

of the interests in such partnership are owned, directly or indirectly, by or for such partner.

**(4) Certain income qualifying under regulated investment company or real estate trust provisions**

The term “qualifying income” also includes any income which would qualify under section 851(b)(2) or 856(c)(2).

**(5) Special rule for determining gross income from certain real property sales**

In the case of the sale or other disposition of real property described in section 1221(1), gross income shall not be reduced by inventory costs.

**(e) Inadvertent terminations**

If—

(1) a partnership fails to meet the gross income requirements of subsection (c)(2),

(2) the Secretary determines that such failure was inadvertent,

(3) no later than a reasonable time after the discovery of such failure, steps are taken so that such partnership once more meets such gross income requirements, and

(4) such partnership agrees to make such adjustments (including adjustments with respect to the partners) or to pay such amounts as may be required by the Secretary with respect to such period,

then, notwithstanding such failure, such entity shall be treated as continuing to meet such gross income requirements for such period.

**(f) Effect of becoming corporation**

As of the 1st day that a partnership is treated as a corporation under this section, for purposes of this title, such partnership shall be treated as—

(1) transferring all of its assets (subject to its liabilities) to a newly formed corporation in exchange for the stock of the corporation, and

(2) distributing such stock to its partners in liquidation of their interests in the partnership.

(Added Pub. L. 100-203, title X, §10211(a), Dec. 22, 1987, 101 Stat. 1330-403; amended Pub. L. 100-647, title II, §2004(f)(1), (3)-(5), Nov. 10, 1988, 102 Stat. 3602, 3603.)

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100-647, §2004(f)(3), inserted at end “For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership.”

Subsec. (d)(1). Pub. L. 100-647, §2004(f)(4), inserted at end “For purposes of subparagraph (E), the term ‘mineral or natural resource’ means any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7).”

Subsec. (d)(3). Pub. L. 100-647, §2004(f)(5), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The term ‘real property rent’ means amounts which would qualify as rent from real property under section 856(d) if such section were applied without re-

gard to paragraph (2)(C) thereof (relating to independent contractor requirements).”

Subsec. (e)(4). Pub. L. 100-647, §2004(f)(1), inserted “or to pay such amounts” before “as may be required”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section 10211(c) of Pub. L. 100-203, as amended by Pub. L. 100-647, title II, §2004(f)(2), Nov. 10, 1988, 102 Stat. 3602, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply—

“(A) except as provided in subparagraph (B), to taxable years beginning after December 31, 1987, or

“(B) in the case of an existing partnership, to taxable years beginning after December 31, 1997.

“(2) EXISTING PARTNERSHIP.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘existing partnership’ means any partnership if—

“(i) such partnership was a publicly traded partnership on December 17, 1987,

“(ii) a registration statement indicating that such partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to such partnership on or before such date, or

“(iii) with respect to such partnership, an application was filed with a State regulatory commission on or before such date seeking permission to restructure a portion of a corporation as a publicly traded partnership.

“(B) SPECIAL RULE WHERE SUBSTANTIAL NEW LINE OF BUSINESS ADDED AFTER DECEMBER 17, 1987.—A partnership which, but for this subparagraph, would be treated as an existing partnership shall cease to be treated as an existing partnership as of the 1st day after December 17, 1987, on which there has been an addition of a substantial new line of business with respect to such partnership.

“(C) COORDINATION WITH PASSIVE-TYPE INCOME REQUIREMENTS.—In the case of an existing partnership, paragraph (1) of section 7704(c) of the Internal Revenue Code of 1986 (as added by this section) shall be applied by substituting for ‘December 31, 1987’ the earlier of—

“(i) December 31, 1997, or

“(ii) the day (if any) as of which such partnership ceases to be treated as an existing partnership by reason of subparagraph (B).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 988 of this title; title 29 section 1107.

CHAPTER 80—GENERAL RULES

Subchapter		Sec. <sup>1</sup>
A.	Application of internal revenue laws ....	7801
B.	Effective date and related provisions ....	7851
C.	Provisions affecting more than one sub- title .....	7871

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 7851 of this title.

**Subchapter A—Application of Internal Revenue Laws**

Sec.	
7801.	Authority of Department of the Treasury.

<sup>1</sup> Section numbers editorially supplied.

Sec.	
7802.	Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations).
7803.	Other personnel.
7804.	Effect of reorganization plans.
7805.	Rules and regulations.
7806.	Construction of title.
7807.	Rules in effect upon enactment of this title.
7808.	Depositaries for collections.
7809.	Deposit of collections.
7810.	Revolving fund for redemption of real property.
7811.	Taxpayer Assistance Orders.

AMENDMENTS

1988—Pub. L. 100-647, title VI, §6230(b), Nov. 10, 1988, 102 Stat. 3734, added item 7811.  
 1983—Pub. L. 97-473, title II, §202(c), Jan. 14, 1983, 96 Stat. 2610, added item for subchapter C.  
 1974—Pub. L. 93-406, title II, §1051(c), Sept. 2, 1974, 88 Stat. 951, substituted “Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)” for “Commissioner of Internal Revenue” in item 7802.  
 1966—Pub. L. 89-719, title I, §112(c), Nov. 2, 1966, 80 Stat. 1146, added item 7810.

**§ 7801. Authority of Department of the Treasury**

**(a) Powers and duties of Secretary**

Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

**[(b) Repealed. Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1078]**

**(c) Functions of Department of Justice unaffected**

Nothing in this section or section 301(f) of title 31 shall be considered to affect the duties, powers, or functions imposed upon, or vested in, the Department of Justice, or any officer thereof, by law existing on May 10, 1934.

(Aug. 16, 1954, ch. 736, 68A Stat. 915; Sept. 22, 1959, Pub. L. 86-368, §1, 73 Stat. 647; Aug. 14, 1964, Pub. L. 88-426, title III, §305(39), 78 Stat. 427; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(B), 90 Stat. 1834; Sept. 13, 1982, Pub. L. 97-258, §§2(f)(1), 5(b), 96 Stat. 1059, 1068, 1078.)

AMENDMENTS

1982—Subsec. (b). Pub. L. 97-258, §5(b), struck out subsec. (b) which related to Office of General Counsel of Department of the Treasury. See section 301 of Title 31, Money and Finance.

Subsec. (c). Pub. L. 97-258, §2(f)(1), inserted “or section 301(f) of title 31” after “Nothing in this section”.

1976—Subsec. (b). Pub. L. 94-455 substituted “Secretary of the Treasury” for “Secretary” in four places, in par. (1) after “prescribed by the”, in par. (2) after “prescribed by the” and in third sentence thereof “The”, and in par. (3) before “may appoint and fix”.

1964—Subsec. (b)(2). Pub. L. 88-426 struck out provisions which prescribed compensation of Assistant General Counsel.

1959—Pub. L. 86-368 provided for Presidential appointment and for compensation of Assistant General Counsel who shall be Chief Counsel for Internal Revenue Service.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 3 of Pub. L. 86-368 provided that:

“(a) Except as otherwise provided in this Act, the amendments made by this Act [amending this section] shall take effect on the date of the enactment of this Act [Sept. 22, 1959].

“(b) The amendments made by section 2 of this Act [amending sections 7452 and 8023 of this title] shall take effect when the Chief Counsel for the Internal Revenue Service first appointed pursuant to the amendment made by section 1 of this Act [amending this section] qualifies and takes office.”

REPEALS

Pub. L. 86-368, §1, Sept. 22, 1959, 73 Stat. 648; Pub. L. 88-426, title III, §305(39), Aug. 14, 1964, 78 Stat. 427; and Pub. L. 94-455, title XIX, §1906(b)(13)(B), Oct. 4, 1976, 90 Stat. 1834, cited as credits to this section, were repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1079, 1080, 1082.

SAVINGS PROVISION

Section 4 of Pub. L. 86-368 provided that the position of Assistant General Counsel serving as Chief Counsel of the Internal Revenue Service was abolished as of the time that the Chief Counsel for the Internal Revenue Service appointed pursuant to the amendment to this section by Pub. L. 86-368, took office, but that Pub. L. 86-368 was not to be construed to otherwise abolish, terminate, or change any office or position, or employment of any officer or employee existing immediately preceding Sept. 22, 1959, and that any delegation of authority pursuant to Reorg. Plan No. 26 of 1950 or Reorg. Plan No. 2 of 1952 including any redelegation of authority, in effect immediately preceding Sept. 22, 1959, was to remain in effect unless distinctly inconsistent or manifestly incompatible with the amendment made to this section by Pub. L. 86-368.

NATIONAL COMMISSION ON RESTRUCTURING INTERNAL REVENUE SERVICE

Pub. L. 104-52, title VI, §637, Nov. 19, 1995, 109 Stat. 509, provided that:

“(a) FINDINGS.—The Congress finds the following:

“(1) While the budget for the Internal Revenue Service (hereafter referred to as the ‘IRS’) has risen from \$2.5 billion in fiscal year 1979 to \$7.3 billion in fiscal year 1996, tax returns processing has not become significantly faster, tax collection rates have not significantly increased, and the accuracy and timeliness of taxpayer assistance has not significantly improved.

“(2) To date, the Tax Systems Modernization (TSM) program has cost the taxpayers \$2.5 billion, with an estimated cost of \$8 billion. Despite this investment, modernization efforts were recently described by the GAO as ‘chaotic’ and ‘ad hoc’.

“(3) While the IRS maintains that TSM will increase efficiency and thus revenues, Congress has had to appropriate additional funds in recent years for compliance initiatives in order to increase tax revenues.

“(4) Because TSM has not been implemented, the IRS continues to rely on paper returns, processing a total of 14 billion pieces of paper every tax season. This results in an extremely inefficient system.

“(5) This lack of efficiency reduces the level of customer service and impedes the ability of the IRS to collect revenue.

“(6) The present status of the IRS shows the need for the establishment of a Commission which will examine the organization of IRS and recommend actions to expedite the implementation of TSM and improve service to taxpayers.

“(b) COMPOSITION OF THE COMMISSION.—

“(1) ESTABLISHMENT.—To carry out the purposes of this section, there is established a National Commission on Restructuring the Internal Revenue Service (in this section referred to as the ‘Commission’).

“(2) COMPOSITION.—The Commission shall be composed of thirteen members, as follows:

“(A) Five members appointed by the President, two from the executive branch of the Government, two from private life, and one from an organization that represents a substantial number of Internal Revenue Service employees.

“(B) Two members appointed by the Majority Leader of the Senate, one from Members of the Senate and one from private life.

“(C) Two members appointed by the Minority Leader of the Senate, one from Members of the Senate and one from private life.

“(D) Two members appointed by the Speaker of the House of Representatives, one from Members of the House of Representatives and one from private life.

“(E) Two members appointed by the Minority Leader of the House of Representatives, one from Members of the House of Representatives and one from private life.

“The Commissioner of the Internal Revenue Service shall be an ex officio member of the Commission.

“(3) CHAIRMAN.—The Commission shall elect a Chairman from among its members.

“(4) MEETING; QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the Chairman or a majority of its members. Seven members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

“(5) APPOINTMENT; INITIAL MEETING.—

“(A) APPOINTMENT.—It is the sense of the Congress that members of the Committee [Commission] should be appointed not more than 60 days after the date of the enactment of this section [Nov. 19, 1995].

“(B) INITIAL MEETING.—If, after 60 days from the date of the enactment of this section, seven or more members of the Commission have been appointed, members who have been appointed may meet and select a Chairman who thereafter shall have the authority to begin the operations of the Commission, including the hiring of staff.

“(c) FUNCTIONS OF COMMISSION.—

“(1) IN GENERAL.—The functions of the Commission shall be—

“(A) to conduct, for a period of not to exceed one year from the date of its first meeting, the review described in paragraph (2), and

“(B) to submit to the Congress a final report of the results of the review, including recommendations for restructuring the IRS.

“(2) REVIEW.—The Commission shall review—

“(A) the present practices of the IRS, especially with respect to—

“(i) its organizational structure;

“(ii) its paper processing and return processing activities;

“(iii) its infrastructure; and

“(iv) the collection process;

“(B) requirements for improvement in the following areas:

“(i) making returns processing ‘paperless’;

“(ii) modernizing IRS operations;

“(iii) improving the collections process without major personnel increases or increased funding;

“(iv) improving taxpayer accounts management;

“(v) improving the accuracy of information requested by taxpayers in order to file their returns; and

“(vi) changing the culture of the IRS to make the organization more efficient, productive, and customer-oriented;

“(C) whether the IRS could be replaced with a quasi-governmental agency with tangible incentives and internally managing its programs and activities and for modernizing its activities, and

“(D) whether the IRS could perform other collection, information, and financial service functions of the Federal Government.

“(d) POWERS OF THE COMMISSION.—

“(1) IN GENERAL.—(A) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this section—

“(i) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths, and

“(ii) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may deem advisable.

“(B) Subpoenas issued under subparagraph (A)(ii) may be issued under the signature of the Chairman of the Commission, the chairman of any designated subcommittee, or any designated member, and may be served by any person designated by such Chairman, subcommittee chairman, or member. The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192-194) shall apply in the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section.

“(2) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this section.

“(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this section. Each such department, bureau, agency, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman.

“(4) ASSISTANCE FROM FEDERAL AGENCIES.—(A) The Secretary of the Treasury is authorized on a non-reimbursable basis to provide the Commission with administrative services, funds, facilities, staff, and other support services for the performance of the Commission’s functions.

“(B) The Administrator of General Services shall provide to the Commission on a nonreimbursable basis such administrative support services as the Commission may request.

“(C) In addition to the assistance set forth in subparagraphs (A) and (B), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may deem advisable and as may be authorized by law.

“(5) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

“(e) STAFF OF THE COMMISSION.—

“(1) IN GENERAL.—The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall

retain the rights, status, and privileges of his or her regular employment without interruption.

“(2) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

“(f) COMPENSATION AND TRAVEL EXPENSES.—

“(1) COMPENSATION.—(A) Except as provided in subparagraph (B), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

“(B) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay on account of their service on the Commission.

“(2) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

“(g) FINAL REPORT OF COMMISSION; TERMINATION.—

“(1) FINAL REPORT.—Not later than one year after the date of the first meeting of the Commission, the Commission shall submit to the Congress its final report, as described in subsection (c)(2).

“(2) TERMINATION.—(A) The Commission, and all the authorities of this section, shall terminate on the date which is 60 days after the date on which a final report is required to be transmitted under paragraph (1).

“(B) The Commission may use the 60-day period referred to in subparagraph (A) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its final report and disseminating that report.

“(h) AUTHORIZATION OF APPROPRIATIONS.—Such sums as may be necessary are authorized to be appropriated for the activities of the Commission.

“(i) APPROPRIATIONS.—Notwithstanding any other provision of this Act, \$1,000,000 shall be available from fiscal year 1996 funds appropriated to the Internal Revenue Service, ‘Information systems’ account, for the activities of the Commission, to remain available until expended.”

FEEES FOR SERVICES RENDERED

Pub. L. 103-329, title I, § 3, Sept. 30, 1994, 108 Stat. 2388, as amended by Pub. L. 104-19, title I, July 27, 1995, 109 Stat. 227, provided that: “The Secretary of the Treasury may establish new fees or raise existing fees for services provided by the Internal Revenue Service to increase receipts, where such fees are authorized by another law. The Secretary of the Treasury may spend the new or increased fee receipts to supplement appropriations made available to the Internal Revenue Service appropriations accounts in fiscal years 1995 and thereafter: *Provided*, That the Secretary shall base such fees on the costs of providing specified services to persons paying such fees: *Provided further*, That the Secretary shall provide quarterly reports to the Congress on the collection of such fees and how they are being expended by the Service: *Provided further*, That the total expenditures from such fees shall not exceed \$119,000,000 annually.”

DISCLOSURE OF RIGHTS OF TAXPAYERS

Pub. L. 100-647, title VI, § 6227, Nov. 10, 1988, 102 Stat. 3731, provided that:

“(a) IN GENERAL.—The Secretary of the Treasury shall, as soon as practicable, but not later than 180 days

after the date of the enactment of this Act [Nov. 10, 1988], prepare a statement which sets forth in simple and nontechnical terms—

“(1) the rights of a taxpayer and the obligations of the Internal Revenue Service (hereinafter in this section referred to as the ‘Service’) during an audit;

“(2) the procedures by which a taxpayer may appeal any adverse decision of the Service (including administrative and judicial appeals);

“(3) the procedures for prosecuting refund claims and filing of taxpayer complaints; and

“(4) the procedures which the Service may use in enforcing the internal revenue laws (including assessment, jeopardy assessment, levy and distraint, and enforcement of liens).

“(b) TRANSMISSION TO COMMITTEES OF CONGRESS.—The Secretary of the Treasury shall transmit drafts of the statement required under subsection (a) (or proposed revisions of any such statement) to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation on the same day.

“(c) DISTRIBUTION.—The statement prepared in accordance with subsections (a) and (b) shall be distributed by the Secretary of the Treasury to all taxpayers the Secretary contacts with respect to the determination or collection of any tax (other than by providing tax forms). The Secretary shall take such actions as the Secretary deems necessary to ensure that such distribution does not result in multiple statements being sent to any one taxpayer.”

DESIGNATION OF OFFICERS TO ACT AS SECRETARY OF TREASURY

Designation of officers of Treasury Department to act as Secretary of Treasury, during any period when, by reason of absence, disability, or vacancy in office, either the Secretary of Treasury or his Deputy Secretary is not available to exercise the powers or perform the duties of the office of the Secretary, see Ex. Ord. No. 11822, Dec. 10, 1974, 39 F.R. 43275, set out as a note under section 3347 of Title 5, Government Organization and Employees.

FEEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS

Pub. L. 100-203, title X, § 10511, Dec. 22, 1987, 101 Stat. 1330-446, as amended by Pub. L. 101-508, title XI, § 11319(a), Nov. 5, 1990, 104 Stat. 1388-460; Pub. L. 103-465, title VII, § 743, Dec. 8, 1994, 108 Stat. 5011, provided that:

“(a) GENERAL RULE.—The Secretary of the Treasury or his delegate (hereinafter in this section referred to as the ‘Secretary’) shall establish a program requiring the payment of user fees for requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters and for similar requests.

“(b) PROGRAM CRITERIA.—

“(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

“(A) shall vary according to categories (or subcategories) established by the Secretary,

“(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

“(C) shall be payable in advance.

“(2) EXEMPTIONS, ETC.—The Secretary shall provide for such exemptions (and reduced fees) under such program as he determines to be appropriate.

“(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

“Category	Average Fee
Employee plan ruling and opinion .....	\$250
Exempt organization ruling .....	\$350
Employee plan determination .....	\$300
Exempt organization determination ...	\$275
Chief counsel ruling .....	\$200.

“(c) APPLICATION OF SECTION.—Subsection (a) shall apply with respect to requests made on or after the 1st day of the second calendar month beginning after the date of the enactment of this Act [Dec. 22, 1987] and before September 30, 1990. Subsection (a) shall also apply with respect to requests made after September 30, 1990, and before October 1, 2000.”

[Section 11319(b) of Pub. L. 101-508 provided that: “The amendment made by this section [amending section 10511 of Pub. L. 100-203 set out above] shall take effect on September 29, 1990, except that no advance payment shall be required for any fee for any requests filed after September 29, 1990, and before the 30th day after the date of the enactment of this Act [Nov. 5, 1990].”]

STUDY OF TAX INCENTIVES FOR EXPENDITURES REQUIRED BY OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND MINING HEALTH AND SAFETY ADMINISTRATION

Pub. L. 95-600, title V, § 552, Nov. 6, 1978, 92 Stat. 2891, authorized the Secretary of the Treasury to conduct an investigation into the appropriateness of providing additional tax incentives for expenditures required by the Occupational Safety and Health Act, section 651 et seq. of Title 29, Labor, and the Mining Safety and Health Administration of the Department of Labor and to submit a report on such investigation to Congress before Apr. 1, 1979, together with any legislative recommendations.

STUDY OF TAXATION OF NONRESIDENT ALIEN REAL ESTATE TRANSACTIONS IN THE UNITED STATES

Pub. L. 95-600, title V, § 553, Nov. 6, 1978, 92 Stat. 2891, authorized the Secretary of the Treasury to make a study of the appropriate tax treatment to be given to income derived from, or gain realized on, the sale of interests in United States property held by nonresident aliens or foreign corporations and to submit a report on such study to Congress no later than six months from Nov. 6, 1978, together with any recommendations.

STUDY AND INVESTIGATION OF INTERNAL REVENUE CODE PROVISIONS WHICH IMPEDE OR DISCOURAGE RECYCLING OF SOLID WASTE MATERIALS; PRESIDENTIAL AND CONGRESSIONAL REPORT

Pub. L. 94-568, § 4, Oct. 20, 1976, 90 Stat. 2698, provided that the Secretary of the Treasury, in cooperation with the Administrator of the Environmental Protection Agency, make a complete study of all provisions of the Internal Revenue Code of 1954 which impeded or discouraged the recycling of solid waste materials and to report to the President and Congress, not later than Apr. 20, 1977, his findings, together with specific legislative proposals designed to increase and encourage the recycling of solid waste materials and detailed revenue cost estimates.

CROSS REFERENCES

Department of Justice, see section 501 et seq. of Title 28, Judiciary and Judicial Procedure.

Department of Treasury, see section 301 et seq. of Title 31, Money and Finance.

**§ 7802. Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)**

**(a) Commissioner of Internal Revenue**

There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary of the Treasury.

**(b) Assistant Commissioner for Employee Plans and Exempt Organizations**

**(1) Establishment of Office**

There is established within the Internal Revenue Service an office to be known as the “Office of Employee Plans and Exempt Organizations” to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary may prescribe with respect to organizations exempt from tax under section 501(a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies).

**(2) Authorization of appropriations**

There is authorized to be appropriated to the Department of the Treasury to carry out the functions of the Office an amount equal to the sum of—

(A) so much of the collections from taxes imposed under section 4940 (relating to excise tax based on investment income) as would have been collected if the rate of tax under such section was 2 percent during the second preceding fiscal year; and

(B) the greater of—

- (i) an amount equal to the amount described in paragraph (A); or
- (ii) \$30,000,000.

**(c) Assistant Commissioner (Taxpayer Services)**

There is established within the Internal Revenue Service an office to be known as the “Office for Taxpayer Services” to be under the supervision and direction of an Assistant Commissioner of the Internal Revenue. The Assistant Commissioner shall be responsible for taxpayer services such as telephone, walk-in, and taxpayer educational services, and the design and production of tax and informational forms.

(Aug. 16, 1954, ch. 736, 68A Stat. 915; Sept. 2, 1974, Pub. L. 93-406, title II, § 1051(a), 88 Stat. 951; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), (B), 90 Stat. 1834; Sept. 13, 1982, Pub. L. 97-258, § 2(f)(2), 96 Stat. 1059; Nov. 10, 1988, Pub. L. 100-647, title VI, § 6235(a), 102 Stat. 3737.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-647 added subsec. (c).

1982—Subsec. (b). Pub. L. 97-258 redesignated existing provisions as par. (1), added par. (1) heading, and added par. (2). Par. (2) is based on provisions that appeared in section 1037 of former Title 31, Money and Finance, prior to enactment of Title 31 by Pub. L. 97-258.

1976—Subsec. (a). Pub. L. 94-455, § 1906(b)(13)(B), substituted “Secretary of the Treasury” for “Secretary” after “prescribed by the”.

Subsec. (b). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1974—Pub. L. 93-406 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6235(c) of Pub. L. 100-647 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date 180 days after the date of the enactment of this Act [Nov. 10, 1988].”

## EFFECTIVE DATE OF 1974 AMENDMENT

Section 1051(d) of Pub. L. 93-406 provided that: "The amendments made by this section [amending this section and sections 5108 and 5109 of Title 5, Government Organization and Employees] shall take effect on the 90th day after the date of the enactment of this Act [Sept. 2, 1974]."

## ANNUAL REPORTS TO CONGRESS

Section 6235(b) of Pub. L. 100-647 provided that: "The Assistant Commissioner (Taxpayer Services) and the Taxpayer Ombudsman for the Internal Revenue Service shall jointly make an annual report regarding the quality of taxpayer services provided. Such report shall be made to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives."

## CROSS REFERENCES

Compensation of Commissioner, see section 5314 of Title 5, Government Organization and Employees.

Definition of Commissioner, see section 7701 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5109.

**§ 7803. Other personnel****(a) Appointment and supervision**

The Secretary is authorized to employ such number of persons as the Secretary deems proper for the administration and enforcement of the internal revenue laws, and the Secretary shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

**(b) Posts of duty of employees in field service or traveling****(1) Designation of post of duty**

The Secretary shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

**(2) Detail of personnel from field service**

The Secretary may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Secretary may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

**(c) Delinquent internal revenue officers and employees**

If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

(Aug. 16, 1954, ch. 736, 68A Stat. 915; June 6, 1972, Pub. L. 92-310, title II, §230(e), 86 Stat. 209; Oct.

4, 1976, Pub. L. 94-455, title XIX, §1906(a)(58), (b)(13)(A), 90 Stat. 1833, 1834.)

## REFERENCES IN TEXT

The internal revenue laws, referred to in subsections (a) and (c), are classified generally to this title.

## AMENDMENTS

1976—Subsecs. (a), (b), (c). Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsecs. (c), (d). Pub. L. 94-455, §1906(a)(58), redesignated subsec. (d) as (c).

1972—Subsec. (c). Pub. L. 92-310 repealed subsec. (c) which related to bonds of officers and employees.

## TAXPAYERS' RIGHTS, COURTESY AND CROSS-CULTURAL RELATIONS TRAINING

Pub. L. 104-52, title I, §2, Nov. 19, 1995, 109 Stat. 474, provided that: "The Internal Revenue Service shall institute and maintain a training program to insure that Internal Revenue Service employees are trained in taxpayers' rights, in dealing courteously with the taxpayers, and in cross-cultural relations."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103-329, title I, §2, Sept. 30, 1994, 108 Stat. 2388.

Pub. L. 103-123, title I, §2, Oct. 28, 1993, 107 Stat. 1232.

Pub. L. 102-393, title I, §2, Oct. 6, 1992, 106 Stat. 1735.

## BASIS FOR EVALUATION OF INTERNAL REVENUE SERVICE EMPLOYEES

Pub. L. 100-647, title VI, §6231, Nov. 10, 1988, 102 Stat. 3734, provided that:

"(a) IN GENERAL.—The Internal Revenue Service shall not use records of tax enforcement results—

"(1) to evaluate employees directly involved in collection activities and their immediate supervisors, or

"(2) to impose or suggest production quotas or goals with respect to individuals described in clause (i).

"(b) APPLICATION OF IRS POLICY STATEMENT.—The Internal Revenue Service shall not be treated as failing to meet the requirements of subsection (a) if the Service follows the policy statement of the Service regarding employee evaluation (as in effect on the date of the enactment of this Act [Nov. 10, 1988]) in a manner which does not violate subsection (a).

"(c) CERTIFICATION.—Each district director shall certify quarterly by letter to the Commissioner of Internal Revenue that tax enforcement results are not used in a manner prohibited by subsection (a).

"(d) EFFECTIVE DATE.—The provisions of this section shall apply to evaluations conducted on or after January 1, 1989."

## SENSE OF CONGRESS AS TO INCREASED INTERNAL REVENUE SERVICE FUNDING FOR TAXPAYER ASSISTANCE AND ENFORCEMENT

Pub. L. 100-203, title X, §10622, Dec. 22, 1987, 101 Stat. 1330-452, provided that:

"(a) FINDINGS.—The Congress hereby finds that—

"(1) the Internal Revenue Service estimates that the amount of taxes owed for 1986 will exceed the amount of taxes collected for such year by \$100 billion;

"(2) the current taxpayer compliance rate stands at 81.5 percent;

"(3) the tax gap can be significantly reduced by enhancing taxpayer assistance services and enforcement; and

"(4) the Appropriations Committee of the House of Representatives, in its fiscal year 1988 Internal Revenue Service appropriation, took a step in the direction of providing additional funding for taxpayer assistance and enforcement efforts.

"(b) It is the sense of the Congress that:

"(1) The Congress increase outlays for the Internal Revenue Service in fiscal year 1989 and fiscal year

1990 in the areas of taxpayer assistance and enforcement by \$.7 billion in fiscal year 1989 for a revenue total of \$3.2 billion and by \$.8 billion in fiscal year 1990 for a revenue total of \$4.4 billion. The net revenue increase would be \$2.5 billion in fiscal year 1989 and \$3.6 billion in fiscal year 1990, or a net revenue increase over the House Appropriations Committee recommendations of \$.4 billion in fiscal year 1989 and \$1.3 billion in fiscal year 1990.

“(2) The Internal Revenue Service offer improved taxpayer assistance and enforcement efforts by using the aforementioned outlays in areas recommended by, or consistent with the recommendations of, the ‘Dorgan Task Force Report’. Taxpayer assistance efforts would include providing expanded taxpayer education programs, instituting pilot programs of tax-mobiles in rural areas, and upgrading the quality of telephone assistance. Taxpayer enforcement efforts would include raising the audit rate from 1.1 percent toward 2.5 percent, restoring resources to criminal investigations, and the collection of delinquent accounts.

“(3) The Congress should undertake an experimental multiyear authorization and 2-year appropriation for the Internal Revenue Service consistent with the recommendations in Public Law 100-119, section 201 (Increasing the Statutory Limit on the Public Debt) [2 U.S.C. 621 note].

“(4) Increased funding should be provided for compilation and analysis of statistics of income and research.

The Internal Revenue Service must issue a report on the extent of the tax gap and the measures that could be undertaken to decrease the tax gap. The report must utilize more current data than has been utilized recently. The report must be issued by April 15, 1989. The Internal Revenue Service must also report annually on the improvements being made in the audit rate, taxpayer assistance, and enforcement efforts.”

#### TAX COUNSELING FOR THE ELDERLY

Pub. L. 95-600, title I, § 163, Nov. 6, 1978, 92 Stat. 2810, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) TRAINING AND TECHNICAL ASSISTANCE.—

“(1) AGREEMENTS.—The Secretary, through the Internal Revenue Service, is authorized to enter into agreements with private or public nonprofit agencies or organizations for the purpose of providing training and technical assistance to prepare volunteers to provide tax counseling assistance for elderly individuals in the preparation of their Federal income tax returns.

“(2) OTHER ASSISTANCE.—In addition to any other forms of technical assistance provided under this section, the Secretary may provide—

“(A) preferential access to Internal Revenue Service taxpayer service representatives for the purpose of making available technical information needed during the course of the volunteers’ work;

“(B) material to be used in making elderly persons aware of the availability of assistance under volunteer taxpayer assistance programs under this section; and

“(C) technical materials and publications to be used by such volunteers.

“(b) POWERS OF THE SECRETARY.—In carrying out his responsibilities under this section, the Secretary is authorized—

“(1) to provide assistance to organizations which demonstrate, to the satisfaction of the Secretary, that their volunteers are adequately trained and competent to render effective tax counseling to the elderly;

“(2) to provide for the training of such volunteers, and to assist in such training, to insure that such volunteers are qualified to provide tax counseling assistance to elderly individuals;

“(3) to provide reimbursement to volunteers through such organizations for transportation, meals,

and other expenses incurred by them in training or providing tax counseling assistance under this section, and such other support and assistance as he determines to be appropriate in carrying out the provisions of this section;

“(4) to provide for the use of services, personnel, and facilities of Federal executive agencies and of State and local public agencies with their consent, with or without reimbursement therefor; and

“(5) to prescribe such rules and regulations as he deems necessary to carry out the provisions of this section.

“(c) EMPLOYMENT OF VOLUNTEERS.—

“(1) IN GENERAL.—Service as a volunteer in any program carried out under this section shall not be considered service as an employee of the United States. Volunteers under such a program shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, except that the provisions of section 1905 of title 18, United States Code, shall apply to volunteers as if they were employees of the United States.

“(2) EXPENSES.—Amounts received by volunteers serving in any program carried out under this section as reimbursement for expenses are exempt from taxation under chapters 1 and 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(d) PUBLICITY RELATING TO INCOME TAX PROVISIONS PARTICULARLY IMPORTANT TO THE ELDERLY.—The Secretary shall, from time to time, undertake to direct the attention of elderly individuals to those provisions of the Internal Revenue Code of 1986 which are particularly important to taxpayers who are elderly individuals, such as the provisions of section 37 (relating to credit for the elderly) and section 121 (relating to one-time exclusion of gain from sale of principal residence) of the Internal Revenue Code of 1986.

“(e) DEFINITIONS.—For purposes of this section—

“(1) The term ‘Secretary’ means the Secretary of the Treasury or his delegate.

“(2) The term ‘elderly individual’ means an individual who has attained the age of 60 years as of the close of his taxable year.

“(3) The term ‘Federal income tax return’ means any return required under chapter 61 of the Internal Revenue Code of 1986 with respect to the tax imposed on an individual under chapter 1 of such Code.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purpose of carrying out the provisions of this section \$2,500,000 for the fiscal year ending September 30, 1979, and \$3,500,000 for the fiscal year ending September 30, 1980.”

#### CROSS REFERENCES

Jurisdiction of district courts, concurrently with state courts, of actions on official bonds of internal revenue officers or employees, see section 7402 of this title.

Other provisions for bonds, see section 7103 of this title.

Repayments to officers and employees, see section 7423 of this title.

### § 7804. Effect of reorganization plans

#### (a) Application

The provisions of Reorganization Plan Numbered 26 of 1950 and Reorganization Plan Numbered 1 of 1952 shall be applicable to all functions vested by this title, or by any act amending this title (except as otherwise expressly provided in such amending act), in any officer, employee, or agency, of the Department of the Treasury.

#### (b) Preservation of existing rights and remedies

Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of

1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

(Aug. 16, 1954, ch. 736, 68A Stat. 916; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat. 1834.)

#### REFERENCES IN TEXT

Reorganization Plan Numbered 26 of 1950, referred to in subsecs. (a) and (b), is Reorganization Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, which is set out in the Appendix to Title 5, Government Organization and Employees.

Reorganization Plan Numbered 1 of 1952, referred to in subsecs. (a) and (b), is Reorganization Plan No. 1 of 1952, eff. Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, amended June 28, 1955, ch. 189, §12(c)(19), 69 Stat. 182, which is set out below.

The internal revenue laws, referred to in subsec. (b), are classified generally to this title.

#### PRIOR PROVISIONS

Provisions similar to those appearing in subsec. (b) were contained in act July 16, 1952, ch. 892, §3, 66 Stat. 735.

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

#### REORGANIZATION PLAN NO. 1 OF 1952

Effective Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, as amended June 28, 1955, ch. 189, §12(c)(19), 69 Stat. 182; Sept. 13, 1982, Pub. L. 97-258, §5(b), 96 Stat. 1068, 1085 Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, January 14, 1952, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

#### BUREAU OF INTERNAL REVENUE

##### SECTION 1. ABOLITION OF EXISTING OFFICES

There are abolished the offices of Assistant Commissioner, Special Deputy Commissioner, Deputy Commissioner, Assistant General Counsel for the Bureau of Internal Revenue, Collector, and Deputy Collector, provided for in sections 3905, 3910, 3915, 3931, 3941, and 3990, respectively, of the Internal Revenue Code [this title]. The provisions of the foregoing sentence shall become effective with respect to each office abolished thereby at such time as the Secretary of the Treasury shall specify, but in no event later than December 1, 1952. The Secretary of the Treasury shall make such provisions as he shall deem necessary respecting the winding up of the affairs of any officer whose office is abolished by the provisions of this section.

##### SEC. 2. ESTABLISHING OF NEW OFFICES

(a) New offices are hereby established in the Bureau of Internal Revenue as follows: (1) three offices each of which shall have the title of “Assistant Commissioner

of Internal Revenue”; (2) so many offices, not in excess of twenty-five existing at any one time, as the Secretary of the Treasury shall from time to time determine, each of which shall have the title of “district commissioner of internal revenue”; and (3) so many other offices, not in excess of seventy existing at any one time, and with such title or titles, as the Secretary of the Treasury shall from time to time determine.

(b) [Repealed. Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1085. Subsection established a new and additional office of Assistant General Counsel. See section 301 of Title 31, Money and Finance.]

##### SEC. 3. APPOINTMENT AND COMPENSATION

Each Assistant Commissioner and district commissioner, the Assistant General Counsel, and each other officer provided for in section 2 of this reorganization plan shall be appointed by the Secretary of the Treasury under the classified civil service and shall receive compensation which shall be fixed from time to time pursuant to the classification laws, as now or hereafter amended. (As amended Act June 28, 1955, ch. 189, §12(c)(19), 69 Stat. 182).

##### SEC. 4. TRANSFER OF FUNCTIONS

There are transferred to the Secretary of the Treasury the functions, if any, that have been vested by statute in officers, agencies, or employees of the Bureau of Internal Revenue of the Department of the Treasury since the effective date of Reorganization Plan Numbered 26 of 1950 (15 F.R. 4935) [set out in the Appendix to Title 5, Government Organization and Employees].

##### MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1952, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Bureau of Internal Revenue of the Department of the Treasury.

A comprehensive reorganization of that Bureau is necessary both to increase the efficiency of its operations and to provide better machinery for assuring honest and impartial administration of the internal revenue laws. The reorganization plan transmitted with this message is essential to accomplish the basic changes in the structure of the Bureau of Internal Revenue which are necessary for the kind of comprehensive reorganization that is now required.

By bringing additional personnel in the Bureau of Internal Revenue under the merit system, Reorganization Plan No. 1 likewise removes what the Commission on Organization of the Executive Branch of the Government described as “one of the chief handicaps to effective organization of the Department \* \* \*.”

It is my determination to maintain the highest standards of integrity and efficiency in the Federal service. While those standards have been observed faithfully by all but a relatively few public servants, the betrayal of their trust by those few demands the strongest corrective action.

The most vigorous efforts are being and will continue to be made to expose and punish every Government employee who misuses his official position. But we must do even more than this. We must correct every defect in organization that contributes to inefficient management and thus affords the opportunity for improper conduct.

The thorough reorganization of the Bureau of Internal Revenue which I propose will be of great help in accomplishing all of these ends. It is an integral part of a program to prevent improper conduct in public service, to protect the Government from insidious influence peddlers and favor seekers, to expose and punish wrongdoers, and to improve the management and efficiency of the executive branch.

I am confident that the Congress and the public are as deeply and earnestly concerned as I am that the public business be conducted entirely upon a basis of fair-

ness, integrity, and efficiency. I therefore hope that the Congress will give speedy approval to Reorganization Plan No. 1, in order that we may move ahead rapidly in to achieving the reorganization of the Bureau of Internal Revenue.

The task of collecting the internal revenue has expanded enormously within the past decade. This expansion has been occasioned by the necessary additional taxation brought on by World War II and essential post-war programs. In fiscal year 1940, tax collections made by the Bureau of Internal Revenue were slightly over 5½ billions of dollars; in 1951, they totaled almost 50½ billions. In 1940, 19 million tax returns were filed; in 1951, 82 million. In 1940, there were 22,000 employees working for the Bureau; in 1951, there were 57,000.

Throughout this tremendous growth, the structure of the revenue-collecting organization has remained substantially unchanged. The present field structure of the Bureau of Internal Revenue is comprised of more than 200 field offices which report directly to Washington. Those 200 offices carry out their functions through more than 2,000 suboffices and posts of duty throughout the country. The Washington office now provides operating supervision, guidance, and control over the principal field offices through 10 separate divisions, thus further adding to the complexities of administration.

Since the end of World War II, many procedural improvements have been made in the Bureau's operations. The use of automatic machines has been greatly increased. The handling of cases has been simplified. One major advance is represented by the recently completed arrangements to expedite criminal prosecutions in tax-fraud cases. In these cases, field representatives of the Bureau of Internal Revenue will make recommendations for criminal prosecutions directly to the Department of Justice. These procedural changes have increased the Bureau's efficiency and have made it possible for the Bureau to carry its enormously increased workload. However, improvements in procedure cannot meet the need for organizational changes.

Part of the authority necessary to make a comprehensive reorganization was provided in Reorganization Plan No. 26 of 1950, which was one of several uniform plans giving department heads fuller authority over internal organizations throughout their departments. The studies of the Secretary of the Treasury have culminated since that time in a plan for extensive reorganization and modernization of the Bureau. However, his existing authority is not broad enough to permit him to effectuate all of the basic features of the plan he has developed.

The principal barrier to effective organization and administration of the Bureau of Internal Revenue which plan No. 1 removes is the archaic statutory office of collector of internal revenue. Since the collectors are not appointed and cannot be removed by the Commissioner of Internal Revenue or the Secretary of the Treasury and since the collectors must accommodate themselves to local political situations, they are not fully responsive to the control of their superiors in the Treasury Department. Residence requirements prevent moving a collector from one collection district to another, either to promote impartiality and fairness or to advance collectors to more important positions. Uncertainties of tenure add to the difficulty of attracting to such offices persons who are well versed in the intricacies of the revenue laws and possessed of broadgaged administrative ability.

It is appropriate and desirable that major political offices in the executive branch of the Government be filled by persons who are appointed by the President by and with the advice and consent of the Senate. On the other hand, the technical nature of much of the Government's work today makes it equally appropriate and desirable that positions of other types be in the professional career service. The administration of our internal-revenue laws at the local level calls for positions in the latter category.

Instead of the present organization built around the offices of politically appointed collectors of internal

revenue, plan No. 1 will make it possible for the Secretary of the Treasury to establish not to exceed 25 district offices. Each of these offices will be headed by a district commissioner who will be responsible to the Commissioner of Internal Revenue and will have full responsibility for administering all internal-revenue activities within a designated area. In addition, all essential collection, enforcement, and appellate functions can be provided for in each local area and under one roof so far as is practicable. It is not proposed to discontinue any essential facilities which now exist in any local areas. Rather, the facilities will be extended and the service to taxpayers improved. These new arrangements should make it possible for the individual taxpayer to conduct his business with the Bureau much more conveniently and expeditiously.

In addition to making possible greatly improved service to the taxpayer, the establishment of the district offices will provide opportunity in the field service of the Bureau of Internal Revenue for the development of high-caliber administrators with experience in all phases of revenue administration. These offices will be the backbone of a modern, streamlined pattern of organization and operations with clear and direct channels of responsibility and supervision from the lowest field office to the Commissioner, and through him to the Secretary of the Treasury. The creation of this new framework of district offices is a necessary step in carrying out the overall reorganization of the Bureau.

Plan No. 1 also makes it possible to provide a new framework of supervisory offices in the headquarters of the Bureau of Internal Revenue. Under plan No. 1, the offices of Deputy Commissioner, Special Deputy Commissioner, and Assistant Commissioner are abolished. Three Assistant Commissioners, all in the classified civil service, are authorized, and will be available, to perform such functions as may be assigned to them. The intention of the Secretary of the Treasury under the comprehensive reorganization is to utilize one Assistant Commissioner to assist the Commissioner of Internal Revenue in supervising the operations of the district offices, another Assistant Commissioner to aid in the preparation of technical rulings and decisions, and the third Assistant Commissioner to supervise for the Commissioner the inspection activities of the Bureau.

Two additional advantages will be obtained when the reorganization around this new framework is completed.

First, the strong inspection service which the Secretary is establishing will keep the work of the Bureau under close and continuous observation. Working under the direct control of the Commissioner of Internal Revenue, it will be responsible for promptly detecting and investigating any irregularities.

Second, the new pattern of organization will strengthen and clarify lines of responsibility throughout the Bureau, thus simplifying and making more effective and uniform the management control of the organization. This is essential in any effort to provide our principal revenue collection agency the best possible administration.

In order to eliminate Presidential appointment and senatorial confirmation with respect to the Assistant General Counsel for the Bureau of Internal Revenue, and in order to provide a method of appointment comparable to that obtaining in the case of other assistant general counsel of the Department of the Treasury, plan No. 1 abolishes that office and provides in lieu thereof a new office of Assistant General Counsel with appointment under the classified civil service.

The success of the reorganization of the Bureau of Internal Revenue will to a considerable extent depend upon the ability to attract the best qualified persons to the key positions throughout the Bureau. In order to do so, it is necessary to make provision for more adequate salaries for such key positions. Plan No. 1 establishes in the Bureau of Internal Revenue a maximum of 70 offices with titles determined by the Secretary of the Treasury. Those offices are in addition to the offices with specific titles also provided for in plan No. 1 and

to any positions established under other authority vested in the Department of the Treasury. The compensation of these officials will be fixed under the Classification Act of 1949, as amended, but without regard to the numerical limitations on positions set forth in section 505 of that act. This provision will enable the Chairman of the Civil Service Commission, or the President, as the case may be, to fix rates of pay for those offices in excess of the rates established in the Classification Act of 1949 for grade GS-15 whenever the standards of the classification laws so permit.

All organizational changes under plan No. 1 will be put into effect as soon as it is possible to do so without disrupting the continued collection of revenue. Plan No. 1 will in any event be effective in its entirety no later than December 1, 1952.

The taking effect of the reorganizations provided for in Reorganization Plan No. 1 of 1952 will make possible many benefits in improved organization and operations which may be expected to produce substantial savings in future years. Those savings should not be expected to be reflected in an immediate reduction in expenditure by the Bureau of Internal Revenue but in an improved service to the public and a more efficient collection of revenue.

It should be emphasized that abolition by plan No. 1 of the offices of collectors and others will in no way prejudice any right or potential right of any taxpayer. The abolition of offices by plan No. 1 will not abolish any rights, privileges, powers, duties, immunities, liabilities, obligations, or other attributes of those offices except as they relate to matters of appointment, tenure, and compensation inconsistent with plan No. 1. Under the Reorganization Act of 1949, all of these attributes of office will attach to the office to which the functions of the abolished office are delegated by the Secretary of the Treasury.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1952 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

I have found and hereby declare that it is necessary to include in the accompanying Reorganization Plan No. 1, by reason of reorganizations made thereby, provisions for the appointment and compensation of the officers specified therein. The rates of compensation fixed for these officers are not in excess of those which I have found to prevail in respect of comparable officers in the executive branch.

I cannot emphasize too strongly the importance which should be attached to the reorganization plan that I am now transmitting to the Congress. The fair and efficient administration of the Federal internal-revenue laws is of vital concern to every citizen. All of us have a right to insist that the Bureau of Internal Revenue be provided with the finest organization that can be devised. All of us are entitled to have that organization manned by personnel who get their jobs and keep them solely because of their own integrity and competence. This reorganization plan will be a major step in achieving those objectives.

HARRY S. TRUMAN.

THE WHITE HOUSE, January 14, 1952.

## § 7805. Rules and regulations

### (a) Authorization

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

### (b) Retroactivity of regulations or rulings

The Secretary may prescribe the extent, if any, to which any ruling or regulation, relating

to the internal revenue laws, shall be applied without retroactive effect.

### (c) Preparation and distribution of regulations, forms, stamps, and other matters

The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

### (d) Manner of making elections prescribed by Secretary

Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall by regulations or forms prescribe.

### (e) Temporary regulations

#### (1) Issuance

Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

#### (2) 3-year duration

Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

### (f) Review of impact of regulations on small business

#### (1) Submissions to Small Business Administration

After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

#### (2) Consideration of comments

In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

#### (3) Submission of certain final regulations

In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply; except that—

(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation.

(Aug. 16, 1954, ch. 736, 68A Stat. 917; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat.

1834; July 18, 1984, Pub. L. 98-369, div. A, title I, § 43(b), 98 Stat. 558; Nov. 10, 1988, Pub. L. 100-647, title VI, § 6232(a), 102 Stat. 3734; Nov. 5, 1990, Pub. L. 101-508, title XI, § 11621(a), 104 Stat. 1388-503.)

#### AMENDMENTS

1990—Subsec. (f). Pub. L. 101-508 substituted heading for one which read “Impact of regulations on small business reviewed” and amended text generally. Prior to amendment, text read as follows: “After the publication of any proposed regulation by the Secretary and before the promulgation of any final regulation by the Secretary which does not supersede a proposed regulation, the Secretary shall submit such regulation to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business. The Administrator shall have 4 weeks from the date of submission to respond.”

1988—Subsecs. (e), (f). Pub. L. 100-647 added subsecs. (e) and (f).

1984—Pub. L. 98-369 added subsec. (d).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 11621(b) of Pub. L. 101-508 provided that: “The amendment made by subsection (a) [amending this section] shall apply to regulations issued after the date which is 30 days after the date of the enactment of this Act [Nov. 5, 1990].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 6232(b) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section] shall apply to any regulation issued after the date which is 10 days after the date of the enactment of this Act [Nov. 10, 1988].”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

#### CROSS REFERENCES

Departmental regulations, see section 301 of Title 5, Government Organization and Employees.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3613.

### § 7806. Construction of title

#### (a) Cross references

The cross references in this title to other portions of the title, or other provisions of law, where the word “see” is used, are made only for convenience, and shall be given no legal effect.

#### (b) Arrangement and classification

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

(Aug. 16, 1954, ch. 736, 68A Stat. 917.)

#### REFERENCES IN TEXT

This Act, referred to in subsec. (b), is act Aug. 16, 1954.

### § 7807. Rules in effect upon enactment of this title

#### (a) Interim provision for administration of title

Until regulations are promulgated under any provision of this title which depends for its application upon the promulgation of regulations (or which is to be applied in such manner as may be prescribed by regulations) all instructions, rules or regulations which are in effect immediately prior to the enactment of this title shall, to the extent such instructions, rules, or regulations could be prescribed as regulations under authority of such provision, be applied as if promulgated as regulations under such provision.

#### (b) Provisions of this title corresponding to prior internal revenue laws

##### (1) Reference to law applicable to prior period

Any provision of this title which refers to the application of any portion of this title to a prior period (or which depends upon the application to a prior period of any portion of this title) shall, when appropriate and consistent with the purpose of such provision, be deemed to refer to (or depend upon the application of) the corresponding provision of the Internal Revenue Code of 1939 or of such other internal revenue laws as were applicable to the prior period.

##### (2) Elections or other acts

If an election or other act under the provisions of the Internal Revenue Code of 1939 would, if this title had not been enacted, be given effect for a period subsequent to the date of enactment of this title, and if corresponding provisions are contained in this title, such election or other act shall be given effect under the corresponding provisions of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 917.)

#### REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was redesignated The Internal Revenue Code of 1986 by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

#### CROSS REFERENCES

Adjustments required by changes in method of accounting, applying subsection (b)(1) of this section, see section 481 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 481 of this title.

### § 7808. Depositaries for collections

The Secretary is authorized to designate one or more depositaries in each State for the deposit and safe-keeping of the money collected by virtue of the internal revenue laws; and the receipt of the proper officer of such depositary to the proper officer or employee of the Treasury Department for the money deposited by him shall be a sufficient voucher for such Treasury

officer or employee in the settlement of his accounts.

(Aug. 16, 1954, ch. 736, 68A Stat. 918; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834.)

#### REFERENCES IN TEXT

The internal revenue laws, referred to in text, are classified generally to this title.

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

### § 7809. Deposit of collections

#### (a) General rule

Except as provided in subsections (b) and (c) and in sections 7651, 7652, 7654, and 7810, the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer of the United States, designated depository, or proper officer of a deposit bank, shall be transmitted to the Secretary.

#### (b) Deposit funds

In accordance with instructions of the Secretary, there shall be deposited with the Treasurer of the United States in a deposit fund account—

##### (1) Sums offered in compromise

Sums offered in compromise under the provisions of section 7122;

##### (2) Sums offered for purchase of real estate

Sums offered for the purchase of real estate under the provisions of section 7506;

##### (3) Surplus proceeds in sales under levy

Surplus proceeds in any sale under levy, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the levy and sale; and

##### (4) Surplus proceeds in sales of redeemed property

Surplus proceeds in any sale under section 7506 of real property redeemed by the United States, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale.

Upon the acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn from such deposit fund account and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer, the Secretary shall refund to the maker of such offer the amount thereof.

#### (c) Deposit of certain receipts

Moneys received in payment for—

(1) Work or services performed pursuant to section 6103(p) (relating to furnishing of copies of returns or of return information), and section 6108(b) (relating to special statistical studies and compilations);

(2) work or services performed (including materials supplied) pursuant to section 7516 (relating to the supplying of training and training aids on request);

(3) other work or services performed for a State or a department or agency of the Federal Government (subject to all provisions of law and regulations governing disclosure of information) in supplying copies of, or data from, returns, statements, or other documents filed under authority of this title or records maintained in connection with the administration and enforcement of this title; and

(4) work or services performed (including materials supplied) pursuant to section 6110 (relating to public inspection of written determinations),

shall be deposited in a separate account which may be used to reimburse appropriations which bore all or part of the costs of such work or services, or to refund excess sums when necessary.

#### (d) Deposit of funds for law enforcement agency account

##### (1) In general

In the case of any amounts recovered as the result of information provided to the Internal Revenue Service by State and local law enforcement agencies which substantially contributed to such recovery, an amount equal to 10 percent of such amounts shall be deposited in a separate account which shall be used to make the reimbursements required under section 7624.

##### (2) Deposit in Treasury as internal revenue collections

If any amounts remain in such account after payment of any qualified costs incurred under section 7624, such amounts shall be withdrawn from such account and deposited in the Treasury of the United States as internal revenue collections.

(Aug. 16, 1954, ch. 736, 68A Stat. 918; Oct. 23, 1962, Pub. L. 87-870, § 3(b), 76 Stat. 1161; Nov. 2, 1966, Pub. L. 89-719, title I, § 112(b), 80 Stat. 1146; Oct. 4, 1976, Pub. L. 94-455, title XII, § 1202(h)(5), title XIX, §§ 1906(a)(59), (b)(13)(A), 90 Stat. 1688, 1833, 1834; Oct. 17, 1976, Pub. L. 94-528, § 2(d), 90 Stat. 2483; Nov. 18, 1988, Pub. L. 100-690, title VII, § 7602(b), 102 Stat. 4507.)

#### AMENDMENTS

1988—Subsec. (d). Pub. L. 100-690 added subsec. (d).

1976—Subsec. (a). Pub. L. 94-455, § 1906(a)(59), (b)(13)(A), struck out “4735, 4762” after “and in sections”, and “or his delegate” after “Secretary” in two places.

Subsec. (b). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (c)(1). Pub. L. 94-455, § 1202(h)(5), substituted “section 6103(p) (relating to furnishing of copies of returns or of return information), and section 6108(b) (re-

lating to special statistical studies and compilations)” for “section 7515 (relating to special statistical studies and compilations for other services on request)” after “performed pursuant to”.

Subsec. (c)(4). Pub. L. 94-528 added par. (4).

1966—Subsecs. (a), (b)(4). Pub. L. 89-719 inserted reference to section 7810 in subsec. (a) and added subsec. (b)(4).

1962—Subsec. (a). Pub. L. 87-870, §3(b)(1), substituted “subsections (b) and (c) and in” for “subsection (b).”

Subsec. (c). Pub. L. 87-870, §3(b)(2), added subsec. (c).

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 applicable to information first provided more than 90 days after Nov. 18, 1988, see section 7602(e) of Pub. L. 100-690, set out as a note under section 6103 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENTS

Section 2(e) of Pub. L. 94-528 provided that: “The amendments made by this section [amending this section and provisions set out as notes under sections 6334, 6851, and 7609 of this title] shall take effect on the date of the enactment of the Tax Reform Act of 1976 [Oct. 4, 1976].”

Amendment by section 1202(h)(5) of Pub. L. 94-455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94-455, set out as a note under section 6103 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)-(c) of Pub. L. 89-719, set out as a note under section 6323 of this title.

#### AUTHORIZATION OF APPROPRIATIONS

Section 7602(f) of Pub. L. 100-690 provided that: “There is authorized to be appropriated from the account referred to in section 7809(d) of the Internal Revenue Code of 1986 such sums as may be necessary to make the payments authorized by section 7624 of such Code.”

### § 7810. Revolving fund for redemption of real property

#### (a) Establishment of fund

There is established a revolving fund, under the control of the Secretary, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary) of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from time to time such sums (not to exceed \$10,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

#### (b) Reimbursement of fund

The fund shall be reimbursed from the proceeds of a subsequent sale of real property redeemed by the United States in an amount equal to the amount expended out of such fund for such redemption.

#### (c) System of accounts

The Secretary shall maintain an adequate system of accounts for such fund and prepare annual reports on the basis of such accounts.

(Added Pub. L. 89-719, title I, §112(a), Nov. 2, 1966, 80 Stat. 1145; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title IV, §443, July 18, 1984, 98 Stat. 816.)

#### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted “\$10,000,000” for “\$1,000,000”.

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE

Section applicable after Nov. 2, 1966, regardless of when title or lien of United States arose or when lien or interest of another person was acquired, with certain exceptions, see section 114(a)-(c) of Pub. L. 89-719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7809 of this title.

### § 7811. Taxpayer Assistance Orders

#### (a) Authority to issue

Upon application filed by a taxpayer with the Office of Ombudsman (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the Ombudsman may issue a Taxpayer Assistance Order if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.

#### (b) Terms of a Taxpayer Assistance Order

The terms of a Taxpayer Assistance Order may require the Secretary—

(1) to release property of the taxpayer levied upon, or

(2) to cease any action, or refrain from taking any action, with respect to the taxpayer under—

(A) chapter 64 (relating to collection),

(B) subchapter B of chapter 70 (relating to bankruptcy and receiverships),

(C) chapter 78 (relating to discovery of liability and enforcement of title), or

(D) any other provision of law which is specifically described by the Ombudsman in such order.

#### (c) Authority to modify or rescind

Any Taxpayer Assistance Order issued by the Ombudsman under this section may be modified or rescinded only by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals, or any superior of any such person.

#### (d) Suspension of running of period of limitation

The running of any period of limitation with respect to any action described in subsection (b) shall be suspended for—

(1) the period beginning on the date of the taxpayer's application under subsection (a) and ending on the date of the Ombudsman's decision with respect to such application, and

(2) any period specified by the Ombudsman in a Taxpayer Assistance Order issued pursuant to such application.

#### (e) Independent action of Ombudsman

Nothing in this section shall prevent the Ombudsman from taking any action in the absence of an application under subsection (a).

#### (f) Ombudsman

For purposes of this section, the term “Ombudsman” includes any designee of the Ombudsman.

(Added Pub. L. 100-647, title VI, §6230(a), Nov. 10, 1988, 102 Stat. 3733.)

EFFECTIVE DATE

Section 6230(d) of Pub. L. 100-647 provided that: “The amendments made by this section [enacting this section] shall take effect on January 1, 1989.”

REGULATIONS

Section 6230(c) of Pub. L. 100-647 provided that: “The Secretary of the Treasury or the Secretary’s delegate shall issue such regulations as the Secretary deems necessary within 90 days of the date of the enactment of this Act [Nov. 10, 1988] in order to carry out the purposes of section 7811 of the 1986 Code (as added by this section) and to ensure taxpayers uniform access to administrative procedures.”

**Subchapter B—Effective Date and Related Provisions**

Sec.	
7851.	Applicability of revenue laws.
7852.	Other applicable rules.

**§ 7851. Applicability of revenue laws**

**(a) General rules**

Except as otherwise provided in any section of this title—

**(1) Subtitle A**

(A) Chapters 1, 2, 4,<sup>1</sup> and 6 of this title shall apply only with respect to taxable years beginning after December 31, 1953, and ending after the date of enactment of this title, and with respect to such taxable years, chapters 1 (except sections 143 and 144) and 2, and section 3801, of the Internal Revenue Code of 1939 are hereby repealed.

(B) Chapters 3 and 5 of this title shall apply with respect to payments and transfers occurring after December 31, 1954, and as to such payments and transfers sections 143 and 144 and chapter 7 of the Internal Revenue Code of 1939 are hereby repealed.

(C) Any provision of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953), or in terms of taxable years ending after a specific date (occurring after December 31, 1953), shall apply to taxable years ending after such specific date. Each such provision shall, in the case of a taxable year subject to the Internal Revenue Code of 1939, be deemed to be included in the Internal Revenue Code of 1939, but shall be applicable only to taxable years ending after such specific date. The provisions of the Internal Revenue Code of 1939 superseded by provisions of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953) shall be deemed to be included in subtitle A of this title, but shall be applicable only to the period prior to the taking effect of the corresponding provision of subtitle A.

(D) Effective with respect to taxable years ending after March 31, 1954, and subject to tax under chapter 1 of the Internal Revenue Code of 1939—

- (i) Sections 13(b)(3), 26(b)(2)(C), 26(h) (1)(C) (including the comma and the word “and”

immediately preceding such section), 26(i)(3), 108(k), 207(a)(1)(C), 207(a)(3)(C), and the last sentence of section 362(b)(3) of such Code are hereby repealed; and

(ii) Sections 13(b)(2), 26(b)(2)(B), 26(h) (1)(B), 26(i)(2), 207(a)(1)(B), 207(a)(3)(B), 421(a)(1)(B), and the second sentence of section 362(b)(3) of such Code are hereby amended by striking out “and before April 1, 1954” (and any accompanying punctuation) wherever appearing therein.

**(2) Subtitle B**

(A) Chapter 11 of this title shall apply with respect to estates of decedents dying after the date of enactment of this title, and with respect to such estates chapter 3 of the Internal Revenue Code of 1939 is hereby repealed.

(B) Chapter 12 of this title shall apply with respect to the calendar year 1955 and all calendar years thereafter, and with respect to such years chapter 4 of the Internal Revenue Code of 1939 is hereby repealed.

**(3) Subtitle C**

Subtitle C of this title shall apply only with respect to remuneration paid after December 31, 1954, except that chapter 22 of such subtitle shall apply only with respect to remuneration paid after December 31, 1954, which is for services performed after such date. Chapter 9 of the Internal Revenue Code of 1939 is hereby repealed with respect to remuneration paid after December 31, 1954, except that subchapter B of such chapter (and subchapter E of such chapter to the extent it relates to subchapter B) shall remain in force and effect with respect to remuneration paid after December 31, 1954, for services performed on or before such date.

**(4) Subtitle D**

Subtitle D of this title shall take effect on January 1, 1955. Subtitles B and C of the Internal Revenue Code of 1939 (except chapters 7, 9, 15, 26, and 28, subchapter B of chapter 25, and parts VII and VIII of subchapter A of chapter 27 of such code) are hereby repealed effective January 1, 1955. Provisions having the same effect as section 6416(b)(2)(H),<sup>1</sup> and so much of section 4082(c)<sup>1</sup> as refers to special motor fuels, shall be considered to be included in the Internal Revenue Code of 1939 effective as of May 1, 1954. Section 2450(a) of the Internal Revenue Code of 1939 (as amended by the Excise Tax Reduction Act of 1954) applies to the period beginning on April 1, 1954, and ending on December 31, 1954.

**(5) Subtitle E**

Subtitle E shall take effect on January 1, 1955, except that the provisions in section 5411 permitting the use of a brewery under regulations prescribed by the Secretary for the purpose of producing and bottling soft drinks, section 5554, and chapter 53 shall take effect on the day after the date of enactment of this title. Subchapter B of chapter 25, and part VIII of subchapter A of chapter 27, of the Internal Revenue Code of 1939 are hereby repealed effective on the day after the date of enactment of this title. Chapters 15 and 26, and part VII of subchapter A of chapter 27, of the Internal

<sup>1</sup> See References in Text note below.

Revenue Code of 1939 are hereby repealed effective January 1, 1955.

**(6) Subtitle F**

**(A) General rule**

The provisions of subtitle F shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title. The provisions of subtitle F shall apply with respect to any tax imposed by the Internal Revenue Code of 1939 only to the extent provided in subparagraphs (B) and (C) of this paragraph.

**(B) Assessment, collection, and refunds**

Notwithstanding the provisions of subparagraph (A), and notwithstanding any contrary provision of subchapter A of chapter 63 (relating to assessment), chapter 64 (relating to collection), or chapter 65 (relating to abate­ments, credits, and refunds) of this title, the provisions of part II of subchapter A of chapter 28 and chapters 35, 36, and 37 (except section 3777) of subtitle D of the Internal Revenue Code of 1939 shall remain in effect until January 1, 1955, and shall also be applicable to the taxes imposed by this title. On and after January 1, 1955, the provisions of subchapter A of chapter 63, chapter 64, and chapter 65 (except section 6405) of this title shall be applicable to all internal revenue taxes (whether imposed by this title or by the Internal Revenue Code of 1939), notwithstanding any contrary provision of part II of subchapter A of chapter 28, or of chapter 35, 36, or 37, of the Internal Revenue Code of 1939. The provisions of section 6405 (relating to reports of refunds and credits) shall be applicable with respect to refunds or credits allowed after the date of enactment of this title, and section 3777 of the Internal Revenue Code of 1939 is hereby repealed with respect to such refunds and credits.

**(C) Taxes imposed under the 1939 Code**

After the date of enactment of this title, the following provisions of subtitle F shall apply to the taxes imposed by the Internal Revenue Code of 1939, notwithstanding any contrary provisions of such code:

- (i) Chapter 73, relating to bonds.
- (ii) Chapter 74, relating to closing agree­ments and compromises.
- (iii) Chapter 75, relating to crimes and other offenses, but only insofar as it relates to offenses committed after the date of enactment of this title, and in the case of such offenses, section 6531, relating to periods of limitation on criminal prosecution, shall be applicable. The penalties (other than penalties which may be assessed) provided by the Internal Revenue Code of 1939 shall not apply to offenses, committed after the date of enactment of this title, to which chapter 75 of this title is applicable.
- (iv) Chapter 76, relating to judicial proceedings.
- (v) Chapter 77, relating to miscellaneous provisions, except that section 7502 shall apply only if the mailing occurs after the

date of enactment of this title, and section 7503 shall apply only if the last date referred to therein occurs after the date of enactment of this title.

(vi) Chapter 78, relating to discovery of liability and enforcement of title.

(vii) Chapter 79, relating to definitions.

(viii) Chapter 80, relating to application of internal revenue laws, effective date, and related provisions.

**(D) Chapter 28 and subtitle D of 1939 Code**

Except as otherwise provided in subparagraphs (B) and (C), the provisions of chapter 28 and of subtitle D of the Internal Revenue Code of 1939 shall remain in effect with respect to taxes imposed by the Internal Revenue Code of 1939.

**(7) Other provisions**

If the effective date of any provision of the Internal Revenue Code of 1986 is not otherwise provided in this section or in any other section of this title, such provision shall take effect on the day after the date of enactment of this title. If the repeal of any provision of the Internal Revenue Code of 1939 is not otherwise provided by this section or by any other section of this title, such provision is hereby repealed effective on the day after the date of enactment of this title.

**(b) Effect of repeal of Internal Revenue Code of 1939**

**(1) Existing rights and liabilities**

The repeal of any provision of the Internal Revenue Code of 1939 shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal; but all rights and liabilities under such code shall continue, and may be enforced in the same manner, as if such repeal had not been made.

**(2) Existing offices**

The repeal of any provision of the Internal Revenue Code of 1939 shall not abolish, terminate, or otherwise change—

- (A) any internal revenue district,
- (B) any office, position, board, or committee, or
- (C) the appointment or employment of any officer or employee,

existing immediately preceding the enactment of this title, the continuance of which is not manifestly inconsistent with any provision of this title, but the same shall continue unless and until changed by lawful authority.

**(3) Existing delegations of authority**

Any delegation of authority made pursuant to the provisions of Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952, including any redelegation of authority made pursuant to any such delegation of authority, and in effect under the Internal Revenue Code of 1939 immediately preceding the enactment of this title shall, notwithstanding the repeal of such code, remain in effect for purposes of this title, unless distinctly inconsistent or manifestly incompatible with the provisions of this title. The pre-

ceding sentence shall not be construed as limiting in any manner the power to amend, modify, or revoke any such delegation or redelegation of authority.

**(c) Crimes and forfeitures**

All offenses committed, and all penalties or forfeitures incurred, under any provision of law hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted.

**(d) Periods of limitation**

All periods of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this title had not been enacted.

**(e) Reference to other provisions**

For the purpose of applying the Internal Revenue Code of 1939 or the Internal Revenue Code of 1986 to any period, any reference in either such code to another provision of the Internal Revenue Code of 1939 or the Internal Revenue Code of 1986 which is not then applicable to such period shall be deemed a reference to the corresponding provision of the other code which is then applicable to such period.

(Aug. 16, 1954, ch. 736, 68A Stat. 919; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Chapter 4 of this title, referred to in subsec. (a)(1)(A), was repealed by Pub. L. 101-508, title XI, § 11801(a)(37), Nov. 5, 1990, 104 Stat. 1388-521.

The date of enactment of this title, referred to in subsecs. (a)(1)(A), (5), (6)(A) to (C), (7), (b)(2), (3), is Aug. 16, 1954.

Various provisions of the Internal Revenue Code of 1939, referred to in text and described below, have corresponding provisions appearing in the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, subsec. (e) of this section for provision that references in the 1986 Code to a provision in the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Chapter 1 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(A), (D), was comprised of sections 1 to 482 of former Title 26, Internal Revenue Code. Sections 1 to 33 were repealed by subsec. (a)(1)(A) of this section, section 34 was repealed by act Feb. 25, 1944, ch. 63, title I, § 106(c)(2), 58 Stat. 31, sections 35 to 184 were repealed by subsec. (a)(1)(A) of this section, section 185 was repealed by act Feb. 25, 1944, ch. 63, title I, § 107(a), 58 Stat. 31, sections 201 to 263 were repealed by subsec. (a)(1)(A) of this section, section 264 was repealed by act Oct. 21, 1942, ch. 619, title I, § 159(e), 56 Stat. 860, sections 265 to 362 were repealed by subsec. (a)(1)(A) of this section, section 363 was repealed by act Oct. 21, 1942, ch. 619, title I, § 170(a), 56 Stat. 878, sections 371 to 482 were repealed by subsec. (a)(1)(A) of this section.

Sections 143 and 144 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(A), (B), were classified to sections 143 and 144 of former Title 26, Internal Revenue Code.

Chapter 2 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(A), was comprised of sections 500 to 784 of former Title 26, Internal Revenue Code. Sections 500 to 511 and 650 to 706 were repealed by subsec. (a)(1)(A) of this section, sections 600 to 605 were repealed by act Nov. 8, 1945, ch. 453, title II, § 202, 59 Stat. 574, sections 710 to 736, 740, 742 to 744, 750, 751, 760, 761 and 780 to 784 were repealed by act Nov. 8, 1945, ch. 453, title I, § 122(a), 59 Stat. 568, section 741 was repealed by act Oct. 21, 1942, ch. 619, title II, §§ 224(b), 228(b), 56 Stat. 920, 925, section 752 was repealed by act Oct. 21, 1942, ch. 619, title II, § 229(a)(1), 56 Stat. 931, eff. as of Oct. 8, 1940.

Section 3801 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(A), was classified to section 3801 of former Title 26, Internal Revenue Code. Section 3801 was repealed by subsec. (a)(1)(A) of this section.

Chapter 7 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1)(B), (4), was comprised of sections 1250 to 1254 of former Title 26, Internal Revenue Code.

The Internal Revenue Code of 1939, referred to in subsecs. (a)(1)(C), (4), (6)(A) to (C), (C)(iii), (D), (7), (b)(1) to (3), (e), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code.

Sections 13(b)(3), 26(b)(2)(C), 26(h)(1)(C), 26(i)(3), 108(k), 207(a)(1)(C), 207(a)(3)(C), and the last sentence of section 362(b)(3), referred to in subsec. (a)(1)(D)(i), were classified to former sections 13(b)(3), 26(b)(2)(C), (h)(1)(C), (i)(3), 108(k), 207(a)(1)(C), (3)(C), and 362(b)(3) of former Title 26, Internal Revenue Code. Sections 13(b)(3), 26(b)(2)(C), (h)(1)(C), (i)(3), 108(k), 207(a)(1)(C), (3)(C), and 362(b)(3) were repealed by subsec. (a)(1)(d)(i) of this section.

Sections 13(b)(2), 26(b)(2)(B), 26(h)(1)(B), 26(i)(2), 207(a)(1)(B), 207(a)(3)(B), 421(a)(1)(B), and the second sentence of section 362(b)(3), referred to in subsec. (a)(1)(D)(ii), were classified to sections 13(b)(2), 26(b)(2)(B), (h)(1)(B), (i)(2), 207(a)(1)(B), (3)(B), 421(a)(1)(B), and 362(b)(3) of former Title 26, Internal Revenue Code.

Chapter 3 of the Internal Revenue Code of 1939, referred to in subsec. (a)(2)(A), was comprised of sections 800 to 951 of former Title 26, Internal Revenue Code.

Chapter 4 of the Internal Revenue Code of 1939, referred to in subsec. (a)(2)(B), was comprised of sections 1000 to 1031 of former Title 26, Internal Revenue Code.

Chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a)(3), (4), was comprised of sections 1400 to 1636 of former Title 26, Internal Revenue Code. Subchapters B and E of chapter 9 of the Internal Revenue Code of 1939 were comprised of sections 1500 to 1538, and 1630 to 1636, respectively, of former Title 26.

Subtitles B and C of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), were comprised of chapters 6 to 28, sections 1200 to 3361, and chapters 29 to 33A, sections 3400 to 3540, respectively, of former Title 26, Internal Revenue Code. Sections 1200 to 1207 of former Title 26 were repealed by act Nov. 8, 1945, ch. 453, title II, § 201, 59 Stat. 574. Sections 1250 to 1254, 1400 to 1627, 1631 to 1805, 1807 to 2300, 2302 to 2362, 2400 to 2475, 2477 to 2905, 2908 to 3150, 3152, 3153, 3155 to 3195, 3206 to 3212, 3220 to 3301, 3303 to 3335, 3350 to 3409, 3412 to 3451, and 3453 to 3508 of former Title 26, were repealed by subsec. (a)(4) of this section. Sections 1300 and 1301 were repealed by act June 10, 1952, ch. 390, 66 Stat. 133. Section 1630 was repealed by act Aug. 27, 1949, ch. 517, § 4(b), 63 Stat. 668. Section 1806 was repealed by act Mar. 11, 1947, ch. 117, § 8(c), 61 Stat. 13. Section 2301 was repealed by act Mar. 16, 1950, ch. 61, § 1, 64 Stat. 20. Sections 2380 to 2390, and 3215 to 3217 were repealed by act Oct. 21, 1942, ch. 619, title VI, § 619, 56 Stat. 979. Section 2476 was repealed by act Apr. 30, 1946, ch. 244, title V, § 506(b), 60 Stat. 157. Sections 2906 and 3302 were repealed by act Feb. 21, 1950, ch. 36, § 7, 64 Stat. 8. Section 2907 was repealed by act July 22, 1941, ch. 314, 55 Stat. 602. Sections 3151 and 3154 were repealed by act Aug. 27, 1949, ch. 498, § 6, 63 Stat. 626. Sections 3200 to 3202 were repealed by act Mar. 16, 1950, ch. 61, § 2, 64 Stat. 20. Sections 3340 to

3343 were repealed by act Apr. 30, 1946, ch. 244, title V, § 507(b), 60 Stat. 157. Section 3411 was repealed by act Oct. 20, 1951, ch. 521, title IV, § 488(a), 65 Stat. 536. Section 3452 was repealed by act Sept. 20, 1941, ch. 412, title V, § 501, 55 Stat. 706. Sections 3520 to 3528 expired by their own terms on Apr. 26, 1941. Section 3540 was repealed by act Nov. 8, 1945, ch. 453, title III, § 301, 59 Stat. 575.

Chapter 15 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (5), was comprised of sections 2000 to 2199 of former Title 26, Internal Revenue Code. Chapter 15 was repealed by subsec. (a)(5) of this section.

Chapter 26 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (5), was comprised of sections 2800 to 3195 of former Title 26, Internal Revenue Code. Sections 2800 to 2905, 2908 to 3150, 3152, 3153, 3155 to 3195 were repealed by subsec. (a)(5) of this section. Section 2906 was repealed by act Feb. 21, 1950, ch. 36, § 7, 64 Stat. 8. Section 2907 was repealed by act July 22, 1941, ch. 314, § 3, 55 Stat. 602. Sections 3151 and 3154 were repealed by act Aug. 23, 1949, ch. 498, § 6, 63 Stat. 626.

Chapter 28 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (6)(B), (D), was comprised of sections 3300 to 3361 of former Title 26, Internal Revenue Code. Part II of subchapter A of chapter 27 of the Internal Revenue Code of 1939 was comprised of sections 3310 to 3314 of former Title 26.

Subchapter B of chapter 25 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (5), was comprised of sections 2720 to 2734 of former Title 26, Internal Revenue Code. Subchapter B of chapter 25 of the Internal Revenue Code of 1939 was repealed by subsec. (a)(5) of this section.

Parts VII and VIII of subchapter A of chapter 27 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), (5), were comprised of sections 3250 to 3255 and 3260 to 3266, respectively, of former Title 26, Internal Revenue Code. Parts VII and VIII of subchapter A of chapter 27 of the Internal Revenue Code of 1939 were repealed by subsec. (a)(5) of this section.

Section 6416(b)(2)(H), referred to in subsec. (a)(4), was repealed by Pub. L. 98-369, div. A, title VII, § 735(c)(13)(B), July 18, 1984, 98 Stat. 984.

Section 4082, referred to in subsec. (a)(4), was amended generally by Pub. L. 99-514, title XVII, § 1703(a), Oct. 22, 1986, 100 Stat. 2775, and, as so amended, did not contain a subsec. (c). Subsequently, section 4082 was amended generally by Pub. L. 103-66, title XIII, § 13242(a), Aug. 10, 1993, 107 Stat. 517, and, as so amended, contains a subsec. (c) relating to regulations.

Section 2450(a) of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), was classified to section 2450 of former Title 26, Internal Revenue Code. Section 2450 was repealed by subsec. (a)(4) of this section.

The Excise Tax Reduction Act of 1954, referred to in subsec. (a)(4), is act Mar. 31, 1954, ch. 126, 68 Stat. 37.

Subtitle D of the Internal Revenue Code of 1939, referred to in subsec. (a)(6)(B), (D), was comprised of chapters 34 to 38, sections 3600 to 3781 of former Title 26, Internal Revenue Code. Chapters 35, 36, and 37 of subtitle D of the Internal Revenue Code of 1939 were comprised of sections 3640 to 3647, 3650 to 3762, and 3770 to 3781, respectively, of former Title 26.

Section 3777 of the Internal Revenue Code of 1939, referred to in subsec. (a)(6)(B), was classified to section 3777 of former Title 26, Internal Revenue Code. Section 3777 was repealed by subsec. (a)(6)(B) of this section.

Reorganization Plan Numbered 26 of 1950, referred to in subsec. (b)(3), is Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, which is set out in the Appendix to Title 5, Government Organization and Employees.

Reorganization Plan Numbered 1 of 1952, referred to in subsec. (b)(3), is Reorg. Plan No. 1 of 1952, eff. Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, which is set out in Appendix to Title 5.

#### AMENDMENTS

1986—Subsecs. (a)(7), (e). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1976—Subsec. (a)(5). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

#### CROSS REFERENCES

Treatment of joint return after death of either spouse for purposes of subsection (a)(1)(A) of this section, see section 6013 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6013 of this title.

### § 7852. Other applicable rules

#### (a) Separability clause

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.

#### (b) Reference in other laws to Internal Revenue Code of 1939

Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

#### (c) Items not to be twice included in income or deducted therefrom

Except as otherwise distinctly expressed or manifestly intended, the same item (whether of income, deduction, credit, or otherwise) shall not be taken into account both in computing a tax under subtitle A of this title and a tax under chapter 1 or 2 of the Internal Revenue Code of 1939.

#### (d) Treaty obligations

##### (1) In general

For purposes of determining the relationship between a provision of a treaty and any law of the United States affecting revenue, neither the treaty nor the law shall have preferential status by reason of its being a treaty or law.

##### (2) Savings clause for 1954 treaties

No provision of this title (as in effect without regard to any amendment thereto enacted after August 16, 1954) shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 16, 1954.

#### (e) Privacy Act of 1974

The provisions of subsections (d)(2), (3), and (4), and (g) of section 552a of title 5, United States Code, shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense to which the provisions of this title apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 922; Oct. 4, 1976, Pub. L. 94-455, title XII, § 1202(g), 90 Stat. 1688; Nov. 10, 1988, Pub. L. 100-647, title I, § 1012(aa)(1)(A), 102 Stat. 3531.)

#### REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b), is act Feb. 10, 1939, ch. 2, 53 Stat. 1. Prior to the

enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was redesignated The Internal Revenue Code of 1986 by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

Chapters 1 and 2 of the Internal Revenue Code of 1939, referred to in subsec. (c), are chapters 1 and 2 of former Title 26, Internal Revenue Code. For history of such chapters, see References in Text note set out under section 7851 of this title.

The Privacy Act of 1974, referred to in subsec. (e), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and enacted notes set out under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

#### AMENDMENTS

1988—Subsec. (d). Pub. L. 100-647 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “No provision of this title shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of enactment of this title.”

1976—Subsec. (e). Pub. L. 94-455 added subsec. (e).

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(aa)(1)(B) of Pub. L. 100-647 provided that: “Section 7852(d)(1) of the 1986 Code, as added by subparagraph (A), shall apply to any taxable period with respect to which the time for assessment of any deficiency has not expired by reason of any law or rule of law before the date of the enactment of this Act [Nov. 10, 1988].”

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective Jan. 1, 1977, see section 1202(i) of Pub. L. 94-455, set out as a note under section 6103 of this title.

#### APPLICATION OF SUBSEC. (d) TO PUB. L. 87-834

Pub. L. 87-834, § 31, Oct. 16, 1962, 76 Stat. 1069, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Section 7852(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to treaty obligations) shall not apply in respect of any amendment made by this Act [see Short Title of 1962 Amendments note set out under section 1 of this title].”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 269B, 894 of this title; title 42 section 1307.

### Subchapter C—Provisions Affecting More Than One Subtitle

Sec.	
7871.	Indian tribal governments treated as States for certain purposes.
7872.	Treatment of loans with below-market interest rates.
7873.	Income derived by Indians from exercise of fishing rights.

#### AMENDMENTS

1988—Pub. L. 100-647, title III, § 3041(b), Nov. 10, 1988, 102 Stat. 3641, added item 7873.

1984—Pub. L. 98-369, div. A, title I, § 172(b), July 18, 1984, 98 Stat. 703, added item 7872.

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7701 of this title; title 25 sections 566, 715a.

### § 7871. Indian tribal governments treated as States for certain purposes

#### (a) General rule

An Indian tribal government shall be treated as a State—

(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under—

(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),

(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or

(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

(2) subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

(A) chapter 31 (relating to tax on special fuels),

(B) chapter 32 (relating to manufacturers excise taxes),

(C) subchapter B of chapter 33 (relating to communications excise tax), or

(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);

(3) for purposes of section 164 (relating to deduction for taxes);

(4) subject to subsection (c), for purposes of section 103 (relating to State and local bonds);

(5) for purposes of section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

(6) for purposes of—

(A) section 105(e) (relating to accident and health plans),

(B) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities), and

(C) section 454(b)(2) (relating to discount obligations); and

(7) for purposes of—

(A) chapter 41 (relating to tax on excess expenditures to influence legislation), and

(B) subchapter A of chapter 42 (relating to private foundations).

#### (b) Additional requirements for excise tax exemptions

Paragraph (2) of subsection (a) shall apply with respect to any transaction only if, in addition to any other requirement of this title applicable to similar transactions involving a State or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.

#### (c) Additional requirements for tax-exempt bonds

##### (1) In general

Subsection (a) of section 103 shall apply to any obligation (not described in paragraph (2))

issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

**(2) No exemption for private activity bonds**

Except as provided in paragraph (3), subsection (a) of section 103 shall not apply to any private activity bond (as defined in section 141(a)) issued by an Indian tribal government (or subdivision thereof).

**(3) Exception for certain private activity bonds**

**(A) In general**

In the case of an obligation to which this paragraph applies—

- (i) paragraph (2) shall not apply,
- (ii) such obligation shall be treated for purposes of this title as a qualified small issue bond, and
- (iii) section 146 shall not apply.

**(B) Obligations to which paragraph applies**

This paragraph shall apply to any obligation issued as part of an issue if—

- (i) 95 percent or more of the net proceeds of the issue are to be used for the acquisition, construction, reconstruction, or improvement of property which is of a character subject to the allowance for depreciation and which is part of a manufacturing facility (as defined in section 144(a)(12)(C)),
- (ii) such issue is issued by an Indian tribal government or a subdivision thereof,
- (iii) 95 percent or more of the net proceeds of the issue are to be used to finance property which—

(I) is to be located on land which, throughout the 5-year period ending on the date of issuance of such issue, is part of the qualified Indian lands of the issuer, and

(II) is to be owned and operated by such issuer,

(iv) such obligation would not be a private activity bond without regard to subparagraph (C),

(v) it is reasonably expected (at the time of issuance of the issue) that the employment requirement of subparagraph (D)(i) will be met with respect to the facility to be financed by the net proceeds of the issue, and

(vi) no principal user of such facility will be a person (or group of persons) described in section 144(a)(6)(B).

For purposes of clause (iii), section 150(a)(5) shall apply.

**(C) Private activity bond rules to apply**

An obligation to which this paragraph applies (other than an obligation described in paragraph (1)) shall be treated for purposes of this title as a private activity bond.

**(D) Employment requirements**

**(i) In general**

The employment requirements of this subparagraph are met with respect to a fa-

cility financed by the net proceeds of an issue if, as of the close of each calendar year in the testing period, the aggregate face amount of all outstanding tax-exempt private activity bonds issued to provide financing for the establishment which includes such facility is not more than 20 times greater than the aggregate wages (as defined by section 3121(a)) paid during the preceding calendar year to individuals (who are enrolled members of the Indian tribe of the issuer or the spouse of any such member) for services rendered at such establishment.

**(ii) Failure to meet requirements**

**(I) In general**

If, as of the close of any calendar year in the testing period, the requirements of this subparagraph are not met with respect to an establishment, section 103 shall cease to apply to interest received or accrued (on all private activity bonds issued to provide financing for the establishment) after the close of such calendar year.

**(II) Exception**

Subclause (I) shall not apply if the requirements of this subparagraph would be met if the aggregate face amount of all tax-exempt private activity bonds issued to provide financing for the establishment and outstanding at the close of the 90th day after the close of the calendar year were substituted in clause (i) for such bonds outstanding at the close of such calendar year.

**(iii) Testing period**

For purposes of this subparagraph, the term “testing period” means, with respect to an issue, each calendar year which begins more than 2 years after the date of issuance of the issue (or, in the case of a refunding obligation, the date of issuance of the original issue).

**(E) Definitions**

For purposes of this paragraph—

**(i) Qualified Indian lands**

The term “qualified Indian lands” means land which is held in trust by the United States for the benefit of an Indian tribe.

**(ii) Indian tribe**

The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**(iii) Net proceeds**

The term “net proceeds” has the meaning given such term by section 150(a)(3).

**(d) Treatment of subdivisions of Indian tribal governments as political subdivisions**

For the purposes specified in subsection (a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a State if

(and only if) the Secretary determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.

**(e) Essential governmental function**

For purposes of this section, the term “essential governmental function” shall not include any function which is not customarily performed by State and local governments with general taxing powers.

(Added Pub. L. 97-473, title II, §202(a), Jan. 14, 1983, 96 Stat. 2608; amended Pub. L. 98-21, title I, §122(c)(6), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98-369, div. A, title IV, §474(r)(41), title X, §1065(b), July 18, 1984, 98 Stat. 847, 1048; Pub. L. 99-514, title I, §§112(b)(4), 123(b)(3), title XIII, §1301(j)(6), (7), title XVIII, §§1878(i), 1899A(65), Oct. 22, 1986, 100 Stat. 2109, 2113, 2658, 2905, 2962; Pub. L. 100-203, title X, §10632(a), (b), Dec. 22, 1987, 101 Stat. 1330-455; Pub. L. 103-66, title XIII, §13222(d), Aug. 10, 1993, 107 Stat. 481.)

AMENDMENTS

1993—Subsec. (a)(6)(B) to (D). Pub. L. 103-66 redesignated former subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: “section 162(e) (relating to appearances, etc., with respect to legislation).”

1987—Subsec. (c)(2). Pub. L. 100-203, §10632(b)(2), substituted “Except as provided in paragraph (3), subsection (a)” for “Subsection (a)”.

Subsec. (c)(3). Pub. L. 100-203, §10632(b)(1), added par. (3).

Subsec. (e). Pub. L. 100-203, §10632(a), added subsec. (e).

1986—Subsec. (a)(4). Pub. L. 99-514, §1301(j)(6), substituted “(relating to State and local bonds)” for “(relating to interest on certain governmental obligations)”.

Subsec. (a)(6). Pub. L. 99-514, §123(b)(3), redesignated subpars. (C) to (E), as previously redesignated by section 112(b)(4) of Pub. L. 99-514, as (B) to (D), respectively, and struck out previously redesignated subpar. (B), which read as follows: “section 117(b)(2)(A) (relating to scholarships and fellowship grants).”

Pub. L. 99-514, §112(b)(4), redesignated subpars. (B) to (F) as (A) to (E), respectively, and struck out former subpar. (A) which read as follows: “section 24(c)(4) (defining State for purposes of credit for contribution to candidates for public offices).”

Pub. L. 99-514, §1878(i), made technical amendment to directory language of Pub. L. 98-369, §1065(b). See 1984 Amendment note below.

Subsec. (a)(6)(D). Pub. L. 99-514, §1899A(65), substituted “; and” for period at end.

Subsec. (c)(2). Pub. L. 99-514, §1301(j)(7), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Subsection (a) of section 103 shall not apply to any of the following issued by an Indian tribal government (or subdivision thereof):

“(A) An industrial development bond (as defined in section 103(b)(2)).

“(B) An obligation described in section 103(l)(1)(A) (relating to scholarship bonds).

“(C) A mortgage subsidy bond (as defined in paragraph (1) of section 103A(b) without regard to paragraph (2) thereof).”

1984—Subsec. (a)(6)(A). Pub. L. 98-369, §474(r)(41), substituted “section 24(c)(4)” for “section 41(c)(4)”.

Subsec. (a)(6)(B) to (F). Pub. L. 98-369, §1065(b), as amended by Pub. L. 99-514, §1878(i), added subpars. (B), (D), and (F), and redesignated former subpars. (B) and (C) as (C) and (E), respectively.

1983—Subsec. (a)(6). Pub. L. 98-21 redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A), which referred to section 37(e)(9)(A) (relating to certain public retirement systems).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to amounts paid or incurred after Dec. 31, 1993, see section 13222(e) of Pub. L. 103-66 set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10632(c) of Pub. L. 100-203 provided that: “The amendments made by this section [amending this section] shall apply to obligations issued after October 13, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 112(b)(4) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 123(b)(3) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(6), (7) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1878(i) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(41) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 1065(c) of Pub. L. 98-369 provided that: “The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1984.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual’s annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual’s first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

EFFECTIVE DATE

Section 204 of title II of Pub. L. 97-473, as amended by Pub. L. 98-369, div. A, title X, §1065(a), July 18, 1984, 98 Stat. 1048; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this title [enacting this section, amending sections 41, 103, 164, 170, 2055, 2106, 2522, 4227, 4484, 6420, 6421, 6424, 6427, and 7701 of this title, and enacting provisions set out as a note under section 1 of this title]—

“(1) insofar as they relate to chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 1 et seq.] (other than section 103 thereof), shall apply to taxable years beginning after December 31, 1982.

“(2) insofar as they relate to section 103 of such Code, shall apply to obligations issued after December 31, 1982.

“(3) insofar as they relate to chapter 11 of such Code [26 U.S.C. 2001 et seq.], shall apply to estates of decedents dying after December 31, 1982.

“(4) insofar as they relate to chapter 12 of such Code [26 U.S.C. 2501 et seq.], shall apply to gifts made after December 31, 1982, and

“(5) insofar as they relate to taxes imposed by subtitle D of such Code [26 U.S.C. 4041 et seq.], shall take effect on January 1, 1983.”

#### SHORT TITLE

For short title of title II of Pub. L. 97-473 as the “Indian Tribal Governmental Tax Status Act of 1982”, see Short Title of 1983 Amendments note set out under section 1 of this title.

#### APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(b)(3) of Pub. L. 99-514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 164, 170, 2055, 2106, 2522, 4227, 4484, 6420, 6421, 6427, 7701 of this title; title 25 section 566.

### § 7872. Treatment of loans with below-market interest rates

#### (a) Treatment of gift loans and demand loans

##### (1) In general

For purposes of this title, in the case of any below-market loan to which this section applies and which is a gift loan or a demand loan, the foregone interest shall be treated as—

- (A) transferred from the lender to the borrower, and
- (B) retransferred by the borrower to the lender as interest.

##### (2) Time when transfers made

Except as otherwise provided in regulations prescribed by the Secretary, any foregone interest attributable to periods during any calendar year shall be treated as transferred (and retransferred) under paragraph (1) on the last day of such calendar year.

#### (b) Treatment of other below-market loans

##### (1) In general

For purposes of this title, in the case of any below-market loan to which this section applies and to which subsection (a)(1) does not apply, the lender shall be treated as having transferred on the date the loan was made (or, if later, on the first day on which this section applies to such loan), and the borrower shall be treated as having received on such date, cash in an amount equal to the excess of—

(A) the amount loaned, over

(B) the present value of all payments which are required to be made under the terms of the loan.

#### (2) Obligation treated as having original issue discount

For purposes of this title—

##### (A) In general

Any below-market loan to which paragraph (1) applies shall be treated as having original issue discount in an amount equal to the excess described in paragraph (1).

##### (B) Amount in addition to other original issue discount

Any original issue discount which a loan is treated as having by reason of subparagraph (A) shall be in addition to any other original issue discount on such loan (determined without regard to subparagraph (A)).

#### (c) Below-market loans to which section applies

##### (1) In general

Except as otherwise provided in this subsection and subsection (g), this section shall apply to—

##### (A) Gifts

Any below-market loan which is a gift loan.

##### (B) Compensation-related loans

Any below-market loan directly or indirectly between—

- (i) an employer and an employee, or
- (ii) an independent contractor and a person for whom such independent contractor provides services.

##### (C) Corporation-shareholder loans

Any below-market loan directly or indirectly between a corporation and any shareholder of such corporation.

##### (D) Tax avoidance loans

Any below-market loan 1 of the principal purposes of the interest arrangements of which is the avoidance of any Federal tax.

##### (E) Other below-market loans

To the extent provided in regulations, any below-market loan which is not described in subparagraph (A), (B), (C), or (F) if the interest arrangements of such loan have a significant effect on any Federal tax liability of the lender or the borrower.

##### (F) Loans to qualified continuing care facilities

Any loan to any qualified continuing care facility pursuant to a continuing care contract.

#### (2) \$10,000 de minimis exception for gift loans between individuals

##### (A) In general

In the case of any gift loan directly between individuals, this section shall not apply to any day on which the aggregate outstanding amount of loans between such individuals does not exceed \$10,000.

**(B) De minimis exception not to apply to loans attributable to acquisition of income-producing assets**

Subparagraph (A) shall not apply to any gift loan directly attributable to the purchase or carrying of income-producing assets.

**(C) Cross reference**

For limitation on amount treated as interest where loans do not exceed \$100,000, see subsection (d)(1).

**(3) \$10,000 de minimis exception for compensation-related and corporate-shareholder loans**

**(A) In general**

In the case of any loan described in subparagraph (B) or (C) of paragraph (1), this section shall not apply to any day on which the aggregate outstanding amount of loans between the borrower and lender does not exceed \$10,000.

**(B) Exception not to apply where 1 of principal purposes is tax avoidance**

Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

**(d) Special rules for gift loans**

**(1) Limitation on interest accrual for purposes of income taxes where loans do not exceed \$100,000**

**(A) In general**

For purposes of subtitle A, in the case of a gift loan directly between individuals, the amount treated as retransferred by the borrower to the lender as of the close of any year shall not exceed the borrower's net investment income for such year.

**(B) Limitation not to apply where 1 of principal purposes is tax avoidance**

Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

**(C) Special rule where more than 1 gift loan outstanding**

For purposes of subparagraph (A), in any case in which a borrower has outstanding more than 1 gift loan, the net investment income of such borrower shall be allocated among such loans in proportion to the respective amounts which would be treated as retransferred by the borrower without regard to this paragraph.

**(D) Limitation not to apply where aggregate amount of loans exceed \$100,000**

This paragraph shall not apply to any loan made by a lender to a borrower for any day on which the aggregate outstanding amount of loans between the borrower and lender exceeds \$100,000.

**(E) Net investment income**

For purposes of this paragraph—

**(i) In general**

The term “net investment income” has the meaning given such term by section 163(d)(4).

**(ii) De minimis rule**

If the net investment income of any borrower for any year does not exceed \$1,000, the net investment income of such borrower for such year shall be treated as zero.

**(iii) Additional amounts treated as interest**

In determining the net investment income of a person for any year, any amount which would be included in the gross income of such person for such year by reason of section 1272 if such section applied to all deferred payment obligations shall be treated as interest received by such person for such year.

**(iv) Deferred payment obligations**

The term “deferred payment obligation” includes any market discount bond, short-term obligation, United States savings bond, annuity, or similar obligation.

**(2) Special rule for gift tax**

In the case of any gift loan which is a term loan, subsection (b)(1) (and not subsection (a)) shall apply for purposes of chapter 12.

**(e) Definitions of below-market loan and foregone interest**

For purposes of this section—

**(1) Below-market loan**

The term “below-market loan” means any loan if—

(A) in the case of a demand loan, interest is payable on the loan at a rate less than the applicable Federal rate, or

(B) in the case of a term loan, the amount loaned exceeds the present value of all payments due under the loan.

**(2) Foregone interest**

The term “foregone interest” means, with respect to any period during which the loan is outstanding, the excess of—

(A) the amount of interest which would have been payable on the loan for the period if interest accrued on the loan at the applicable Federal rate and were payable annually on the day referred to in subsection (a)(2), over

(B) any interest payable on the loan properly allocable to such period.

**(f) Other definitions and special rules**

For purposes of this section—

**(1) Present value**

The present value of any payment shall be determined in the manner provided by regulations prescribed by the Secretary—

(A) as of the date of the loan, and

(B) by using a discount rate equal to the applicable Federal rate.

**(2) Applicable Federal rate**

**(A) Term loans**

In the case of any term loan, the applicable Federal rate shall be the applicable Federal rate in effect under section 1274(d) (as of the day on which the loan was made), compounded semiannually.

**(B) Demand loans**

In the case of a demand loan, the applicable Federal rate shall be the Federal short-term rate in effect under section 1274(d) for the period for which the amount of foregone interest is being determined, compounded semiannually.

**(3) Gift loan**

The term “gift loan” means any below-market loan where the foregoing of interest is in the nature of a gift.

**(4) Amount loaned**

The term “amount loaned” means the amount received by the borrower.

**(5) Demand loan**

The term “demand loan” means any loan which is payable in full at any time on the demand of the lender. Such term also includes (for purposes other than determining the applicable Federal rate under paragraph (2)) any loan if the benefits of the interest arrangements of such loan are not transferable and are conditioned on the future performance of substantial services by an individual. To the extent provided in regulations, such term also includes any loan with an indefinite maturity.

**(6) Term loan**

The term “term loan” means any loan which is not a demand loan.

**(7) Husband and wife treated as 1 person**

A husband and wife shall be treated as 1 person.

**(8) Loans to which section 483 or 1274 applies**

This section shall not apply to any loan to which section 483 or 1274 applies.

**(9) No withholding**

No amount shall be withheld under chapter 24 with respect to—

(A) any amount treated as transferred or retransferred under subsection (a), and

(B) any amount treated as received under subsection (b).

**(10) Special rule for term loans**

If this section applies to any term loan on any day, this section shall continue to apply to such loan notwithstanding paragraphs (2) and (3) of subsection (c). In the case of a gift loan, the preceding sentence shall only apply for purposes of chapter 12.

**(11) Time for determining rate applicable to employee relocation loans****(A) In general**

In the case of any term loan made by an employer to an employee the proceeds of which are used by the employee to purchase a principal residence (within the meaning of section 1034), the determination of the applicable Federal rate shall be made as of the date the written contract to purchase such residence was entered into.

**(B) Paragraph only to apply to cases to which section 217 applies**

Subparagraph (A) shall only apply to the purchase of a principal residence in connec-

tion with the commencement of work by an employee or a change in the principal place of work of an employee to which section 217 applies.

**(12) Special rule for certain employer security loans**

This section shall not apply to any loan between a corporation (or any member of the controlled group of corporations which includes such corporation) and an employee stock ownership plan described in section 4975(e)(7) to the extent that the interest rate on such loan is equal to the interest rate paid on a related securities acquisition loan (as described in section 133(b)) to such corporation.

**(g) Exception for certain loans to qualified continuing care facilities****(1) In general**

This section shall not apply for any calendar year to any below-market loan made by a lender to a qualified continuing care facility pursuant to a continuing care contract if the lender (or the lender’s spouse) attains age 65 before the close of such year.

**(2) \$90,000 limit**

Paragraph (1) shall apply only to the extent that the aggregate outstanding amount of any loan to which such paragraph applies (determined without regard to this paragraph), when added to the aggregate outstanding amount of all other previous loans between the lender (or the lender’s spouse) and any qualified continuing care facility to which paragraph (1) applies, does not exceed \$90,000.

**(3) Continuing care contract**

For purposes of this section, the term “continuing care contract” means a written contract between an individual and a qualified continuing care facility under which—

(A) the individual or individual’s spouse may use a qualified continuing care facility for their life or lives,

(B) the individual or individual’s spouse—

(i) will first—

(I) reside in a separate, independent living unit with additional facilities outside such unit for the providing of meals and other personal care, and

(II) not require long-term nursing care, and

(ii) then will be provided long-term and skilled nursing care as the health of such individual or individual’s spouse requires, and

(C) no additional substantial payment is required if such individual or individual’s spouse requires increased personal care services or long-term and skilled nursing care.

**(4) Qualified continuing care facility****(A) In general**

For purposes of this section, the term “qualified continuing care facility” means 1 or more facilities—

(i) which are designed to provide services under continuing care contracts, and

(ii) substantially all of the residents of which are covered by continuing care contracts.

**(B) Substantially all facilities must be owned or operated by borrower**

A facility shall not be treated as a qualified continuing care facility unless substantially all facilities which are used to provide services which are required to be provided under a continuing care contract are owned or operated by the borrower.

**(C) Nursing homes excluded**

The term “qualified continuing care facility” shall not include any facility which is of a type which is traditionally considered a nursing home.

**(5) Adjustment of limit for inflation****(A) In general**

In the case of any loan made during any calendar year after 1986 to which paragraph (1) applies, the dollar amount in paragraph (2) shall be increased by the inflation adjustment for such calendar year. Any increase under the preceding sentence shall be rounded to the nearest multiple of \$100 (or, if such increase is a multiple of \$50, such increase shall be increased to the nearest multiple of \$100).

**(B) Inflation adjustment**

For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

- (i) the CPI for the preceding calendar year exceeds
- (ii) the CPI for calendar year 1985.

For purposes of the preceding sentence, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year.

**(h) Regulations****(1) In general**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(A) regulations providing that where, by reason of varying rates of interest, conditional interest payments, waivers of interest, disposition of the lender’s or borrower’s interest in the loan, or other circumstances, the provisions of this section do not carry out the purposes of this section, adjustments to the provisions of this section will be made to the extent necessary to carry out the purposes of this section,

(B) regulations for the purpose of assuring that the positions of the borrower and lender are consistent as to the application (or non-application) of this section, and

(C) regulations exempting from the application of this section any class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower.

**(2) Estate tax coordination**

Under regulations prescribed by the Secretary, any loan which is made with donative intent and which is a term loan shall be taken

into account for purposes of chapter 11 in a manner consistent with the provisions of subsection (b).

(Added Pub. L. 98-369, div. A, title I, §172(a), July 18, 1984, 98 Stat. 699; amended Pub. L. 99-121, title II, §§201, 202, Oct. 11, 1985, 99 Stat. 511-513; Pub. L. 99-514, title V, §511(d)(1), title XVIII, §§1812(b)(2)-(4), 1854(c)(2)(B), Oct. 22, 1986, 100 Stat. 2248, 2834, 2879; Pub. L. 100-647, title I, §§1005(c)(15), 1018(u)(48), Nov. 10, 1988, 102 Stat. 3393, 3593.)

## AMENDMENTS

1988—Subsec. (d)(1)(E)(i). Pub. L. 100-647, §1005(c)(15), directed substitution of “section 163(d)(4)” for “section 163(d)(3)”, which substitution had been previously made by Pub. L. 99-514, §511(d)(1).

Subsec. (f)(11), (12). Pub. L. 100-647, §1018(u)(48), redesignated former par. (11), Pub. L. 99-514, relating to special rule for certain employer security loans, as (12).

1986—Subsec. (d)(1)(E)(i). Pub. L. 99-514, §511(d)(1), substituted “section 163(d)(4)” for “section 163(d)(3)”.

Subsec. (f)(2)(B). Pub. L. 99-514, §1812(b)(4), inserted “, compounded semiannually” before the period at end.

Subsec. (f)(5). Pub. L. 99-514, §1812(b)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The term ‘demand loan’ means any loan which is payable in full at any time on the demand of the lender. Such term also includes (for purposes other than determining the applicable Federal rate under paragraph (2)) any loan which is not transferable and the benefits of the interest arrangements of which is conditioned on the future performance of substantial services by an individual.”

Subsec. (f)(9). Pub. L. 99-514, §1812(b)(2), amended par. (9) generally, inserting the subpar. (A) designation and adding subpar. (B).

Subsec. (f)(11). Pub. L. 99-514, §1854(c)(2)(B), added par. (11) relating to special rule for certain employer security loans.

1985—Subsec. (c)(1). Pub. L. 99-121, §201(c)(1), inserted “and subsection (g)” after “this subsection” in provisions preceding subpar. (A).

Subsec. (c)(1)(E). Pub. L. 99-121, §201(c)(2), substituted “(C), or (F)” for “or (C)”.

Subsec. (c)(1)(F). Pub. L. 99-121, §201(b), added subpar. (f).

Subsec. (f)(11). Pub. L. 99-121, §202, added par. (11) relating to time for determining rate applicable to employee relocation loans.

Subsecs. (g), (h). Pub. L. 99-121, §201(a), added subsec. (g) and redesignated former subsec. (g) as (h).

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(1) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99-514, set out as a note under section 163 of this title.

Amendment by sections 1812(b)(2)-(4) and 1854(c)(2)(B) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

## EFFECTIVE DATE OF 1985 AMENDMENT

Section 204(a), (b) of Pub. L. 99-121, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) SECTION 201.—

“(1) IN GENERAL.—The amendments made by section 201 [amending this section] shall apply with respect to loans made after the date of enactment of this Act [Oct. 11, 1985].

“(2) SECTION 7872 NOT TO APPLY TO CERTAIN LOANS.—Section 7872 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to loans made on or before the date of the enactment of this Act [Oct. 11, 1985] to any qualified continuing care facility pursuant to a continuing care contract. For purposes of this paragraph, the terms ‘qualified continuing care facility’ and ‘continuing care contract’ have the meanings given such terms by section 7872(g) of such Code (as added by section 201).

“(b) SECTION 202.—The amendment made by section 202 [amending this section] shall apply to contracts entered into after June 30, 1985, in taxable years ending after such date.”

#### EFFECTIVE DATE

Section 172(c) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section] shall apply to—

“(A) term loans made after June 6, 1984, and

“(B) demand loans outstanding after June 6, 1984.

“(2) EXCEPTION FOR DEMAND LOANS OUTSTANDING ON JUNE 6, 1984, AND REPAYED WITHIN 60 DAYS AFTER DATE OF ENACTMENT.—The amendments made by this section shall not apply to any demand loan which—

“(A) was outstanding on June 6, 1984, and

“(B) was repaid before the date 60 days after the date of the enactment of this Act [July 18, 1984].

“(3) EXCEPTION FOR CERTAIN EXISTING LOANS TO CONTINUING CARE FACILITIES.—Nothing in this subsection shall be construed to apply the amendments made by this section to any loan made before June 6, 1984, to a continuing care facility by a resident of such facility which is contingent on continued residence at such facility.

“(4) APPLICABLE FEDERAL RATE FOR PERIODS BEFORE JANUARY 1, 1985.—For periods before January 1, 1985, the applicable Federal rate under paragraph (2) of section 7872(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section, shall be 10 percent, compounded semiannually.

“(5) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this subsection, any loan renegotiated, extended, or revised after June 6, 1984, shall be treated as a loan made after such date.

“(6) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this subsection, the terms ‘demand loan’ and ‘term loan’ have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1986, as added by this section, but the second sentence of such paragraph (5) shall not apply.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

#### CERTAIN ISRAEL OR POLISH BONDS NOT SUBJECT TO RULES RELATING TO BELOW-MARKET LOANS

Section 1812(b)(5) of Pub. L. 99-514, as amended by Pub. L. 101-179, title III, § 307(a), Nov. 28, 1989, 103 Stat. 1314, provided that: “Section 7872 of the Internal Revenue Code of 1954 [now 1986] (relating to treatment of loans with below-market interest rates) shall not apply to any obligation issued by Israel or Poland if—

“(A) the obligation is payable in United States dollars, and

“(B) the obligation bears interest at an annual rate of not less than 4 percent.”

[Section 307(b) of Pub. L. 101-179 provided that: “The amendments made by this section [amending section 1812(b)(5) of Pub. L. 99-514, set out above] shall apply to obligations issued after the date of the enactment of this Act [Nov. 28, 1989].”]

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 142, 4941 of this title.

### § 7873. Income derived by Indians from exercise of fishing rights

#### (a) In general

##### (1) Income and self-employment taxes

No tax shall be imposed by subtitle A on income derived—

(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

(B) by a qualified Indian entity,

from a fishing rights-related activity of such tribe.

##### (2) Employment taxes

No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

#### (b) Definitions

For purposes of this section—

##### (1) Fishing rights-related activity

The term “fishing rights-related activity” means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

##### (2) Recognized fishing rights

The term “recognized fishing rights” means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

##### (3) Qualified Indian entity

###### (A) In general

The term “qualified Indian entity” means, with respect to an Indian tribe, any entity if—

(i) such entity is engaged in a fishing rights-related activity of such tribe,

(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

(iii) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

**(B) Qualified indian tribe**

For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

**(c) Special rules**

**(1) Distributions from qualified Indian entity**

For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

**(2) De minimis unrelated amounts may be excluded**

If, but for this paragraph, all but a de minimis amount—

(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a),

then the entire amount shall be entitled to the benefits of such paragraph.

(Added Pub. L. 100-647, title III, §3041(a), Nov. 10, 1988, 102 Stat. 3640.)

**EFFECTIVE DATE**

Section 3044 of subtitle E (§§3041-3044) of title III of Pub. L. 100-647 provided that:

“(a) **EFFECTIVE DATE.**—The amendments made by this subtitle [enacting this section and amending sections 1402 and 3121 of this title, section 71 of Title 25, Indians, and sections 409 and 411 of Title 42, The Public Health and Welfare] shall apply to all periods beginning before, on, or after the date of the enactment of this Act [Nov. 10, 1988].

“(b) **NO INFERENCE CREATED.**—Nothing in the amendments made by this subtitle shall create any inference as to the existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of March 17, 1988, by any treaty, law, or Executive Order.”

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1402, 3121 of this title; title 25 section 71; title 42 sections 409, 411.

**Subtitle G—The Joint Committee on Taxation**

Chapter	Sec. <sup>1</sup>
91. Organization and membership of the Joint Committee .....	8001

<sup>1</sup> Section numbers editorially supplied.

92. Powers and duties of the Joint Committee .....	8021
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**AMENDMENTS**

1976—Pub. L. 94-455, title XIX, §1907(b)(1), Oct. 4, 1976, 90 Stat. 1836, struck out “Internal Revenue” in heading of subtitle G.

**CHAPTER 91—ORGANIZATION AND MEMBERSHIP OF THE JOINT COMMITTEE**

Sec.	
8001.	Authorization.
8002.	Membership.
8003.	Election of chairman and vice chairman.
8004.	Appointment and compensation of staff.
8005.	Payment of expenses.

**§ 8001. Authorization**

There shall be a joint congressional committee known as the Joint Committee on Taxation (hereinafter in this subtitle referred to as the “Joint Committee”).

(Aug. 16, 1954, ch. 736, 68A Stat. 925; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1907(a)(1), 90 Stat. 1835.)

**AMENDMENTS**

1976—Pub. L. 94-455 struck out “Internal Revenue” after “Committee on”.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Section 1907(c) of Pub. L. 94-455 provided that: “The amendments made by this section [amending this section and sections 8004, 8021, and 8023 of this title and enacting provisions set out below] shall take effect on the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976].”

**REFERENCES TO JOINT COMMITTEE ON INTERNAL REVENUE TAXATION**

Pub. L. 94-455, title XIX, §1907(a)(5), Oct. 4, 1976, 90 Stat. 1836, provided that: “All references in any other statute, or in any rule, regulation, or order, to the Joint Committee on Internal Revenue Taxation shall be considered to be made to the Joint Committee on Taxation.”

**§ 8002. Membership**

**(a) Number and selection**

The Joint Committee shall be composed of 10 members as follows:

**(1) From Committee on Finance**

Five members who are members of the Committee on Finance of the Senate, three from the majority and two from the minority party, to be chosen by such Committee; and

**(2) From Committee on Ways and Means**

Five members who are members of the Committee on Ways and Means of the House of Representatives, three from the majority and two from the minority party, to be chosen by such Committee.

**(b) Tenure of office**

**(1) General limitation**

No person shall continue to serve as a member of the Joint Committee after he has ceased to be a member of the Committee by which he was chosen, except that—

**(2) Exception**

The members chosen by the Committee on Ways and Means who have been reelected to