, Red Star Cafe, Literary Cafe, Firehouse Brewery, Uptowne Grille, Hi & Dry, The Last Drop, La Cave du Vin, The Humidor, The Drip Stick, Rhythm Room.

SOCIAL SECURITY

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 30, 1997

Mr. HAMILTON. Mr. Speaker, I am inserting my Washington Report for Wednesday, July 30, 1997 into the CONGRESSIONAL RECORD:

THE OUTLOOK FOR SOCIAL SECURITY

The aging of America is a significant factor in the growth of federal spending. Not only do we have more people in the population over 65, we also have a slowdown in the growth of the workforce. The proportion of the U.S. population that is elderly will increase dramatically in the second and third decades of the next century, as the baby boomers—those born between 1946 and 1964—retire. As these population shifts occur, the federal budget increases automatically because it is the principal source of income support and medical care for older people.

Federal programs that serve older people—Social Security, Medicare, and parts of Medicaid—have replaced national defense as the dominant category of federal spending, with the federal government now spending well over twice as much on older Americans as we spend on national defense. Social Security now constitutes the major source of income for most retirees. Covering more than 95% of the labor force, Social Security is an immensely popular program.

The Social Security program is currently in good financial shape, but the long-term

changes in the workforce will place a major strain on its ability to pay full benefits for the baby boomers' retirement. So fundamental questions are being asked about whether the Social Security system should be sustained, reduced, or even replaced.

DIFFERENT APPROACHES

There are four broad approaches for bringing financial balance to the future of Social Security.

One approach is to have some combination of benefit cuts and tax increases that would restore long-run financial balance without changing the system in fundamental ways. Benefits can be cut by lowering the amounts paid each year or by raising the normal retirement age. For example, under current law the normal Social Security retirement age will be raised from 65 to 67 by the year 2027; some are suggesting that this transition be accelerated while others suggest raising it to 70. Benefits can also be cut back by reducing the size of the automatic cost-of-living adjustments. Taxes can be increased by increasing the payroll tax, increasing the average covered wages, and broadening the tax base to include some currently tax-exempt benefits. Although benefit cuts or tax increases could help shore up the program, they are not politically popular, and passage would be difficult.

A second approach is to means test Social Security—reducing benefits to relatively well-to-do beneficiaries. For example, one proposal is to make wealthier retirees ineligible for Social Security cost-of-living adjustments. Proponents of means testing point out that currently some 1.5 million Social Security recipients have annual incomes over $100,000. This approach has some appeal, but it is subject to the criticism that it would discourage savings because those who saved during their working years would find income from those savings indirectly taxed through reduced Social Security benefits. It also raises difficult administrative problems, encouraging potential beneficiaries to conceal assets by moving them abroad, placing them in trusts, or shifting them to children.

The third approach is to privatize the existing Social Security system. The main proposal is that we move to a system of mandatory Individual Retirement Accounts, allowing workers to invest the savings directly in higher yielding assets than government securities. Most privatization proposals would not be pure—the system would still protect workers with low earnings and those who become disabled. The Individual Retirement Accounts would be combined with a low-level uniform benefit and disability insurance.

The privatization approach prompts some criticism. It requires a sizable Social Security payroll tax increase over a long transition period to function. These taxes are necessary because it would not be good policy or politically feasible to cut benefits sharply for current retirees or to change the rules for those about to retire. There are also concerns that a privatized program would not provide sufficient support for workers with low lifetime earnings and that less-skilled workers will have difficulty making informed investment decisions. Privatization approaches attract political support especially among high earners.

How Social Security invests its reserves also affects the program's outlook. Under current law, Social Security reserves are invested in special Treasury securities that yield a return of about 2–3% greater than inflation. Some propose investing part of the Social Security reserves in a broad index of private securities. Critics fear that Social Security benefits could be threatened if the stock market goes down and also worry that this approach would enable the federal government to exercise inordinate control over private companies as a dominant shareholder. It is possible that arrangements could be established to prevent such control of companies whose shares would be represented in the broad portfolio.

A fourth main approach to shoring up the Social Security system recognizes the need to go beyond specific program changes to consider the broader economic environment. Since Social Security depends on payroll tax revenues to support it, it is very sensitive to changes in the economy and workforce productivity. That means we need to continue to implement strong growth-oriented policies for the economy that include balancing the budget and keeping it balanced.

CONCLUSION

My view is that the existing Social Security system has many advantages. The system is progressive in offering larger benefits relative to lifetime earnings for lower earners than for higher earners. It protects virtually all of the retired population. Its administrative costs are low and its benefits are indexed for inflation. Most Americans now rely on it heavily, so we must be very cautious about any major changes. The projected costs of Social Security in the future are high, but if carefully planned and handled, these costs are manageable.

(Material taken from "Setting National Priorities" by the Brookings Institution)

LEGISLATION IN SUPPORT OF RELIABLE WATER SUPPLY

HON. RICK HILL

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 30, 1997

Mr. HILL. Mr. Speaker, I rise today to introduce legislation that will ensure the Assinlboine and Sioux people of the Fort Peck Reservation and the surrounding communities in my home State of Montana a safe and reliable water supply. The Fort Peck Reservation, with a population of over 10,000, is one of the largest reservations in the United States. This reservation suffers from a 52-percent unemployment rate and many of its residents suffer from high incidents of heart disease, high blood pressure, and diabetes. A safe source of water is needed to improve the health status of the residents and encourage economic self-sufficiency.

This legislation delivers those needs for the residents of the reservation and the nearby communities. Building upon a consensus-based water compact, this legislation authorizes a municipal, rural, and industrial water system for the Fort Peck Reservation and the surrounding communities off the reservation. This project will benefit the entire region of northeast Montana and, accordingly, has the support of the residents of the Fort Peck Reservation and the Tribal Council of the Assiniborne and Sioux Tribes, and a member of the conservation districts surrounding the reservation.

The people in this region are plagued with major drinking water problems. In one community, the sulfate levels in the water are four times the standard for safe drinking water. In four of the communities the iron levels are five times the standard. In all of the communities throughout the reservation the groundwater exceeds the standards for total dissolved solids, iron, sulfates, nitrates. In some instances, minerals such as selenium, manganese, and fluorine are found in high concentrations.

Several local water systems have had occurrences of biological contamination. As a result, the Indian Health Service has issued several public health alerts. In most of the reservation communities, the residents are forced to buy bottled water at a cost of at least $75 a month. Those who cannot afford to buy bottled water must continue to use the existing water sources, at great risk to their health. This is true although an ideal source of safe water, the Missouri River, flows near their homes every day. In short, Mr. Speaker, the very health of the residents depends on construction of this project.

Besides the need for drinking water, a new source of water is needed to protect the livestock operations. A major constraint on the ranching industry at Fort Peck has been a lack of available watering sites for the cattle. This water system would provide the needed pasture taps for livestock watering which would boost the local economy. In addition, distributing livestock water to pasture taps at different locations throughout the range would be an effective measure for soil conservation and range management.

Finally, the future water needs of the region are expanding. Current census data show the reservation population as increasing over 30 percent in the next 20 years. The people of the reservation and surrounding communities are clearly in desperate need of a safe and good source of drinking water.

The solution to this need for an adequate and safer water supply is a water system that will deliver a safe and adequate source of water to the residents of the region by using a small amount of the water in the Missouri River to meet these needs. The same type of system has been successfully used throughout the Dakotas.

The people of the Fort Peck Indian Reservation and the region only ask for a necessity of life: good, clean, safe drinking water. Mr. Speaker, I am proud to say that this bill delivers those basic necessities and helps foster much needed economic benefits.

TRIBUTE TO GORDON HEIGHTS

HON. MICHAEL P. FORBES

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 30, 1997

Mr. FORBES. Mr. Speaker, I rise today to pay tribute to Gordon Heights, Long Island as its residents mark the 70th anniversary of this community's creation this year. I ask all of my colleagues in the House of Representatives to join me in honoring my friends and neighbors in Gordon Heights, as they celebrate their community's historic anniversary on August 16, 1997.

A community of caring, friendly people, Gordon Heights is a place where neighbors help

neighbors and all residents share in the pride of their hometown. So much of that pride is generated by the great work of the Greater Gordon Heights Civic Association, who through their kind and caring acts have come to truly personify the selfless attitude that is the hallmark of small town America. Students, working mothers, senior citizens, children, veterans and so many others in the Gordon Heights community have benefited from the civic association's charitable efforts and educational programs.

As the Greater Gordon Heights Civic Association has shown, a community's collective civic pride is manifested through the actions of its residents. This evidenced once again by the members of the Gordon Heights Volunteer Fire Department, who are celebrating the 50th anniversary of dedicated service to this Long Island community. Concerned only with saving the lives and property of their neighbors, and compensated only by the gratitude of those they protect, these volunteer firefighters answer the call for help in the dead of night, on brutally cold mornings and in the face of grave danger. The Bible teaches us that we can show no greater love than to lay down our life for a brother. Clearly, the members of the Gordon Heights Volunteer Fire Department have demonstrated the greatest love for their neighbors and community.

One of the truest tests of a community's character is reflected in the way its children assume the responsibilities of adulthood. To gauge the depth of the character of this community, one need look no further than Gordon Heights resident Michelle Teachey, the first African-American student to earn the privilege of being the valedictorian of her graduating class at Longwood High School. A volunteer with the Greater Gordon Heights Civic Association, Michelle Teachey has achieved so much through the love and guidance of her family and friends. Realizing her responsibilities as a role model, Michelle returns that support by volunteering for critical community anti-drug programs that provide the children of Gordon Heights with meaningful alternatives to the ruination of substance abuse.

Mr. Speaker, every Gordon Heights resident, past and present, is part of the proud legacy of this Long Island treasure. That is why I ask my colleagues in the U.S. House of Representatives to join me in saluting the people of Gordon Heights as they mark this historic anniversary. Congratulations.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, July 31, 1997, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

AUGUST 1

9:30 a.m.

Rules and Administration

Business meeting, to consider the status of the investigation into the contested Senate election in Louisiana.

SR-301

Joint Economic

To hold hearings to examine the employment-unemployment situation for July.

1334 Longworth Building

2:00 p.m.

Judiciary

Administrative Oversight and the Courts Subcommittee

To hold hearings to examine the negative impact of bankruptcy on local education funding.

SD-226

SEPTEMBER 4

9:00 a.m.

Agriculture, Nutrition, and Forestry

To hold hearings to examine rural and agricultural credit issues.

SR-332

POSTPONEMENTS

AUGUST 1

10:00 a.m.

Judiciary

Administrative Oversight and the Courts Subcommittee

To hold hearings to review the operation of the FBI crime laboratory.

SD-226