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105TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
105–599

INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998

CONFERENCE REPORT

TO ACCOMPANY

H.R. 2676

JUNE 24, 1998.—Ordered to be printed

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105TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 105–599

INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998

JUNE 24, 1998.—Ordered to be printed

Mr. ARCHER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2676]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2676) to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; WAIVER OF ESTIMATED TAX PENALTIES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Internal Revenue Service Restructuring and Reform Act of 1998".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an installment required to be paid on or before the 30th day after the date of the enactment of this Act to the extent such underpayment was created or increased by any provision of this Act.

(d) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; waiver of estimated tax penalties; table of contents.

TITLE I—REORGANIZATION OF STRUCTURE AND MANAGEMENT OF THE INTERNAL REVENUE SERVICE

Subtitle A—Reorganization of the Internal Revenue Service

Sec. 1001. Reorganization of the internal revenue service.
Sec. 1002. IRS mission to focus on taxpayers' needs.

Subtitle B—Executive Branch Governance and Senior Management

Sec. 1101. Internal Revenue Service Oversight Board.
Sec. 1102. Commissioner of Internal Revenue; other officials.
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Subtitle C—Personnel Flexibilities

Sec. 1201. Improvements in personnel flexibilities.
Sec. 1202. Voluntary separation incentive payments.
Sec. 1203. Termination of employment for misconduct.
Sec. 1204. Basis for evaluation of Internal Revenue Service employees.
Sec. 1205. Employee training program.

TITLE II—ELECTRONIC FILING

Sec. 2001. Electronic filing of tax and information returns.
Sec. 2002. Due date for certain information returns.
Sec. 2003. Paperless electronic filing.
Sec. 2004. Return-free tax system.
Sec. 2005. Access to account information.

TITLE III—TAXPAYER PROTECTION AND RIGHTS

Sec. 3000. Short title.

Subtitle A—Burden of Proof

Sec. 3001. Burden of proof.

Subtitle B—Proceedings by Taxpayers

Sec. 3101. Expansion of authority to award costs and certain fees.
Sec. 3102. Civil damages for collection actions.
Sec. 3103. Increase in size of cases permitted on small case calendar.
Sec. 3104. Actions for refund with respect to certain estates which have elected the installment method of payment.
Sec. 3105. Administrative appeal of adverse IRS determination of tax-exempt status of bond issue.
Sec. 3106. Civil action for release of erroneous lien.

Subtitle C—Relief for Innocent Spouses and for Taxpayers Unable To Manage Their Financial Affairs Due to Disabilities

Sec. 3201. Relief from joint and several liability on joint return.
Sec. 3202. Suspension of statute of limitations on filing refund claims during periods of disability.

Subtitle D—Provisions Relating to Interest and Penalties

Sec. 3301. Elimination of interest rate differential on overlapping periods of interest on tax overpayments and underpayments.
Sec. 3302. Increase in overpayment rate payable to taxpayers other than corporations.
Sec. 3303. Mitigation of penalty on individual's failure to pay for months during period of installment agreement.
Sec. 3304. Mitigation of failure to deposit penalty.
Sec. 3305. Suspension of interest and certain penalties where Secretary fails to contact individual taxpayer.
Sec. 3306. Procedural requirements for imposition of penalties and additions to tax.
Sec. 3307. Personal delivery of notice of penalty under section 6672.

Sec. 3308. Notice of interest charges.
Sec. 3309. Abatement of interest on underpayments by taxpayers in Presidentially declared disaster areas.

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Sec. 3414. Threat of audit prohibited to coerce tip reporting alternative commitment agreements.
Sec. 3415. Taxpayers allowed motion to quash all third-party summonses.
Sec. 3416. Service of summonses to third-party recordkeepers permitted by mail.
Sec. 3417. Notice of IRS contact of third parties.

PART III—COLLECTION ACTIVITIES

SUBPART A—APPROVAL PROCESS

Sec. 3421. Approval process for liens, levies, and seizures.

SUBPART B—LIENS AND LEVIES

Sec. 3431. Modifications to certain levy exemption amounts.
Sec. 3432. Release of levy upon agreement that amount is uncollectible.
Sec. 3433. Levy prohibited during pendency of refund proceedings.
Sec. 3434. Approval required for jeopardy and termination assessments and jeopardy levies.
Sec. 3435. Increase in amount of certain property on which lien not valid.
Sec. 3436. Waiver of early withdrawal tax for IRS levies on employer-sponsored retirement plans or IRAs.

SUBPART C—SEIZURES

Sec. 3441. Prohibition of sales of seized property at less than minimum bid.
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Sec. 3443. Uniform asset disposal mechanism.
Sec. 3444. Codification of IRS administrative procedures for seizure of taxpayer's property.
Sec. 3445. Procedures for seizure of residences and businesses.

PART IV—PROVISIONS RELATING TO EXAMINATION AND COLLECTION ACTIVITIES

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Sec. 3462. Offers-in-compromise.
Sec. 3463. Notice of deficiency to specify deadlines for filing Tax Court petition.
Sec. 3464. Refund or credit of overpayments before final determination.
Sec. 3465. IRS procedures relating to appeals of examinations and collections.
Sec. 3466. Application of certain fair debt collection procedures.
Sec. 3467. Guaranteed availability of installment agreements.
Sec. 3468. Prohibition on requests to taxpayers to give up rights to bring actions.

Subtitle F—Disclosures to Taxpayers

Sec. 3501. Explanation of joint and several liability.
Sec. 3502. Explanation of taxpayers' rights in interviews with the Internal Revenue Service.
Sec. 3503. Disclosure of criteria for examination selection.
Sec. 3504. Explanations of appeals and collection process.
Sec. 3505. Explanation of reason for refund disallowance.
Sec. 3506. Statements regarding installment agreements.
Sec. 3507. Notification of change in tax matters partner.
Sec. 3508. Disclosure to taxpayers.
Sec. 3509. Disclosure of Chief Counsel advice.

Subtitle G—Low Income Taxpayer Clinics

Sec. 3601. Low income taxpayer clinics.

Subtitle H—Other Matters

Sec. 3701. Cataloging complaints.
Sec. 3702. Archive of records of Internal Revenue Service.
Sec. 3703. Payment of taxes.
Sec. 3704. Clarification of authority of Secretary relating to the making of elections.
Sec. 3705. IRS employee contacts.
Sec. 3706. Use of pseudonyms by IRS employees.
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Subtitle B—Century Date Change

Sec. 4011. Century date change.

Subtitle C—Tax Law Complexity

Sec. 4021. Role of the Internal Revenue Service.
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Sec. 5002. Clarification of exclusion of meals for certain employees.
Sec. 5003. Clarification of designation of normal trade relations.

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Sec. 6002. Definitions.
Sec. 6003. Amendments related to title I of 1997 Act.
Sec. 6004. Amendments related to title II of 1997 Act.
Sec. 6005. Amendments related to title III of 1997 Act.
Sec. 6006. Amendment related to title IV of 1997 Act.
Sec. 6007. Amendments related to title V of 1997 Act.
Sec. 6008. Amendments related to title VII of 1997 Act.
Sec. 6009. Amendments related to title IX of 1997 Act.
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Sec. 6011. Amendments related to title XI of 1997 Act.
Sec. 6012. Amendments related to title XII of 1997 Act.
Sec. 6013. Amendments related to title XIII of 1997 Act.
Sec. 6014. Amendments related to title XIV of 1997 Act.
Sec. 6015. Amendments related to title XV of 1997 Act.
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Sec. 6017. Amendment related to Transportation Equity Act for the 21st Century.
Sec. 6018. Amendments related to Small Business Job Protection Act of 1996.
Sec. 6019. Amendments related to Taxpayer Bill of Rights 2.
Sec. 6020. Amendment related to Omnibus Budget Reconciliation Act of 1993.
Sec. 6021. Amendment related to Revenue Reconciliation Act of 1990.
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Sec. 6024. Effective date.

TITLE VII—REVENUE PROVISIONS

Sec. 7001. Clarification of deduction for deferred compensation.
Sec. 7002. Termination of exception for certain real estate investment trusts from the treatment of stapled entities.
Sec. 7003. Certain customer receivables ineligible for mark-to-market treatment.
Sec. 7004. Modification of AGI limit for conversions to Roth IRAs.

TITLE VIII—IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO

Sec. 8001. Identification of limited tax benefits subject to line item veto.

TITLE IX—TECHNICAL CORRECTIONS TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

Sec. 9001. Short title.
Sec. 9002. Authorization and program subtitle.
Sec. 9003. Restorations to general provisions subtitle.
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Sec. 9007. Highway finance.
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Sec. 9015. Technical corrections regarding title IX.
Sec. 9016. Effective date.

TITLE I—REORGANIZATION OF STRUCTURE AND MANAGEMENT OF THE INTERNAL REVENUE SERVICE

Subtitle A—Reorganization of the Internal Revenue Service

SEC. 1001. REORGANIZATION OF THE INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—The Commissioner of Internal Revenue shall develop and implement a plan to reorganize the Internal Revenue Service. The plan shall—

(1) supersede any organization or reorganization of the Internal Revenue Service based on any statute or reorganization plan applicable on the effective date of this section;

(2) eliminate or substantially modify the existing organization of the Internal Revenue Service which is based on a national, regional, and district structure;

(3) establish organizational units serving particular groups of taxpayers with similar needs; and

(4) ensure an independent appeals function within the Internal Revenue Service, including the prohibition in the plan of ex parte communications between appeals officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the appeals officers.

(b) SAVINGS PROVISIONS.—

(1) PRESERVATION OF SPECIFIC TAX RIGHTS AND REMEDIES.—Nothing in the plan developed and implemented under subsection (a) 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.

(2) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(A) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of any function transferred or affected by the reorganization of the Internal Revenue Service or any other administrative unit of the Department of the Treasury under this section, and

(B) which are in effect at the time this section takes effect, or were final before the effective date of this section and are to become effective on or after the effective date of this section,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of the Treasury, the Commissioner of Internal Revenue, or other authorized official, a court of competent jurisdiction, or by operation of law.

(3) PROCEEDINGS NOT AFFECTED.—The provisions of this section shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service) at the time this section takes effect, with respect to functions transferred or affected by the reorganization under this section but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could

have been discontinued or modified if this section had not been enacted.

(4) SUITS NOT AFFECTED.—The provisions of this section shall not affect suits commenced before the effective date of this section, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(5) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service), or by or against any individual in the official capacity of such individual as an officer of the Department of the Treasury, shall abate by reason of the enactment of this section.

(6) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Department of the Treasury (or any administrative unit of the Department, including the Internal Revenue Service) relating to a function transferred or affected by the reorganization under this section may be continued by the Department of the Treasury through any appropriate administrative unit of the Department, including the Internal Revenue Service with the same effect as if this section had not been enacted.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

SEC. 1002. IRS MISSION TO FOCUS ON TAXPAYERS' NEEDS.

The Internal Revenue Service shall review and restate its mission to place a greater emphasis on serving the public and meeting taxpayers' needs.

Subtitle B—Executive Branch Governance and Senior Management

SEC. 1101. INTERNAL REVENUE SERVICE OVERSIGHT BOARD.

(a) IN GENERAL.—Section 7802 (relating to the Commissioner of Internal Revenue) is amended to read as follows:

"SEC. 7802. INTERNAL REVENUE SERVICE OVERSIGHT BOARD.

"(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Internal Revenue Service Oversight Board (hereafter in this subchapter referred to as the 'Oversight Board').

"(b) MEMBERSHIP.—

"(1) COMPOSITION.—The Oversight Board shall be composed of 9 members, as follows:

"(A) 6 members shall be individuals who are not otherwise Federal officers or employees and who are appointed by the President, by and with the advice and consent of the Senate.

"(B) 1 member shall be the Secretary of the Treasury or, if the Secretary so designates, the Deputy Secretary of the Treasury.

"(C) 1 member shall be the Commissioner of Internal Revenue.

"(D) 1 member shall be an individual who is a full-time Federal employee or a representative of employees and who is appointed by the President, by and with the advice and consent of the Senate.

"(2) QUALIFICATIONS AND TERMS.—

"(A) QUALIFICATIONS.—Members of the Oversight Board described in paragraph (1)(A) shall be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in 1 or more of the following areas:

"(i) Management of large service organizations.

"(ii) Customer service.

"(iii) Federal tax laws, including tax administration and compliance.

"(iv) Information technology.

"(v) Organization development.

"(vi) The needs and concerns of taxpayers.

"(vii) The needs and concerns of small businesses.

In the aggregate, the members of the Oversight Board described in paragraph (1)(A) should collectively bring to bear expertise in all of the areas described in the preceding sentence.

"(B) TERMS.—Each member who is described in subparagraph (A) or (D) of paragraph (1) shall be appointed for a term of 5 years, except that of the members first appointed under paragraph (1)(A)—

"(i) 2 members shall be appointed for a term of 3 years,

"(ii) 2 members shall be appointed for a term of 4 years, and

"(iii) 2 members shall be appointed for a term of 5 years.

"(C) REAPPOINTMENT.—An individual who is described in subparagraph (A) or (D) of paragraph (1) may be appointed to no more than two 5-year terms on the Oversight Board.

"(D) VACANCY.—Any vacancy on the Oversight Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

"(3) ETHICAL CONSIDERATIONS.—

"(A) FINANCIAL DISCLOSURE.—During the entire period that an individual appointed under subparagraph (A) or (D) of paragraph (1) is a member of the Oversight Board, such individual shall be treated as serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act, except that section 101(d) of such Act shall apply without regard to the number of days of service in the position.

"(B) RESTRICTIONS ON POST-EMPLOYMENT.—For purposes of section 207(c) of title 18, United States Code, an individual appointed under subparagraph (A) or (D) of paragraph (1) shall be treated as an employee referred to in section 207(c)(2)(A)(i) of such title during the entire period the individual is a member of the Board, except that subsections (c)(2)(B) and (f) of section 207 of such title shall not apply.

"(C) MEMBERS WHO ARE SPECIAL GOVERNMENT EMPLOYEES.—If an individual appointed under subparagraph (A) or (D) of paragraph (1) is a special Government employee, the following additional rules apply for purposes of chapter 11 of title 18, United States Code:

"(i) RESTRICTION ON REPRESENTATION.—In addition to any restriction under section 205(c) of title 18, United States Code, except as provided in subsections (d) through (i) of section 205 of such title, such individual (except in the proper discharge of official duties) shall not, with or without compensation, represent anyone to or before any officer or employee of—

"(I) the Oversight Board or the Internal Revenue Service on any matter,

"(II) the Department of the Treasury on any matter involving the internal revenue laws or involving the management or operations of the Internal Revenue Service, or

"(III) the Department of Justice with respect to litigation involving a matter described in subclause (I) or (II).

"(ii) COMPENSATION FOR SERVICES PROVIDED BY ANOTHER.—For purposes of section 203 of such title—

"(I) such individual shall not be subject to the restrictions of subsection (a)(1) thereof for sharing in compensation earned by another for representations on matters covered by such section, and

"(II) a person shall not be subject to the restrictions of subsection (a)(2) thereof for sharing such compensation with such individual.

"(D) WAIVER.—The President may, only at the time the President nominates the member of the Oversight Board described in paragraph (1)(D), waive for the term of the member any appropriate provision of chapter 11 of title 18, United States Code, to the extent such waiver is necessary to allow such member to participate in the decisions of the Board while continuing to serve as a full-time Federal employee or a representative of employees. Any such waiver shall not be effective unless a written intent of waiver to exempt such member (and actual waiver language) is submitted to the Senate with the nomination of such member.

"(4) QUORUM.—5 members of the Oversight Board shall constitute a quorum. A majority of members present and voting shall be required for the Oversight Board to take action.

"(5) REMOVAL.—

"(A) IN GENERAL.—Any member of the Oversight Board appointed under subparagraph (A) or (D) of paragraph (1) may be removed at the will of the President.

"(B) SECRETARY AND COMMISSIONER.—An individual described in subparagraph (B) or (C) of paragraph (1) shall be removed upon termination of service in the office described in such subparagraph.

"(6) CLAIMS.—

"(A) IN GENERAL.—Members of the Oversight Board who are described in subparagraph (A) or (D) of paragraph (1) shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member.

"(B) EFFECT ON OTHER LAW.—This paragraph shall not be construed—

"(i) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions,

"(ii) to affect any other right or remedy against the United States under applicable law, or

"(iii) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

"(c) GENERAL RESPONSIBILITIES.—

"(1) OVERSIGHT.—

"(A) IN GENERAL.—The Oversight Board shall oversee the Internal Revenue Service in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party.

"(B) MISSION OF IRS.—As part of its oversight functions described in subparagraph (A), the Oversight Board shall ensure that the organization and operation of the Internal Revenue Service allows it to carry out its mission.

"(C) CONFIDENTIALITY.—The Oversight Board shall ensure that appropriate confidentiality is maintained in the exercise of its duties.

"(2) EXCEPTIONS.—The Oversight Board shall have no responsibilities or authority with respect to—

"(A) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions,

"(B) specific law enforcement activities of the Internal Revenue Service, including specific compliance activities such as examinations, collection activities, and criminal investigations,

"(C) specific procurement activities of the Internal Revenue Service, or

"(D) except as provided in subsection (d)(3), specific personnel actions.

"(d) SPECIFIC RESPONSIBILITIES.—The Oversight Board shall have the following specific responsibilities:

"(1) STRATEGIC PLANS.—To review and approve strategic plans of the Internal Revenue Service, including the establishment of—

"(A) mission and objectives, and standards of performance relative to either, and

"(B) annual and long-range strategic plans.

"(2) OPERATIONAL PLANS.—To review the operational functions of the Internal Revenue Service, including—

"(A) plans for modernization of the tax system,

"(B) plans for outsourcing or managed competition, and

"(C) plans for training and education.

"(3) MANAGEMENT.—To—

"(A) recommend to the President candidates for appointment as the Commissioner of Internal Revenue and recommend to the President the removal of the Commissioner,

"(B) review the Commissioner's selection, evaluation, and compensation of Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service, and

"(C) review and approve the Commissioner's plans for any major reorganization of the Internal Revenue Service.

"(4) BUDGET.—To—

"(A) review and approve the budget request of the Internal Revenue Service prepared by the Commissioner,

"(B) submit such budget request to the Secretary of the Treasury, and

"(C) ensure that the budget request supports the annual and long-range strategic plans.

"(5) TAXPAYER PROTECTION.—To ensure the proper treatment of taxpayers by the employees of the Internal Revenue Service.

The Secretary shall submit the budget request referred to in paragraph (4)(B) for any fiscal year to the President who shall submit such request, without revision, to Congress together with the President's annual budget request for the Internal Revenue Service for such fiscal year.

"(e) BOARD PERSONNEL MATTERS.—

"(1) COMPENSATION OF MEMBERS.—

"(A) IN GENERAL.—Each member of the Oversight Board who—

"(i) is described in subsection (b)(1)(A), or

"(ii) is described in subsection (b)(1)(D) and is not otherwise a Federal officer or employee,

shall be compensated at a rate of $30,000 per year. All other members shall serve without compensation for such service.

"(B) CHAIRPERSON.—In lieu of the amount specified in subparagraph (A), the Chairperson of the Oversight Board shall be compensated at a rate of $50,000 per year.

"(2) TRAVEL EXPENSES.—

"(A) IN GENERAL.—The members of the Oversight Board shall be allowed travel expenses, including per diem

in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Oversight Board and, with the advance approval of the Chairperson of the Oversight Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Oversight Board.

"(B) REPORT.—The Oversight Board shall include in its annual report under subsection (f)(3)(A) information with respect to the travel expenses allowed for members of the Oversight Board under this paragraph.

"(3) STAFF.—

"(A) IN GENERAL.—The Chairperson of the Oversight Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

"(B) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Chairperson of the Oversight Board, a Federal agency shall detail a Federal Government employee to the Oversight Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

"(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Oversight Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(f) ADMINISTRATIVE MATTERS.—

"(1) CHAIR.—

"(A) TERM.—The members of the Oversight Board shall elect for a 2-year term a chairperson from among the members appointed under subsection (b)(1)(A).

"(B) POWERS.—Except as otherwise provided by a majority vote of the Oversight Board, the powers of the Chairperson shall include—

"(i) establishing committees,

"(ii) setting meeting places and times,

"(iii) establishing meeting agendas, and

"(iv) developing rules for the conduct of business.

"(2) MEETINGS.—The Oversight Board shall meet at least quarterly and at such other times as the Chairperson determines appropriate.

"(3) REPORTS.—

"(A) ANNUAL.—The Oversight Board shall each year report with respect to the conduct of its responsibilities under this title to the President, the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

"(B) ADDITIONAL REPORT.—Upon a determination by the Oversight Board under subsection (c)(1)(B) that the organization and operation of the Internal Revenue Service are not allowing it to carry out its mission, the Oversight Board shall report such determination to the Committee on

Ways and Means of the House of Representatives and the Committee on Finance of the Senate.".

(b) RESTRICTION ON DISCLOSURE OF RETURN INFORMATION TO OVERSIGHT BOARD MEMBERS.—Section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new paragraph:

"(5) INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), and except as provided in subparagraph (B), no return or return information may be disclosed to any member of the Oversight Board described in subparagraph (A) or (D) of section 7802(b)(1) or to any employee or detailee of such Board by reason of their service with the Board. Any request for information not permitted to be disclosed under the preceding sentence, and any contact relating to a specific taxpayer, made by any such individual to an officer or employee of the Internal Revenue Service shall be reported by such officer or employee to the Secretary, the Treasury Inspector General for Tax Administration, and the Joint Committee on Taxation.

"(B) EXCEPTION FOR REPORTS TO THE BOARD.—If—

"(i) the Commissioner or the Treasury Inspector General for Tax Administration prepares any report or other matter for the Oversight Board in order to assist the Board in carrying out its duties, and

"(ii) the Commissioner or such Inspector General determines it is necessary to include any return or return information in such report or other matter to enable the Board to carry out such duties,

such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out such duties.".

(c) CONFORMING AMENDMENTS.—

(1) Section 4946(c) (relating to definitions and special rules for chapter 42) is amended by striking "or" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", or", and by adding at the end the following new paragraph:

"(7) a member of the Internal Revenue Service Oversight Board.".

(2) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7802 and inserting the following new item:

"Sec. 7802. Internal Revenue Service Oversight Board.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) INITIAL NOMINATIONS TO INTERNAL REVENUE SERVICE OVERSIGHT BOARD.—The President shall submit the initial nominations under section 7802 of the Internal Revenue Code

of 1986, as added by this section, to the Senate not later than 6 months after the date of the enactment of this Act.

(3) EFFECT ON ACTIONS PRIOR TO APPOINTMENT OF OVERSIGHT BOARD.—Nothing in this section shall be construed to invalidate the actions and authority of the Internal Revenue Service prior to the appointment of the members of the Internal Revenue Service Oversight Board.

SEC. 1102. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.

(a) IN GENERAL.—Section 7803 (relating to other personnel) is amended to read as follows:

"SEC. 7803. COMMISSIONER OF INTERNAL REVENUE; OTHER OFFICIALS.

"(a) COMMISSIONER OF INTERNAL REVENUE.—

"(1) APPOINTMENT.—

"(A) IN GENERAL.—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, to a 5-year term. Such appointment shall be made from individuals who, among other qualifications, have a demonstrated ability in management.

"(B) VACANCY.—Any individual appointed to fill a vacancy in the position of Commissioner occurring before the expiration of the term for which such individual's predecessor was appointed shall be appointed only for the remainder of that term.

"(C) REMOVAL.—The Commissioner may be removed at the will of the President.

"(D) REAPPOINTMENT.—The Commissioner may be appointed to more than one 5-year term.

"(2) DUTIES.—The Commissioner shall have such duties and powers as the Secretary may prescribe, including the power to—

"(A) administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party, and

"(B) recommend to the President a candidate for appointment as Chief Counsel for the Internal Revenue Service when a vacancy occurs, and recommend to the President the removal of such Chief Counsel.

If the Secretary determines not to delegate a power specified in subparagraph (A) or (B), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

"(3) CONSULTATION WITH BOARD.—The Commissioner shall consult with the Oversight Board on all matters set forth in paragraphs (2) and (3) (other than paragraph (3)(A)) of section 7802(d).

"(b) CHIEF COUNSEL FOR THE INTERNAL REVENUE SERVICE.—

"(1) APPOINTMENT.—There shall be in the Department of the Treasury a Chief Counsel for the Internal Revenue Service who shall be appointed by the President, by and with the consent of the Senate.

"(2) DUTIES.—The Chief Counsel shall be the chief law officer for the Internal Revenue Service and shall perform such duties as may be prescribed by the Secretary, including the duty—

"(A) to be legal advisor to the Commissioner and the Commissioner's officers and employees,

"(B) to furnish legal opinions for the preparation and review of rulings and memoranda of technical advice,

"(C) to prepare, review, and assist in the preparation of proposed legislation, treaties, regulations, and Executive orders relating to laws which affect the Internal Revenue Service,

"(D) to represent the Commissioner in cases before the Tax Court, and

"(E) to determine which civil actions should be litigated under the laws relating to the Internal Revenue Service and prepare recommendations for the Department of Justice regarding the commencement of such actions.

If the Secretary determines not to delegate a power specified in subparagraph (A), (B), (C), (D), or (E), such determination may not take effect until 30 days after the Secretary notifies the Committees on Ways and Means, Government Reform and Oversight, and Appropriations of the House of Representatives and the Committees on Finance, Governmental Affairs, and Appropriations of the Senate.

"(3) PERSONS TO WHOM CHIEF COUNSEL REPORTS.—The Chief Counsel shall report directly to the Commissioner of Internal Revenue, except that—

"(A) the Chief Counsel shall report to both the Commissioner and the General Counsel for the Department of the Treasury with respect to—

"(i) legal advice or interpretation of the tax law not relating solely to tax policy, and

"(ii) tax litigation, and

"(B) the Chief Counsel shall report to the General Counsel with respect to legal advice or interpretation of the tax law relating solely to tax policy.

If there is any disagreement between the Commissioner and the General Counsel with respect to any matter jointly referred to them under subparagraph (A), such matter shall be submitted to the Secretary or Deputy Secretary for resolution.

"(4) CHIEF COUNSEL PERSONNEL.—All personnel in the Office of Chief Counsel shall report to the Chief Counsel.

"(c) OFFICE OF THE TAXPAYER ADVOCATE.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Office of the Taxpayer Advocate'.

"(B) NATIONAL TAXPAYER ADVOCATE.—

"(i) IN GENERAL.—The Office of the Taxpayer Advocate shall be under the supervision and direction of an

official to be known as the 'National Taxpayer Advocate'. The National Taxpayer Advocate shall report directly to the Commissioner of Internal Revenue and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title.

"(ii) APPOINTMENT.—The National Taxpayer Advocate shall be appointed by the Secretary of the Treasury after consultation with the Commissioner of Internal Revenue and the Oversight Board and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service.

"(iii) QUALIFICATIONS.—An individual appointed under clause (ii) shall have—

"(I) a background in customer service as well as tax law, and

"(II) experience in representing individual taxpayers.

"(iv) RESTRICTION ON EMPLOYMENT.—An individual may be appointed as the National Taxpayer Advocate only if such individual was not an officer or employee of the Internal Revenue Service during the 2-year period ending with such appointment and such individual agrees not to accept any employment with the Internal Revenue Service for at least 5 years after ceasing to be the National Taxpayer Advocate. Service as an officer or employee of the Office of the Taxpayer Advocate shall not be taken into account in applying this clause.

"(2) FUNCTIONS OF OFFICE.—

"(A) IN GENERAL.—It shall be the function of the Office of the Taxpayer Advocate to—

"(i) assist taxpayers in resolving problems with the Internal Revenue Service,

"(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

"(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

"(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

"(B) ANNUAL REPORTS.—

"(i) OBJECTIVES.—Not later than June 30 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full

and substantive analysis, in addition to statistical information.

"(ii) ACTIVITIES.—Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Office of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

"(I) identify the initiatives the Office of the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

"(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811,

"(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

"(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

"(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

"(VI) contain an inventory of the items described in subclauses (I), (II), and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

"(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

"(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers,

"(IX) identify areas of the tax law that impose significant compliance burdens on taxpayers or the Internal Revenue Service, including specific recommendations for remedying these problems,

"(X) identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes, and

"(XI) include such other information as the National Taxpayer Advocate may deem advisable.

"(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the committees described in clause (i) without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

"(iv) COORDINATION WITH REPORT OF TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—To the extent that information required to be reported under clause (ii) is also required to be reported under paragraph (1) or (2) of subsection (d) by the Treasury Inspector General for Tax Administration, the National Taxpayer Advocate shall not contain such information in the report submitted under such clause.

"(C) OTHER RESPONSIBILITIES.—The National Taxpayer Advocate shall—

"(i) monitor the coverage and geographic allocation of local offices of taxpayer advocates,

"(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates,

"(iii) ensure that the local telephone number for each local office of the taxpayer advocate is published and available to taxpayers served by the office, and

"(iv) in conjunction with the Commissioner, develop career paths for local taxpayer advocates choosing to make a career in the Office of the Taxpayer Advocate.

"(D) PERSONNEL ACTIONS.—

"(i) IN GENERAL.—The National Taxpayer Advocate shall have the responsibility and authority to—

"(I) appoint local taxpayer advocates and make available at least 1 such advocate for each State, and

"(II) evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of a taxpayer advocate described in subclause (I).

"(ii) CONSULTATION.—The National Taxpayer Advocate may consult with the appropriate supervisory personnel of the Internal Revenue Service in carrying out the National Taxpayer Advocate's responsibilities under this subparagraph.

"(3) RESPONSIBILITIES OF COMMISSIONER.—The Commissioner shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the National Taxpayer Advocate within 3 months after submission to the Commissioner.

"(4) OPERATION OF LOCAL OFFICES.—

"(A) IN GENERAL.—Each local taxpayer advocate—

"(i) shall report to the National Taxpayer Advocate or delegate thereof,

"(ii) may consult with the appropriate supervisory personnel of the Internal Revenue Service regarding the daily operation of the local office of the taxpayer advocate,

"(iii) shall, at the initial meeting with any taxpayer seeking the assistance of a local office of the taxpayer advocate, notify such taxpayer that the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate, and

"(iv) may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.

"(B) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the taxpayer advocate shall maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.

"(d) ADDITIONAL DUTIES OF THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—

"(1) ANNUAL REPORTING.—The Treasury Inspector General for Tax Administration shall include in one of the semiannual reports under section 5 of the Inspector General Act of 1978—

"(A) an evaluation of the compliance of the Internal Revenue Service with—

"(i) restrictions under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 on the use of enforcement statistics to evaluate Internal Revenue Service employees,

"(ii) restrictions under section 7521 on directly contacting taxpayers who have indicated that they prefer their representatives be contacted,

"(iii) required procedures under section 6320 upon the filing of a notice of a lien,

"(iv) required procedures under subchapter D of chapter 64 for seizure of property for collection of taxes, including required procedures under section 6330 regarding levies, and

"(v) restrictions under section 3707 of the Internal Revenue Service Restructuring and Reform Act of 1998 on designation of taxpayers,

"(B) a review and a certification of whether or not the Secretary is complying with the requirements of section 6103(e)(8) to disclose information to an individual filing a joint return on collection activity involving the other individual filing the return,

"(C) information regarding extensions of the statute of limitations for assessment and collection of tax under section 6501 and the provision of notice to taxpayers regarding requests for such extension,

"(D) an evaluation of the adequacy and security of the technology of the Internal Revenue Service,

"(E) any termination or mitigation under section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998,

"(F) information regarding improper denial of requests for information from the Internal Revenue Service identified under paragraph (3)(A), and

"(G) information regarding any administrative or civil actions with respect to violations of the fair debt collection provisions of section 6304, including—

"(i) a summary of such actions initiated since the date of the last report, and

"(ii) a summary of any judgments or awards granted as a result of such actions.

"(2) SEMIANNUAL REPORTS.—

"(A) IN GENERAL.—The Treasury Inspector General for Tax Administration shall include in each semiannual report under section 5 of the Inspector General Act of 1978—

"(i) the number of taxpayer complaints during the reporting period;

"(ii) the number of employee misconduct and taxpayer abuse allegations received by the Internal Revenue Service or the Inspector General during the period from taxpayers, Internal Revenue Service employees, and other sources;

"(iii) a summary of the status of such complaints and allegations; and

"(iv) a summary of the disposition of such complaints and allegations, including the outcome of any Department of Justice action and any monies paid as a settlement of such complaints and allegations.

"(B) Clauses (iii) and (iv) of subparagraph (A) shall only apply to complaints and allegations of serious employee misconduct.

"(3) OTHER RESPONSIBILITIES.—The Treasury Inspector General for Tax Administration shall—

"(A) conduct periodic audits of a statistically valid sample of the total number of determinations made by the Internal Revenue Service to deny written requests to disclose information to taxpayers on the basis of section 6103 of this title or section 552(b)(7) of title 5, United States Code, and

"(B) establish and maintain a toll-free telephone number for taxpayers to use to confidentially register complaints of misconduct by Internal Revenue Service employees and incorporate the telephone number in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1).".

(b) NOTICE OF RIGHT TO CONTACT OFFICE INCLUDED IN NOTICE OF DEFICIENCY.—Section 6212(a) (relating to notice of deficiency) is amended by adding at the end the following new sentence: "Such notice shall include a notice to the taxpayer of the taxpayer's right

to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.".

(c) EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.—Section 7811(a) (relating to taxpayer assistance orders) is amended to read as follows:

"(a) AUTHORITY TO ISSUE.—

"(1) IN GENERAL.—Upon application filed by a taxpayer with the Office of the Taxpayer Advocate (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the National Taxpayer Advocate may issue a Taxpayer Assistance Order if—

"(A) the National Taxpayer Advocate determines 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, or

"(B) the taxpayer meets such other requirements as are set forth in regulations prescribed by the Secretary.

"(2) DETERMINATION OF HARDSHIP.—For purposes of paragraph (1), a significant hardship shall include—

"(A) an immediate threat of adverse action,

"(B) a delay of more than 30 days in resolving taxpayer account problems,

"(C) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted, or

"(D) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

"(3) STANDARD WHERE ADMINISTRATIVE GUIDANCE NOT FOLLOWED.—In cases where any Internal Revenue Service employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a taxpayer assistance order in the manner most favorable to the taxpayer.".

(d) CONFORMING AMENDMENTS RELATING TO NATIONAL TAXPAYER ADVOCATE.—

(1) The following provisions are each amended by striking "Taxpayer Advocate" each place it appears and inserting "National Taxpayer Advocate":

(A) Section 6323(j)(1)(D) (relating to withdrawal of notice in certain circumstances).

(B) Section 6343(d)(2)(D) (relating to return of property in certain cases).

(C) Section 7811(b)(2)(D) (relating to terms of a Taxpayer Assistance Order).

(D) Section 7811(c) (relating to authority to modify or rescind).

(E) Section 7811(d)(2) (relating to suspension of running of period of limitation).

(F) Section 7811(e) (relating to independent action of Taxpayer Advocate).

(G) Section 7811(f) (relating to Taxpayer Advocate).

(2) Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by striking "Taxpayer Advocate's" and inserting "National Taxpayer Advocate's".

(3) The headings of subsections (e) and (f) of section 7811 are each amended by striking "TAXPAYER ADVOCATE" and inserting "NATIONAL TAXPAYER ADVOCATE".

(e) ADDITIONAL CONFORMING AMENDMENTS.—

(1) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7803 and inserting the following new item:

"Sec. 7803. Commissioner of Internal Revenue; other officials.".

(2) Section 5109 of title 5, United States Code, is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

(3) Section 7611(f)(1) (relating to restrictions on church tax inquiries and examinations) is amended by striking "Assistant Commissioner for Employee Plans and Exempt Organizations of the Internal Revenue Service" and inserting "Secretary".

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) CHIEF COUNSEL.—Section 7803(b)(3) of the Internal Revenue Code of 1986, as added by this section, shall take effect on the date that is 90 days after the date of the enactment of this Act.

(3) NATIONAL TAXPAYER ADVOCATE.—Notwithstanding section 7803(c)(1)(B)(iv) of such Code, as added by this section, in appointing the first National Taxpayer Advocate after the date of the enactment of this Act, the Secretary of the Treasury—

(A) shall not appoint any individual who was an officer or employee of the Internal Revenue Service at any time during the 2-year period ending on the date of appointment, and

(B) need not consult with the Internal Revenue Service Oversight Board if the Oversight Board has not been appointed.

(4) CURRENT OFFICERS.—

(A) In the case of an individual serving as Commissioner of Internal Revenue on the date of the enactment of this Act who was appointed to such position before such date, the 5-year term required by section 7803(a)(1) of such Code, as added by this section, shall begin as of the date of such appointment.

(B) Clauses (ii), (iii), and (iv) of section 7803(c)(1)(B) of such Code, as added by this section, shall not apply to the individual serving as Taxpayer Advocate on the date of the enactment of this Act.

SEC. 1103. TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.

(a) ESTABLISHMENT OF 2 INSPECTORS GENERAL IN THE DEPARTMENT OF THE TREASURY.—Section 2 of the Inspector General Act of

1978 (5 U.S.C. App.) is amended by striking the matter following paragraph (3) and inserting the following:

"there is established—

"(A) in each of such establishments an office of Inspector General, subject to subparagraph (B); and

"(B) in the establishment of the Department of the Treasury—

"(i) an Office of Inspector General of the Department of the Treasury; and

"(ii) an Office of Treasury Inspector General for Tax Administration.".

(b) AMENDMENTS TO SECTION 8D OF THE INSPECTOR GENERAL ACT OF 1978.—

(1) LIMITATION ON AUTHORITY OF INSPECTOR GENERAL.—Section 8D(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following new paragraph:

"(4) The Secretary of the Treasury may not exercise any power under paragraph (1) or (2) with respect to the Treasury Inspector General for Tax Administration.".

(2) DUTIES OF INSPECTOR GENERAL OF THE DEPARTMENT OF THE TREASURY; RELATIONSHIP TO THE TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—Section 8D(b) of such Act is amended—

(A) by inserting "(1)" after "(b)"; and

(B) by adding at the end the following new paragraphs:

"(2) The Inspector General of the Department of the Treasury shall exercise all duties and responsibilities of an Inspector General for the Department of the Treasury other than the duties and responsibilities exercised by the Treasury Inspector General for Tax Administration.

"(3) The Secretary of the Treasury shall establish procedures under which the Inspector General of the Department of the Treasury and the Treasury Inspector General for Tax Administration will—

"(A) determine how audits and investigations are allocated in cases of overlapping jurisdiction, and

"(B) provide for coordination, cooperation, and efficiency in the conduct of such audits and investigations.".

(3) ACCESS TO RETURNS AND RETURN INFORMATION.—Section 8D(e) of such Act is amended—

(A) in paragraph (1), by striking "Inspector General" and inserting "Treasury Inspector General for Tax Administration";

(B) in paragraph (2), by striking all beginning with "(2)" through subparagraph (B);

(C)(i) by redesignating subparagraph (C) of paragraph (2) as paragraph (2) of such subsection; and

(ii) in such redesignated paragraph (2), by striking "Inspector General" and inserting "Treasury Inspector General for Tax Administration"; and

(D)(i) by redesignating subparagraph (D) of such paragraph as paragraph (3) of such subsection; and

(ii) in such redesignated paragraph (3), by striking "Inspector General" and inserting "Treasury Inspector General for Tax Administration".

(4) EFFECT ON CERTAIN FINAL DECISIONS OF THE SECRETARY.—Section 8D(f) of such Act is amended by striking "Inspector General" and inserting "Inspector General of the Department of the Treasury or the Treasury Inspector General for Tax Administration".

(5) REPEAL OF LIMITATION ON REPORTS TO THE ATTORNEY GENERAL.—Section 8D of such Act is amended by striking subsection (g).

(6) TRANSMISSION OF REPORTS.—Section 8D(h) of such Act is amended—

(A) by striking "(h)" and inserting "(g)(1)";

(B) by striking "and the Committees on Government Operations and Ways and Means of the House of Representatives" and inserting "and the Committees on Government Reform and Oversight and Ways and Means of the House of Representatives"; and

(C) by adding at the end the following new paragraph:

"(2) Any report made by the Treasury Inspector General for Tax Administration that is required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under such subsection, to the Internal Revenue Service Oversight Board and the Commissioner of Internal Revenue.".

(7) TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION.—Section 8D of the Act is amended by adding at the end the following new subsections:

"(h) The Treasury Inspector General for Tax Administration shall exercise all duties and responsibilities of an Inspector General of an establishment with respect to the Department of the Treasury and the Secretary of the Treasury on all matters relating to the Internal Revenue Service. The Treasury Inspector General for Tax Administration shall have sole authority under this Act to conduct an audit or investigation of the Internal Revenue Service Oversight Board and the Chief Counsel for the Internal Revenue Service.

"(i) In addition to the requirements of the first sentence of section 3(a), the Treasury Inspector General for Tax Administration should have demonstrated ability to lead a large and complex organization.

"(j) An individual appointed to the position of Treasury Inspector General for Tax Administration, the Assistant Inspector General for Auditing of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(1), the Assistant Inspector General for Investigations of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(2), or any position of Deputy Inspector General of the Office of the Treasury Inspector General for Tax Administration may not be an employee of the Internal Revenue Service—

"(1) during the 2-year period preceding the date of appointment to such position; or

"(2) during the 5-year period following the date such individual ends service in such position.

"(k)(1) In addition to the duties and responsibilities exercised by an inspector general of an establishment, the Treasury Inspector General for Tax Administration—

"(A) shall have the duty to enforce criminal provisions under section 7608(b) of the Internal Revenue Code of 1986;

"(B) in addition to the functions authorized under section 7608(b)(2) of such Code, may carry firearms;

"(C) shall be responsible for protecting the Internal Revenue Service against external attempts to corrupt or threaten employees of the Internal Revenue Service, but shall not be responsible for the conducting of background checks and the providing of physical security; and

"(D) may designate any employee in the Office of the Treasury Inspector General for Tax Administration to enforce such laws and perform such functions referred to under subparagraphs (A), (B), and (C).

"(2)(A) In performing a law enforcement function under paragraph (1), the Treasury Inspector General for Tax Administration shall report any reasonable grounds to believe there has been a violation of Federal criminal law to the Attorney General at an appropriate time as determined by the Treasury Inspector General for Tax Administration, notwithstanding section 4(d).

"(B) In the administration of section 5(d) and subsection (g)(2) of this section, the Secretary of the Treasury may transmit the required report with respect to the Treasury Inspector General for Tax Administration at an appropriate time as determined by the Secretary, if the problem, abuse, or deficiency relates to—

"(i) the performance of a law enforcement function under paragraph (1); and

"(ii) sensitive information concerning matters under subsection (a)(1)(A) through (F).

"(3) Nothing in this subsection shall be construed to affect the authority of any other person to carry out or enforce any provision specified in paragraph (1).

"(l)(1) The Commissioner of Internal Revenue or the Internal Revenue Service Oversight Board may request, in writing, the Treasury Inspector General for Tax Administration to conduct an audit or investigation relating to the Internal Revenue Service. If the Treasury Inspector General for Tax Administration determines not to conduct such audit or investigation, the Inspector General shall timely provide a written explanation for such determination to the person making the request.

"(2)(A) Any final report of an audit conducted by the Treasury Inspector General for Tax Administration shall be timely submitted by the Inspector General to the Commissioner of Internal Revenue and the Internal Revenue Service Oversight Board.

"(B) The Treasury Inspector General for Tax Administration shall periodically submit to the Commissioner and Board a list of investigations for which a final report has been completed by the Inspector General and shall provide a copy of any such report upon request of the Commissioner or Board.

"(C) This paragraph applies regardless of whether the applicable audit or investigation is requested under paragraph (1).".

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Section 9(a)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in subparagraph (L)—

(A) by inserting "(i)" after "(L)";

(B) by inserting "and" after the semicolon; and

(C) by adding at the end the following new clause:

"(ii) of the Treasury Inspector General for Tax Administration, effective 180 days after the date of the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, the Office of Chief Inspector of the Internal Revenue Service;".

(2) TERMINATION OF OFFICE OF CHIEF INSPECTOR.—Effective upon the transfer of functions under the amendment made by paragraph (1), the Office of Chief Inspector of the Internal Revenue Service is terminated.

(3) RETENTION OF CERTAIN INTERNAL AUDIT PERSONNEL.—In making the transfer under the amendment made by paragraph (1), the Commissioner of Internal Revenue shall designate and retain an appropriate number (not in excess of 300) of internal audit full-time equivalent employee positions necessary for management relating to the Internal Revenue Service.

(4) ADDITIONAL PERSONNEL TRANSFERS.—Effective 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall transfer 21 full-time equivalent positions from the Office of the Inspector General of the Department of the Treasury to the Office of the Treasury Inspector General for Tax Administration.

(d) AUDITS AND REPORTS OF AGENCY FINANCIAL STATEMENTS.—Subject to section 3521(g) of title 31, United States Code—

(1) the Inspector General of the Department of the Treasury shall, subject to paragraph (2)—

(A) audit each financial statement in accordance with section 3521(e) of such title; and

(B) prepare and submit each report required under section 3521(f) of such title; and

(2) the Treasury Inspector General for Tax Administration shall—

(A) audit that portion of each financial statement referred to under paragraph (1)(A) that relates to custodial and administrative accounts of the Internal Revenue Service; and

(B) prepare that portion of each report referred to under paragraph (1)(B) that relates to custodial and administrative accounts of the Internal Revenue Service.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TRANSFER OF FUNCTIONS.—Section 8D(b) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "and the internal audits and internal investigations performed by the Office of Assistant Commissioner (Inspection) of the Internal Revenue Service".

(2) AMENDMENTS RELATING TO REFERENCES TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF THE TREASURY.—

(A) LIMITATION ON AUTHORITY.—Section 8D(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(i) in the first sentence of paragraph (1), by inserting "of the Department of the Treasury" after "Inspector General";

(ii) in paragraph (2), by inserting "of the Department of the Treasury" after "prohibit the Inspector General"; and

(iii) in paragraph (3)—

(I) in the first sentence, by inserting "of the Department of the Treasury" after "notify the Inspector General"; and

(II) in the second sentence, by inserting "of the Department of the Treasury" after "notice, the Inspector General".

(B) DUTIES.—Section 8D(b) of such Act is amended in the second sentence by inserting "of the Department of the Treasury" after "Inspector General".

(C) AUDITS AND INVESTIGATIONS.—Section 8D (c) and (d) of such Act are amended by inserting "of the Department of the Treasury" after "Inspector General" each place it appears.

(3) REFERENCES.—The second section 8G of the Inspector General Act of 1978 (relating to rule of construction of special provisions) is amended—

(A) by striking "SEC. 8G" and inserting "SEC. 8H";

(B) by striking "or 8E" and inserting "8E or 8F"; and

(C) by striking "section 8F(a)" and inserting "section 8G(a)".

(4) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 7608(b)(1) is amended by striking "or of the Internal Security Division".

SEC. 1104. OTHER PERSONNEL.

(a) IN GENERAL.—Section 7804 (relating to the effect of reorganization plans) is amended to read as follows:

"SEC. 7804. OTHER PERSONNEL.

"(a) APPOINTMENT AND SUPERVISION.—Unless otherwise prescribed by the Secretary, the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

"(b) POSTS OF DUTY OF EMPLOYEES IN FIELD SERVICE OR TRAVELING.—Unless otherwise prescribed by the Secretary—

"(1) DESIGNATION OF POST OF DUTY.—The Commissioner 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 Commissioner may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Commissioner 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.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 6344 is amended by striking "section 7803(d)" and inserting "section 7804(c)".

(2) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7804 and inserting the following new item:

"Sec. 7804. Other personnel.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1105. PROHIBITION ON EXECUTIVE BRANCH INFLUENCE OVER TAXPAYER AUDITS AND OTHER INVESTIGATIONS.

(a) IN GENERAL.—Part I of subchapter A of chapter 75 (relating to crimes, other offenses, and forfeitures) is amended by adding after section 7216 the following new section:

"SEC. 7217. PROHIBITION ON EXECUTIVE BRANCH INFLUENCE OVER TAXPAYER AUDITS AND OTHER INVESTIGATIONS.

"(a) PROHIBITION.—It shall be unlawful for any applicable person to request, directly or indirectly, any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer.

"(b) REPORTING REQUIREMENT.—Any officer or employee of the Internal Revenue Service receiving any request prohibited by subsection (a) shall report the receipt of such request to the Treasury Inspector General for Tax Administration.

"(c) EXCEPTIONS.—Subsection (a) shall not apply to any written request made—

"(1) to an applicable person by or on behalf of the taxpayer and forwarded by such applicable person to the Internal Revenue Service,

"(2) by an applicable person for disclosure of return or return information under section 6103 if such request is made in accordance with the requirements of such section, or

"(3) by the Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

"(d) PENALTY.—Any person who willfully violates subsection (a) or fails to report under subsection (b) shall be punished upon conviction by a fine in any amount not exceeding $5,000, or imprison-

ment of not more than 5 years, or both, together with the costs of prosecution.

"(e) APPLICABLE PERSON.—For purposes of this section, the term 'applicable person' means—

"(1) the President, the Vice President, any employee of the executive office of the President, and any employee of the executive office of the Vice President, and

"(2) any individual (other than the Attorney General of the United States) serving in a position specified in section 5312 of title 5, United States Code.".

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 75 is amended by adding after the item relating to section 7216 the following new item:

"Sec. 7217. Prohibition on executive branch influence over taxpayer audits and other investigations.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

Subtitle C—Personnel Flexibilities

SEC. 1201. IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.

(a) IN GENERAL.—Part III of title 5, United States Code, is amended by adding at the end the following new subpart:

"Subpart I—Miscellaneous

"CHAPTER 95—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

"Sec.
"9501. Internal Revenue Service personnel flexibilities.
"9502. Pay authority for critical positions.
"9503. Streamlined critical pay authority.
"9504. Recruitment, retention, relocation incentives, and relocation expenses.
"9505. Performance awards for senior executives.
"9506. Limited appointments to career reserved Senior Executive Service positions.
"9507. Streamlined demonstration project authority.
"9508. General workforce performance management system.
"9509. General workforce classification and pay.
"9510. General workforce staffing.

"§ 9501. Internal Revenue Service personnel flexibilities

"(a) Any flexibilities provided by sections 9502 through 9510 of this chapter shall be exercised in a manner consistent with—

"(1) chapter 23 (relating to merit system principles and prohibited personnel practices);

"(2) provisions relating to preference eligibles;

"(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

"(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

"(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Secretary of the Treasury under section 1104(a)(2).

"(b) The Secretary of the Treasury shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

"(c) Employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any flexibility provided by sections 9507 through 9510 of this chapter unless the exclusive representative and the Internal Revenue Service have entered into a written agreement which specifically provides for the exercise of that flexibility. Such written agreement may be imposed by the Federal Services Impasses Panel under section 7119.

"§ 9502. Pay authority for critical positions

"(a) When the Secretary of the Treasury seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Internal Revenue Service, the Office of Management and Budget may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

"(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

"§ 9503. Streamlined critical pay authority

"(a) Notwithstanding section 9502, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Secretary of the Treasury may, for a period of 10 years after the date of enactment of this section, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Internal Revenue Service, if—

"(1) the positions—

"(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

"(B) are critical to the Internal Revenue Service's successful accomplishment of an important mission;

"(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

"(3) the number of such positions does not exceed 40 at any one time;

"(4) designation of such positions are approved by the Secretary of the Treasury;

"(5) the terms of such appointments are limited to no more than 4 years;

"(6) appointees to such positions were not Internal Revenue Service employees prior to June 1, 1998;

"(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

"(8) all such positions are excluded from the collective bargaining unit.

"(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

"§ 9504. Recruitment, retention, relocation incentives, and relocation expenses

"(a) For a period of 10 years after the date of enactment of this section and subject to approval by the Office of Personnel Management, the Secretary of the Treasury may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives.

"(b) For a period of 10 years after the date of enactment of this section, the Secretary of the Treasury may pay from appropriations made to the Internal Revenue Service allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9502 or 9503 after June 1, 1998.

"§ 9505. Performance awards for senior executives

"(a) For a period of 10 years after the date of enactment of this section, Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service may be paid a performance bonus without regard to the limitation in section 5384(b)(2) if the Secretary of the Treasury finds such award warranted based on the executive's performance.

"(b) In evaluating an executive's performance for purposes of an award under this section, the Secretary of the Treasury shall take into account the executive's contributions toward the successful accomplishment of goals and objectives established under the Government Performance and Results Act of 1993, division E of the Clinger-Cohen Act of 1996 (Public Law 104–106; 110 Stat. 679), Revenue Procedure 64–22 (as in effect on July 30, 1997), taxpayer service surveys, and other performance metrics or plans established in consultation with the Internal Revenue Service Oversight Board.

"(c) Any award in excess of 20 percent of an executive's rate of basic pay shall be approved by the Secretary of the Treasury.

"(d) Notwithstanding section 5384(b)(3), the Secretary of the Treasury shall determine the aggregate amount of performance awards available to be paid during any fiscal year under this section and section 5384 to career senior executives in the Internal Revenue Service. Such amount may not exceed an amount equal to 5 percent of the aggregate amount of basic pay paid to career senior executives in the Internal Revenue Service during the preceding fiscal year. The Internal Revenue Service shall not be included in the determination under section 5384(b)(3) of the aggregate amount of performance awards payable to career senior executives in the Department of the Treasury other than the Internal Revenue Service.

"(e) Notwithstanding section 5307, a performance bonus award may not be paid to an executive in a calendar year if, or to the extent that, the executive's total annual compensation will exceed the maximum amount of total annual compensation payable at the rate determined under section 104 of title 3.

"§ 9506. Limited appointments to career reserved Senior Executive Service positions

"(a) In the application of section 3132, a 'career reserved position' in the Internal Revenue Service means a position designated under section 3132(b) which may be filled only by—

"(1) a career appointee, or

"(2) a limited emergency appointee or a limited term appointee—

"(A) who, immediately upon entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

"(B) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management.

"(b)(1) The number of positions described under subsection (a) which are filled by an appointee as described under paragraph (2) of such subsection may not exceed 10 percent of the total number of Senior Executive Service positions in the Internal Revenue Service.

"(2) Notwithstanding section 3132—

"(A) the term of an appointee described under subsection (a)(2) may be for any period not to exceed 3 years; and

"(B) such an appointee may serve—

"(i) 2 such terms; or

"(ii) 2 such terms in addition to any unexpired term applicable at the time of appointment.

"§ 9507. Streamlined demonstration project authority

"(a) The exercise of any of the flexibilities under sections 9502 through 9510 shall not affect the authority of the Secretary of the Treasury to implement for the Internal Revenue Service a demonstration project subject to chapter 47, as provided in subsection (b).

"(b) In applying section 4703 to a demonstration project described in section 4701(a)(4) which involves the Internal Revenue Service—

"(1) section 4703(b)(1) shall be deemed to read as follows:

"'(1) develop a plan for such project which describes its purpose, the employees to be covered, the project itself, its anticipated outcomes, and the method of evaluating the project;';

"(2) section 4703(b)(3) shall not apply;

"(3) the 180-day notification period in section 4703(b)(4) shall be deemed to be a notification period of 30 days;

"(4) section 4703(b)(6) shall be deemed to read as follows:

"'(6) provides each House of Congress with the final version of the plan.';

"(5) section 4703(c)(1) shall be deemed to read as follows:

"'(1) subchapter V of chapter 63 or subpart G of part III of this title;';

"(6) the requirements of paragraphs (1)(A) and (2) of section 4703(d) shall not apply; and

"(7) notwithstanding section 4703(d)(1)(B), based on an evaluation as provided in section 4703(h), the Office of Personnel Management and the Secretary of the Treasury, except as otherwise provided by this subsection, may waive the termination date of a demonstration project under section 4703(d).

"(c) At least 90 days before waiving the termination date under subsection (b)(7), the Office of Personnel Management shall publish in the Federal Register a notice of its intention to waive the termination date and shall inform in writing both Houses of Congress of its intention.

"§ 9508. General workforce performance management system

"(a) In lieu of a performance appraisal system established under section 4302, the Secretary of the Treasury shall, within 1 year after the date of enactment of this section, establish for the Internal Revenue Service a performance management system that—

"(1) maintains individual accountability by—

"(A) establishing 1 or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance, and communicating such retention standards to employees;

"(B) making periodic determinations of whether each employee meets or does not meet the employee's established retention standards; and

"(C) taking actions, in accordance with applicable laws and regulations, with respect to any employee whose performance does not meet established retention standards, including denying any increases in basic pay, promotions, and credit for performance under section 3502, and taking 1 or more of the following actions:

"(i) Reassignment.

"(ii) An action under chapter 43 or chapter 75 of this title.

"(iii) Any other appropriate action to resolve the performance problem; and

"(2) except as provided under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998, strengthens the system's effectiveness by—

"(A) establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the Internal Revenue Service's performance planning procedures, including those established under the Government Performance and Results Act of 1993, division E of the Clinger-Cohen Act of 1996 (Public Law 104–106; 110 Stat. 679), Revenue Procedure 64–22 (as in effect on July 30, 1997), and taxpayer service surveys, and communicating such goals or objectives to employees;

"(B) using such goals and objectives to make performance distinctions among employees or groups of employees; and

"(C) using performance assessments as a basis for granting employee awards, adjusting an employee's rate of

basic pay, and other appropriate personnel actions, in accordance with applicable laws and regulations.

"(b)(1) For purposes of subsection (a)(2), the term 'performance assessment' means a determination of whether or not retention standards established under subsection (a)(1)(A) are met, and any additional performance determination made on the basis of performance goals and objectives established under subsection (a)(2)(A).

"(2) For purposes of this title, the term 'unacceptable performance' with respect to an employee of the Internal Revenue Service covered by a performance management system established under this section means performance of the employee which fails to meet a retention standard established under this section.

"(c)(1) The Secretary of the Treasury may establish an awards program designed to provide incentives for and recognition of organizational, group, and individual achievements by providing for granting awards to employees who, as individuals or members of a group, contribute to meeting the performance goals and objectives established under this chapter by such means as a superior individual or group accomplishment, a documented productivity gain, or sustained superior performance.

"(2) A cash award under subchapter I of chapter 45 may be granted to an employee of the Internal Revenue Service without the need for any approval under section 4502(b).

"(d)(1) In applying sections 4303(b)(1)(A) and 7513(b)(1) to employees of the Internal Revenue Service, '30 days' may be deemed to be '15 days'.

"(2) Notwithstanding the second sentence of section 5335(c), an employee of the Internal Revenue Service shall not have a right to appeal the denial of a periodic step increase under section 5335 to the Merit Systems Protection Board.

"§ 9509. General workforce classification and pay

"(a) For purposes of this section, the term 'broad-banded system' means a system for grouping positions for pay, job evaluation, and other purposes that is different from the system established under chapter 51 and subchapter III of chapter 53 as a result of combining grades and related ranges of rates of pay in 1 or more occupational series.

"(b)(1)(A) The Secretary of the Treasury may, subject to criteria to be prescribed by the Office of Personnel Management, establish 1 or more broad-banded systems covering all or any portion of the Internal Revenue Service workforce.

"(B) With the approval of the Office of Personnel Management, a broad-banded system established under this section may either include or consist of positions that otherwise would be subject to subchapter IV of chapter 53 or section 5376.

"(2) The Office of Personnel Management may require the Secretary of the Treasury to submit information relating to broad-banded systems at the Internal Revenue Service.

"(3) Except as otherwise provided under this section, employees under a broad-banded system shall continue to be subject to the laws and regulations covering employees under the pay system that otherwise would apply to such employees.

"(4) The criteria to be prescribed by the Office of Personnel Management shall, at a minimum—

"(A) ensure that the structure of any broad-banded system maintains the principle of equal pay for substantially equal work;

"(B) establish the minimum and maximum number of grades that may be combined into pay bands;

"(C) establish requirements for setting minimum and maximum rates of pay in a pay band;

"(D) establish requirements for adjusting the pay of an employee within a pay band;

"(E) establish requirements for setting the pay of a supervisory employee whose position is in a pay band or who supervises employees whose positions are in pay bands; and

"(F) establish requirements and methodologies for setting the pay of an employee upon conversion to a broad-banded system, initial appointment, change of position or type of appointment (including promotion, demotion, transfer, reassignment, reinstatement, placement in another pay band, or movement to a different geographic location), and movement between a broad-banded system and another pay system.

"(c) With the approval of the Office of Personnel Management and in accordance with a plan for implementation submitted by the Secretary of the Treasury, the Secretary may, with respect to Internal Revenue Service employees who are covered by a broad-banded system established under this section, provide for variations from the provisions of subchapter VI of chapter 53.

"§ 9510. General workforce staffing

"(a)(1) Except as otherwise provided by this section, an employee of the Internal Revenue Service may be selected for a permanent appointment in the competitive service in the Internal Revenue Service through internal competitive promotion procedures if—

"(A) the employee has completed, in the competitive service, 2 years of current continuous service under a term appointment or any combination of term appointments;

"(B) such term appointment or appointments were made under competitive procedures prescribed for permanent appointments;

"(C) the employee's performance under such term appointment or appointments met established retention standards, or, if not covered by a performance management system established under section 9508, was rated at the fully successful level or higher (or equivalent thereof); and

"(D) the vacancy announcement for the term appointment from which the conversion is made stated that there was a potential for subsequent conversion to a permanent appointment.

"(2) An appointment under this section may be made only to a position in the same line of work as a position to which the employee received a term appointment under competitive procedures.

"(b)(1) Notwithstanding subchapter I of chapter 33, the Secretary of the Treasury may establish category rating systems for evaluating applicants for Internal Revenue Service positions in the competitive service under which qualified candidates are divided

into 2 or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings.

"(2) Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of the applicant's knowledge, skills, and abilities relative to those needed for successful performance in the position to be filled.

"(3) Within each quality category established under paragraph (1), preference eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at or higher than GS–9 (or equivalent), preference eligibles who have a compensable service-connected disability of 10 percent or more, and who meet the minimum qualification standards, shall be listed in the highest quality category.

"(4) An appointing authority may select any applicant from the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, from a merged category consisting of the highest and second highest quality categories.

"(5) Notwithstanding paragraph (4), the appointing authority may not pass over a preference eligible in the same or higher category from which selection is made unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

"(c) The Secretary of the Treasury may detail employees among the offices of the Internal Revenue Service without regard to the 120-day limitation in section 3341(b).

"(d) Notwithstanding any other provision of law, the Secretary of the Treasury may establish a probationary period under section 3321 of up to 3 years for Internal Revenue Service positions if the Secretary of the Treasury determines that the nature of the work is such that a shorter period is insufficient to demonstrate complete proficiency in the position.

"(e) Nothing in this section exempts the Secretary of the Treasury from—

"(1) any employment priority established under direction of the President for the placement of surplus or displaced employees; or

"(2) any obligation under a court order or decree relating to the employment practices of the Internal Revenue Service or the Department of the Treasury.".

(b) CLERICAL AMENDMENT.—The table of sections for part III of title 5, United States Code, is amended by adding at the end the following new items:

"Subpart I—Miscellaneous

"95. Personnel flexibilities relating to the Internal Revenue Service ... 9501".

SEC. 1202. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITION.—In this section, the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Internal Revenue Service serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include—

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has not repaid such payment;

(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—The Commissioner of Internal Revenue may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to reorganize the Internal Revenue Service under section 1001.

(2) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(A) shall be paid in a lump sum after the employee's separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;

(C) shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(ii) an amount determined by an agency head not to exceed $25,000;

(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2003;

(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be

entitled under section 5595 of title 5, United States Code, based on any other separation.

(c) ADDITIONAL INTERNAL REVENUE SERVICE CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Internal Revenue Service shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) DEFINITION.—In paragraph (1), the term "final basic pay", with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment to the Internal Revenue Service.

(e) EFFECT ON INTERNAL REVENUE SERVICE EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in the Internal Revenue Service.

(2) USE OF VOLUNTARY SEPARATIONS.—The Internal Revenue Service may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 1203. TERMINATION OF EMPLOYMENT FOR MISCONDUCT.

(a) IN GENERAL.—Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

(b) ACTS OR OMISSIONS.—The acts or omissions referred to under subsection (a) are—

(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

(2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

(3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of—

(A) any right under the Constitution of the United States; or

(B) any civil right established under—

(i) title VI or VII of the Civil Rights Act of 1964;

(ii) title IX of the Education Amendments of 1972;

(iii) the Age Discrimination in Employment Act of 1967;

(iv) the Age Discrimination Act of 1975;

(v) section 501 or 504 of the Rehabilitation Act of 1973; or

(vi) title I of the Americans with Disabilities Act of 1990;

(4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

(5) assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;

(6) violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service;

(7) willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry,

(8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect,

(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect, and

(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

(c) DETERMINATION OF COMMISSIONER.—

(1) IN GENERAL.—The Commissioner of Internal Revenue may take a personnel action other than termination for an act or omission under subsection (a).

(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner of Internal Revenue and may not be delegated to any other officer. The Commissioner of Internal Revenue, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred to the Commissioner

of Internal Revenue for a determination by the Commissioner under paragraph (1).

(3) NO APPEAL.—Any determination of the Commissioner of Internal Revenue under this subsection may not be appealed in any administrative or judicial proceeding.

(d) DEFINITION.—For purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity receiving Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.

SEC. 1204. BASIS FOR EVALUATION OF INTERNAL REVENUE SERVICE EMPLOYEES.

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

(1) to evaluate employees; or

(2) to impose or suggest production quotas or goals with respect to such employees.

(b) TAXPAYER SERVICE.—The Internal Revenue Service shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.

(c) CERTIFICATION.—Each appropriate supervisor shall certify quarterly by letter to the Commissioner of Internal Revenue whether or not tax enforcement results are being used in a manner prohibited by subsection (a).

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 6231 of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3734) is repealed.

(e) EFFECTIVE DATE.—This section shall apply to evaluations conducted on or after the date of the enactment of this Act.

SEC. 1205. EMPLOYEE TRAINING PROGRAM.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Commissioner of Internal Revenue shall implement an employee training program and shall submit an employee training plan to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(b) CONTENTS.—The plan submitted under subsection (a) shall—

(1) detail a comprehensive employee training program to ensure adequate customer service training;

(2) detail a schedule for training and the fiscal years during which the training will occur;

(3) detail the funding of the program and relevant information to demonstrate the priority and commitment of resources to the plan;

(4) review the organizational design of customer service;

(5) provide for the implementation of a performance development system; and

(6) provide for at least 16 hours of conflict management training during fiscal year 1999 for employees conducting collection activities.

TITLE II—ELECTRONIC FILING

SEC. 2001. ELECTRONIC FILING OF TAX AND INFORMATION RETURNS.

(a) IN GENERAL.—It is the policy of Congress that—

(1) paperless filing should be the preferred and most convenient means of filing Federal tax and information returns,

(2) it should be the goal of the Internal Revenue Service to have at least 80 percent of all such returns filed electronically by the year 2007, and

(3) the Internal Revenue Service should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of such returns.

(b) STRATEGIC PLAN.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate (hereafter in this section referred to as the "Secretary") shall establish a plan to eliminate barriers, provide incentives, and use competitive market forces to increase electronic filing gradually over the next 10 years while maintaining processing times for paper returns at 40 days. To the extent practicable, such plan shall provide that all returns prepared electronically for taxable years beginning after 2001 shall be filed electronically.

(2) ELECTRONIC COMMERCE ADVISORY GROUP.—To ensure that the Secretary receives input from the private sector in the development and implementation of the plan required by paragraph (1), the Secretary shall convene an electronic commerce advisory group to include representatives from the small business community and from the tax practitioner, preparer, and computerized tax processor communities and other representatives from the electronic filing industry.

(c) PROMOTION OF ELECTRONIC FILING AND INCENTIVES.—Section 6011 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) PROMOTION OF ELECTRONIC FILING.—

"(1) IN GENERAL.—The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

"(2) INCENTIVES.—The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.".

(d) ANNUAL REPORTS.—Not later than June 30 of each calendar year after 1998, the Chairperson of the Internal Revenue Service Oversight Board, the Secretary of the Treasury, and the Chairperson of the electronic commerce advisory group established under subsection (b)(2) shall report to the Committees on Ways and Means, Appropriations, Government Reform and Oversight, and Small Business of the House of Representatives and the Committees on Finance, Appropriations, Governmental Affairs, and Small Business of the Senate on—

(1) the progress of the Internal Revenue Service in meeting the goal of receiving electronically 80 percent of tax and information returns by 2007;

(2) the status of the plan required by subsection (b);

(3) the legislative changes necessary to assist the Internal Revenue Service in meeting such goal; and

(4) the effects on small businesses and the self-employed of electronically filing tax and information returns.

SEC. 2002. DUE DATE FOR CERTAIN INFORMATION RETURNS.

(a) INFORMATION RETURNS FILED ELECTRONICALLY.—Section 6071 (relating to time for filing returns and other documents) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) ELECTRONICALLY FILED INFORMATION RETURNS.—Returns made under subparts B and C of part III of this subchapter which are filed electronically shall be filed on or before March 31 of the year following the calendar year to which such returns relate.".

(b) STUDY RELATING TO TIME FOR PROVIDING NOTICE TO RECIPIENTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study evaluating the effect of extending the deadline for providing statements to persons with respect to whom information is required to be furnished under subparts B and C of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (other than section 6051 of such Code) from January 31 to February 15 of the year in which the return to which the statement relates is required to be filed.

(2) REPORT.—Not later than June 30, 1999, the Secretary of the Treasury shall submit a report on the study under paragraph (1) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to returns required to be filed after December 31, 1999.

SEC. 2003. PAPERLESS ELECTRONIC FILING.

(a) IN GENERAL.—Section 6061 (relating to signing of returns and other documents) is amended—

(1) by striking "Except as otherwise provided by" and inserting the following:

"(a) GENERAL RULE.—Except as otherwise provided by subsection (b) and", and

(2) by adding at the end the following new subsection:

"(b) ELECTRONIC SIGNATURES.—

"(1) IN GENERAL.—The Secretary shall develop procedures for the acceptance of signatures in digital or other electronic form. Until such time as such procedures are in place, the Secretary may—

"(A) waive the requirement of a signature for, or

"(B) provide for alternative methods of signing or subscribing,

a particular type or class of return, declaration, statement, or other document required or permitted to be made or written under internal revenue laws and regulations.

"(2) TREATMENT OF ALTERNATIVE METHODS.—Notwithstanding any other provision of law, any return, declaration, statement, or other document filed and verified, signed, or subscribed under any method adopted under paragraph (1)(B) shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed or subscribed.

"(3) PUBLISHED GUIDANCE.—The Secretary shall publish guidance as appropriate to define and implement any waiver of the signature requirements or any method adopted under paragraph (1).".

(b) ACKNOWLEDGMENT OF ELECTRONIC FILING.—Section 7502(c) is amended to read as follows:

"(c) REGISTERED AND CERTIFIED MAILING; ELECTRONIC FILING.—

"(1) REGISTERED MAIL.—For purposes of this section, if any return, claim, statement, or other document, or payment, is sent by United States registered mail—

"(A) such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed, and

"(B) the date of registration shall be deemed the postmark date.

"(2) CERTIFIED MAIL; ELECTRONIC FILING.—The Secretary is authorized to provide by regulations the extent to which the provisions of paragraph (1) with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail and electronic filing.".

(c) ESTABLISHMENT OF PROCEDURES FOR OTHER INFORMATION.—In the case of taxable periods beginning after December 31, 1999, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures to accept, in electronic form, any other information, statements, elections, or schedules, from taxpayers filing returns electronically, so that such taxpayers will not be required to file any paper.

(d) INTERNET AVAILABILITY.—In the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall establish procedures for all tax forms, instructions, and publications created in the most recent 5-year period to be made available electronically on the Internet in a searchable database at approximately the same time such records are available to the public in paper form. In addition, in the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures for other taxpayer guidance to be made available electronically on the Internet in a searchable database at approximately the same time such guidance is available to the public in paper form.

(e) PROCEDURES FOR AUTHORIZING DISCLOSURE ELECTRONICALLY.—The Secretary shall establish procedures for any taxpayer to authorize, on an electronically filed return, the Secretary to disclose information under section 6103(c) of the Internal Revenue Code of 1986 to the preparer of the return.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 2004. RETURN-FREE TAX SYSTEM.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall develop procedures for the implementation of a return-free tax system under which appropriate individuals would be permitted to comply with the Internal Revenue Code of 1986 without making the return required under section 6012 of such Code for taxable years beginning after 2007.

(b) REPORT.—Not later than June 30 of each calendar year after 1999, the Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

(1) what additional resources the Internal Revenue Service would need to implement such a system,

(2) the changes to the Internal Revenue Code of 1986 that could enhance the use of such a system,

(3) the procedures developed pursuant to subsection (a), and

(4) the number and classes of taxpayers that would be permitted to use the procedures developed pursuant to subsection (a).

SEC. 2005. ACCESS TO ACCOUNT INFORMATION.

(a) IN GENERAL.—Not later than December 31, 2006, the Secretary of the Treasury or the Secretary's delegate shall develop procedures under which a taxpayer filing returns electronically (and their designees under section 6103(c) of the Internal Revenue Code of 1986) would be able to review the taxpayer's account electronically, but only if all necessary safeguards to ensure the privacy of such account information are in place.

(b) REPORT.—Not later than December 31, 2003, the Secretary of the Treasury shall report on the progress the Secretary is making on the development of procedures under subsection (a) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III—TAXPAYER PROTECTION AND RIGHTS

SEC. 3000. SHORT TITLE.

This title may be cited as the "Taxpayer Bill of Rights 3".

Subtitle A—Burden of Proof

SEC. 3001. BURDEN OF PROOF.

(a) IN GENERAL.—Chapter 76 (relating to judicial proceedings) is amended by adding at the end the following new subchapter:

"Subchapter E—Burden of Proof

"Sec. 7491. Burden of proof.

"SEC. 7491. BURDEN OF PROOF.

"(a) BURDEN SHIFTS WHERE TAXPAYER PRODUCES CREDIBLE EVIDENCE.—

"(1) GENERAL RULE.—If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

"(2) LIMITATIONS.—Paragraph (1) shall apply with respect to an issue only if—

"(A) the taxpayer has complied with the requirements under this title to substantiate any item,

"(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews, and

"(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430(c)(4)(A)(ii).

"(3) COORDINATION.—Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

"(b) USE OF STATISTICAL INFORMATION ON UNRELATED TAXPAYERS.—In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

"(c) PENALTIES.—Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 76 is amended by adding at the end the following new item:

"SUBCHAPTER E. Burden of proof.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to court proceedings arising in connection with examinations commencing after the date of the enactment of this Act.

(2) TAXABLE PERIODS OR EVENTS AFTER DATE OF ENACTMENT.—In any case in which there is no examination, such amendments shall apply to court proceedings arising in connection with taxable periods or events beginning or occurring after such date of enactment.

Subtitle B—Proceedings by Taxpayers

SEC. 3101. EXPANSION OF AUTHORITY TO AWARD COSTS AND CERTAIN FEES.

(a) INCREASE IN ATTORNEY'S FEES.—

(1) INCREASE IN HOURLY AMOUNT.—Clause (iii) of section 7430(c)(1)(B) (relating to reasonable litigation costs) is amended by striking "$110" and inserting "$125".

(2) AWARD OF HIGHER ATTORNEY'S FEES BASED ON COMPLEXITY OF ISSUES.—Clause (iii) of section 7430(c)(1)(B) (relating to the award of costs and certain fees) is amended by inserting "the difficulty of the issues presented in the case, or the local availability of tax expertise," before "justifies a higher rate".

(b) AWARD OF ADMINISTRATIVE COSTS INCURRED AFTER 30-DAY LETTER.—Paragraph (2) of section 7430(c) is amended by striking the last sentence and inserting the following new flush sentence:

"Such term shall only include costs incurred on or after whichever of the following is the earliest: (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, (ii) the date of the notice of deficiency, or (iii) the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.".

(c) AWARD OF FEES FOR CERTAIN ADDITIONAL SERVICES.—Paragraph (3) of section 7430(c) is amended to read as follows:

"(3) ATTORNEYS FEES.—

"(A) IN GENERAL.—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

"(B) PRO BONO SERVICES.—The court may award reasonable attorneys fees under subsection (a) in excess of the attorneys fees paid or incurred if such fees are less than the reasonable attorneys fees because an individual is representing the prevailing party for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. This subparagraph shall apply only if such award is paid to such individual or such individual's employer.".

(d) DETERMINATION OF WHETHER POSITION OF UNITED STATES IS SUBSTANTIALLY JUSTIFIED.—Subparagraph (B) of section 7430(c)(4) is amended by redesignating clause (iii) as clause (iv) and by inserting after clause (ii) the following new clause:

"(iii) EFFECT OF LOSING ON SUBSTANTIALLY SIMILAR ISSUES.—In determining for purposes of clause (i) whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in courts of appeal for other circuits on substantially similar issues.".

(e) TAXPAYER TREATED AS PREVAILING IF JUDGMENT IS LESS THAN TAXPAYER'S OFFER.—

(1) IN GENERAL.—Section 7430(c)(4) (defining prevailing party) is amended by adding at the end the following new subparagraph:

"(E) SPECIAL RULES WHERE JUDGMENT LESS THAN TAXPAYER'S OFFER.—

"(i) IN GENERAL.—A party to a court proceeding meeting the requirements of subparagraph (A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding

(determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted a qualified offer of the party under subsection (g).

"(ii) EXCEPTIONS.—This subparagraph shall not apply to—

"(I) any judgment issued pursuant to a settlement, or

"(II) any proceeding in which the amount of tax liability is not in issue, including any declaratory judgment proceeding, any proceeding to enforce or quash any summons issued pursuant to this title, and any action to restrain disclosure under section 6110(f).

"(iii) SPECIAL RULES.—If this subparagraph applies to any court proceeding—

"(I) the determination under clause (i) shall be made by reference to the last qualified offer made with respect to the tax liability at issue in the proceeding, and

"(II) reasonable administrative and litigation costs shall only include costs incurred on and after the date of such offer.

"(iv) COORDINATION.—This subparagraph shall not apply to a party which is a prevailing party under any other provision of this paragraph.".

(2) QUALIFIED OFFER.—Section 7430 is amended by adding at the end the following new subsection:

"(g) QUALIFIED OFFER.—For purposes of subsection (c)(4)—

"(1) IN GENERAL.—The term 'qualified offer' means a written offer which—

"(A) is made by the taxpayer to the United States during the qualified offer period,

"(B) specifies the offered amount of the taxpayer's liability (determined without regard to interest),

"(C) is designated at the time it is made as a qualified offer for purposes of this section, and

"(D) remains open during the period beginning on the date it is made and ending on the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.

"(2) QUALIFIED OFFER PERIOD.—For purposes of this subsection, the term 'qualified offer period' means the period—

"(A) beginning on the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, and

"(B) ending on the date which is 30 days before the date the case is first set for trial.".

(f) AWARD OF ATTORNEYS FEES IN UNAUTHORIZED INSPECTION AND DISCLOSURE CASES.—Section 7431(c) (relating to damages) is amended by striking the period at the end of paragraph (2) and inserting ", plus", and by adding at the end the following new paragraph:

"(3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4)).".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to costs incurred (and, in the case of the amendment made by subsection (c), services performed) more than 180 days after the date of the enactment of this Act.

SEC. 3102. CIVIL DAMAGES FOR COLLECTION ACTIONS.

(a) EXTENSION TO NEGLIGENCE ACTIONS.—

(1) IN GENERAL.—Section 7433 (relating to civil damages for certain unauthorized collection actions) is amended—

(A) in subsection (a), by inserting ", or by reason of negligence," after "recklessly or intentionally", and

(B) in subsection (b)—

(i) in the matter preceding paragraph (1), by inserting "($100,000, in the case of negligence)" after "$1,000,000", and

(ii) in paragraph (1), by inserting "or negligent" after "reckless or intentional".

(2) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—Paragraph (1) of section 7433(d) is amended to read as follows:

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.".

(b) DAMAGES ALLOWED IN CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.—Section 7426 is amended by redesignating subsection (h) as subsection (i) and by adding after subsection (g) the following new subsection:

"(h) RECOVERY OF DAMAGES PERMITTED IN CERTAIN CASES.—

"(1) IN GENERAL.—Notwithstanding subsection (b), if, in any action brought under this section, there is a finding that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title the defendant shall be liable to the plaintiff in an amount equal to the lesser of $1,000,000 ($100,000 in the case of negligence) or the sum of—

"(A) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent disregard of any provision of this title by the officer or employee (reduced by any amount of such damages awarded under subsection (b)), and

"(B) the costs of the action.

"(2) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED; MITIGATION; PERIOD.—The rules of section 7433(d) shall apply for purposes of this subsection.

"(3) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.".

(c) CIVIL DAMAGES FOR IRS VIOLATIONS OF BANKRUPTCY PROCEDURES.—

(1) IN GENERAL.—Section 7433 (relating to civil damages for certain unauthorized collection actions) is amended by adding at the end the following new subsection:

"(e) ACTIONS FOR VIOLATIONS OF CERTAIN BANKRUPTCY PROCEDURES.—

"(1) IN GENERAL.—If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to automatic stay) or 524 (relating to effect of discharge) of title 11, United States Code (or any successor provision), or any regulation promulgated under such provision, such taxpayer may petition the bankruptcy court to recover damages against the United States.

"(2) REMEDY TO BE EXCLUSIVE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), notwithstanding section 105 of such title 11, such petition shall be the exclusive remedy for recovering damages resulting from such actions.

"(B) CERTAIN OTHER ACTIONS PERMITTED.—Subparagraph (A) shall not apply to an action under section 362(h) of such title 11 for a violation of a stay provided by section 362 of such title; except that—

"(i) administrative and litigation costs in connection with such an action may only be awarded under section 7430, and

"(ii) administrative costs may be awarded only if incurred on or after the date that the bankruptcy petition is filed.".

(2) CONFORMING AMENDMENT.—Subsection (b) of section 7433 is amended by inserting "or petition filed under subsection (e)" after "subsection (a)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to actions of officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 3103. INCREASE IN SIZE OF CASES PERMITTED ON SMALL CASE CALENDAR.

(a) IN GENERAL.—Section 7463 (relating to disputes involving $10,000 or less) is amended by striking "$10,000" each place it appears (including the section heading) and inserting "$50,000".

(b) CONFORMING AMENDMENTS.—

(1) Sections 7436(c)(1) and 7443A(b)(3) are each amended by striking "$10,000" and inserting "$50,000".

(2) The table of sections for part II of subchapter C of chapter 76 is amended by striking "$10,000" in the item relating to section 7463 and inserting "$50,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

SEC. 3104. ACTIONS FOR REFUND WITH RESPECT TO CERTAIN ESTATES WHICH HAVE ELECTED THE INSTALLMENT METHOD OF PAYMENT.

(a) IN GENERAL.—Section 7422 is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SPECIAL RULE FOR ACTIONS WITH RESPECT TO ESTATES FOR WHICH AN ELECTION UNDER SECTION 6166 IS MADE.—

"(1) IN GENERAL.—The district courts of the United States and the United States Court of Federal Claims shall not fail to have jurisdiction over any action brought by the representative of an estate to which this subsection applies to determine the correct amount of the estate tax liability of such estate (or for any refund with respect thereto) solely because the full amount of such liability has not been paid by reason of an election under section 6166 with respect to such estate.

"(2) ESTATES TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any estate if, as of the date the action is filed—

"(A) no portion of the installments payable under section 6166 have been accelerated,

"(B) all such installments the due date for which is on or before the date the action is filed have been paid,

"(C) there is no case pending in the Tax Court with respect to the tax imposed by section 2001 on the estate and, if a notice of deficiency under section 6212 with respect to such tax has been issued, the time for filing a petition with the Tax Court with respect to such notice has expired, and

"(D) no proceeding for declaratory judgment under section 7479 is pending.

"(3) PROHIBITION ON COLLECTION OF DISALLOWED LIABILITY.—If the court redetermines under paragraph (1) the estate tax liability of an estate, no part of such liability which is disallowed by a decision of such court which has become final may be collected by the Secretary, and amounts paid in excess of the installments determined by the court as currently due and payable shall be refunded.".

(b) EXTENSION OF TIME TO FILE REFUND SUIT.—Section 7479 (relating to declaratory judgments relating to eligibility of estate with respect to installment payments under section 6166) is amended by adding at the end the following new subsection:

"(c) EXTENSION OF TIME TO FILE REFUND SUIT.—The 2-year period in section 6532(a)(1) for filing suit for refund after disallowance of a claim shall be suspended during the 90-day period after the mailing of the notice referred to in subsection (b)(3) and, if a pleading has been filed with the Tax Court under this section, until the decision of the Tax Court has become final.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim for refund filed after the date of the enactment of this Act.

SEC. 3105. ADMINISTRATIVE APPEAL OF ADVERSE IRS DETERMINATION OF TAX-EXEMPT STATUS OF BOND ISSUE.

The Internal Revenue Service shall amend its administrative procedures to provide that if, upon examination, the Internal Reve-

nue Service proposes to an issuer that interest on previously issued obligations of such issuer is not excludable from gross income under section 103(a) of the Internal Revenue Code of 1986, the issuer of such obligations shall have an administrative appeal of right to a senior officer of the Internal Revenue Service Office of Appeals.

SEC. 3106. CIVIL ACTION FOR RELEASE OF ERRONEOUS LIEN.

(a) RIGHT OF SUBSTITUTION OF VALUE.—Subsection (b) of section 6325 (relating to release of lien or discharge of property) is amended by adding at the end the following new paragraph:

"(4) RIGHT OF SUBSTITUTION OF VALUE.—

"(A) IN GENERAL.—At the request of the owner of any property subject to any lien imposed by this chapter, the Secretary shall issue a certificate of discharge of such property if such owner—

"(i) deposits with the Secretary an amount of money equal to the value of the interest of the United States (as determined by the Secretary) in the property, or

"(ii) furnishes a bond acceptable to the Secretary in a like amount.

"(B) REFUND OF DEPOSIT WITH INTEREST AND RELEASE OF BOND.—The Secretary shall refund the amount so deposited (and shall pay interest at the overpayment rate under section 6621), and shall release such bond, to the extent that the Secretary determines that—

"(i) the unsatisfied liability giving rise to the lien can be satisfied from a source other than such property, or

"(ii) the value of the interest of the United States in the property is less than the Secretary's prior determination of such value.

"(C) USE OF DEPOSIT, ETC., IF ACTION TO CONTEST LIEN NOT FILED.—If no action is filed under section 7426(a)(4) within the period prescribed therefor, the Secretary shall, within 60 days after the expiration of such period—

"(i) apply the amount deposited, or collect on such bond, to the extent necessary to satisfy the unsatisfied liability secured by the lien, and

"(ii) refund (with interest as described in subparagraph (B)) any portion of the amount deposited which is not used to satisfy such liability.

"(D) EXCEPTION.—Subparagraph (A) shall not apply if the owner of the property is the person whose unsatisfied liability gave rise to the lien.".

(b) CIVIL ACTION TO RELEASE ERRONEOUS LIEN.—

(1) IN GENERAL.—Subsection (a) of section 7426 (relating to civil actions by persons other than taxpayers) is amended by adding at the end the following new paragraph:

"(4) SUBSTITUTION OF VALUE.—If a certificate of discharge is issued to any person under section 6325(b)(4) with respect to any property, such person may, within 120 days after the day on which such certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United

States (if any) in such property is less than the value determined by the Secretary. No other action may be brought by such person for such a determination.".

(2) FORM OF RELIEF.—

(A) IN GENERAL.—Subsection (b) of section 7426 is amended by adding at the end the following new paragraph:

"(5) SUBSTITUTION OF VALUE.—If the court determines that the Secretary's determination of the value of the interest of the United States in the property for purposes of section 6325(b)(4) exceeds the actual value of such interest, the court shall grant a judgment ordering a refund of the amount deposited, and a release of the bond, to the extent that the aggregate of the amounts thereof exceeds such value determined by the court.".

(B) INTEREST ALLOWED ON REFUND OF DEPOSIT.—Subsection (g) of section 7426 is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting "; and", and by adding at the end the following new paragraph:

"(3) in the case of a judgment pursuant to subsection (b)(5) which orders a refund of any amount, from the date the Secretary received such amount to the date of payment of such judgment.".

(3) SUSPENSION OF RUNNING OF STATUTE OF LIMITATION.—Subsection (f) of section 6503 is amended to read as follows:

"(f) WRONGFUL SEIZURE OF OR LIEN ON PROPERTY OF THIRD PARTY.—

"(1) WRONGFUL SEIZURE.—The running of the period under section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary to the date the Secretary returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter. The running of such period shall be suspended under this paragraph only with respect to the amount of such assessment equal to the amount of money or the value of specific property returned.

"(2) WRONGFUL LIEN.—In the case of any assessment for which a lien was made on any property, the running of the period under section 6502 shall be suspended for a period equal to the period beginning on the date any person becomes entitled to a certificate under section 6325(b)(4) with respect to such property and ending on the date which is 30 days after the earlier of—

"(A) the earliest date on which the Secretary no longer holds any amount as a deposit or bond provided under section 6325(b)(4) by reason of such deposit or bond being used to satisfy the unpaid tax or being refunded or released, or

"(B) the date that the judgment secured under section 7426(b)(5) becomes final.

The running of such period shall be suspended under this paragraph only with respect to the amount of such assessment equal

to the value of the interest of the United States in the property plus interest, penalties, additions to the tax, and additional amounts attributable thereto.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle C—Relief for Innocent Spouses and for Taxpayers Unable To Manage Their Financial Affairs Due to Disabilities

SEC. 3201. RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN.

(a) IN GENERAL.—Subpart B of part II of subchapter A of chapter 61 is amended by inserting after section 6014 the following new section:

"SEC. 6015. RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN.

"(a) IN GENERAL.—Notwithstanding section 6013(d)(3)—

"(1) an individual who has made a joint return may elect to seek relief under the procedures prescribed under subsection (b), and

"(2) if such individual is eligible to elect the application of subsection (c), such individual may, in addition to any election under paragraph (1), elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).

Any determination under this section shall be made without regard to community property laws.

"(b) PROCEDURES FOR RELIEF FROM LIABILITY APPLICABLE TO ALL JOINT FILERS.—

"(1) IN GENERAL.—Under procedures prescribed by the Secretary, if—

"(A) a joint return has been made for a taxable year,

"(B) on such return there is an understatement of tax attributable to erroneous items of 1 individual filing the joint return,

"(C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement,

"(D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement, and

"(E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election,

then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.

"(2) APPORTIONMENT OF RELIEF.—If an individual who, but for paragraph (1)(C), would be relieved of liability under paragraph (1), establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, then such individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

"(3) UNDERSTATEMENT.—For purposes of this subsection, the term 'understatement' has the meaning given to such term by section 6662(d)(2)(A).

"(c) PROCEDURES TO LIMIT LIABILITY FOR TAXPAYERS NO LONGER MARRIED OR TAXPAYERS LEGALLY SEPARATED OR NOT LIVING TOGETHER.—

"(1) IN GENERAL.—Except as provided in this subsection, if an individual who has made a joint return for any taxable year elects the application of this subsection, the individual's liability for any deficiency which is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to the individual under subsection (d).

"(2) BURDEN OF PROOF.—Except as provided in subparagraph (A)(ii) or (C) of paragraph (3), each individual who elects the application of this subsection shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.

"(3) ELECTION.—

"(A) INDIVIDUALS ELIGIBLE TO MAKE ELECTION.—

"(i) IN GENERAL.—An individual shall only be eligible to elect the application of this subsection if—

"(I) at the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates, or

"(II) such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the 12-month period ending on the date such election is filed.

"(ii) CERTAIN TAXPAYERS INELIGIBLE TO ELECT.—If the Secretary demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by such individuals, an election under this subsection by either individual shall be invalid (and section 6013(d)(3) shall apply to the joint return).

"(B) TIME FOR ELECTION.—An election under this subsection for any taxable year shall be made not later than 2 years after the date on which the Secretary has begun collection activities with respect to the individual making the election.

"(C) ELECTION NOT VALID WITH RESPECT TO CERTAIN DEFICIENCIES.—If the Secretary demonstrates that an indi-

vidual making an election under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to such individual under subsection (d), such election shall not apply to such deficiency (or portion). This subparagraph shall not apply where the individual with actual knowledge establishes that such individual signed the return under duress.

"(4) LIABILITY INCREASED BY REASON OF TRANSFERS OF PROPERTY TO AVOID TAX.—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection, the portion of the deficiency for which the individual electing the application of this subsection is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

"(B) DISQUALIFIED ASSET.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'disqualified asset' means any property or right to property transferred to an individual making the election under this subsection with respect to a joint return by the other individual filing such joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

"(ii) PRESUMPTION.—

"(I) IN GENERAL.—For purposes of clause (i), except as provided in subclause (II), any transfer which is made after the date which is 1 year before the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

"(II) EXCEPTIONS.—Subclause (I) shall not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree or to any transfer which an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

"(d) ALLOCATION OF DEFICIENCY.—For purposes of subsection (c)—

"(1) IN GENERAL.—The portion of any deficiency on a joint return allocated to an individual shall be the amount which bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

"(2) SEPARATE TREATMENT OF CERTAIN ITEMS.—If a deficiency (or portion thereof) is attributable to—

"(A) the disallowance of a credit, or

"(B) any tax (other than tax imposed by section 1 or 55) required to be included with the joint return,

and such item is allocated to 1 individual under paragraph (3), such deficiency (or portion) shall be allocated to such individual. Any such item shall not be taken into account under paragraph (1).

"(3) ALLOCATION OF ITEMS GIVING RISE TO THE DEFICIENCY.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

"(B) EXCEPTION WHERE OTHER SPOUSE BENEFITS.—Under rules prescribed by the Secretary, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

"(C) EXCEPTION FOR FRAUD.—The Secretary may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Secretary establishes that such allocation is appropriate due to fraud of 1 or both individuals.

"(4) LIMITATIONS ON SEPARATE RETURNS DISREGARDED.—If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, such disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately. A similar rule shall apply for purposes of section 86.

"(5) CHILD'S LIABILITY.—If the liability of a child of a taxpayer is included on a joint return, such liability shall be disregarded in computing the separate liability of either spouse and such liability shall be allocated appropriately between the spouses.

"(e) PETITION FOR REVIEW BY TAX COURT.—

"(1) IN GENERAL.—In the case of an individual who elects to have subsection (b) or (c) apply—

"(A) IN GENERAL.—The individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed during the 90-day period beginning on the date on which the Secretary mails by certified or registered mail a notice to such individual of the Secretary's determination of relief available to the individual. Notwithstanding the preceding sentence, an individual may file such petition at any time after the date which is 6 months after the date such election is filed with the Secretary and before the close of such 90-day period.

"(B) RESTRICTIONS APPLICABLE TO COLLECTION OF ASSESSMENT.—

"(i) IN GENERAL.—Except as otherwise provided in section 6851 or 6861, no levy or proceeding in court shall be made, begun, or prosecuted against the indi-

vidual making an election under subsection (b) or (c) for collection of any assessment to which such election relates until the expiration of the 90-day period described in subparagraph (A), or, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Rules similar to the rules of section 7485 shall apply with respect to the collection of such assessment.

"(ii) AUTHORITY TO ENJOIN COLLECTION ACTIONS.—Notwithstanding the provisions of section 7421(a), the beginning of such levy or proceeding during the time the prohibition under clause (i) is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this subparagraph to enjoin any action or proceeding unless a timely petition has been filed under subparagraph (A) and then only in respect of the amount of the assessment to which the election under subsection (b) or (c) relates.

"(2) SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS.—The running of the period of limitations in section 6502 on the collection of the assessment to which the petition under paragraph (1)(A) relates shall be suspended for the period during which the Secretary is prohibited by paragraph (1)(B) from collecting by levy or a proceeding in court and for 60 days thereafter.

"(3) APPLICABLE RULES.—

"(A) ALLOWANCE OF CREDIT OR REFUND.—Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than section 6512(b), 7121, or 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section.

"(B) RES JUDICATA.—In the case of any election under subsection (b) or (c), if a decision of the Tax Court in any prior proceeding for the same taxable year has become final, such decision shall be conclusive except with respect to the qualification of the individual for relief which was not an issue in such proceeding. The exception contained in the preceding sentence shall not apply if the Tax Court determines that the individual participated meaningfully in such prior proceeding.

"(C) LIMITATION ON TAX COURT JURISDICTION.—If a suit for refund is begun by either individual filing the joint return pursuant to section 6532—

"(i) the Tax Court shall lose jurisdiction of the individual's action under this section to whatever extent jurisdiction is acquired by the district court or the United States Court of Federal Claims over the taxable years that are the subject of the suit for refund, and

"(ii) the court acquiring jurisdiction shall have jurisdiction over the petition filed under this subsection.

"(4) NOTICE TO OTHER SPOUSE.—The Tax Court shall establish rules which provide the individual filing a joint return but not making the election under subsection (b) or (c) with ade-

quate notice and an opportunity to become a party to a proceeding under either such subsection.

"(f) EQUITABLE RELIEF.—Under procedures prescribed by the Secretary, if—

"(1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and

"(2) relief is not available to such individual under subsection (b) or (c),

the Secretary may relieve such individual of such liability.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this section, including—

"(1) regulations providing methods for allocation of items other than the methods under subsection (d)(3), and

"(2) regulations providing the opportunity for an individual to have notice of, and an opportunity to participate in, any administrative proceeding with respect to an election made under subsection (b) or (c) by the other individual filing the joint return.".

(b) EQUITABLE RELIEF FOR INDIVIDUALS NOT FILING JOINT RETURN.—Section 66(c) (relating to spouse relieved of liability in certain other cases) is amended by adding at the end the following new sentence: "Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.".

(c) SEPARATE FORM FOR APPLYING FOR SPOUSAL RELIEF.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall develop a separate form with instructions for use by taxpayers in applying for relief under section 6015(a) of the Internal Revenue Code of 1986, as added by this section.

(d) SEPARATE NOTICE TO EACH FILER.—The Secretary of the Treasury shall, wherever practicable, send any notice relating to a joint return under section 6013 of the Internal Revenue Code of 1986 separately to each individual filing the joint return.

(e) CONFORMING AMENDMENTS.—

(1) Section 6013 is amended by striking subsection (e).

(2) Subparagraph (A) of section 6230(c)(5) is amended by striking "section 6013(e)" and inserting "section 6015".

(3) Section 7421(a) is amended by inserting "6015(d)," after "sections".

(f) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter A of chapter 61 is amended by inserting after the item relating to section 6014 the following new item:

"Sec. 6015. Relief from joint and several liability on joint return.".

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to any liability for tax arising after the date of the enactment of this Act and

any liability for tax arising on or before such date but remaining unpaid as of such date.

(2) 2-YEAR PERIOD.—The 2-year period under subsection (b)(1)(E) or (c)(3)(B) of section 6015 of the Internal Revenue Code of 1986 shall not expire before the date which is 2 years after the date of the first collection activity after the date of the enactment of this Act.

SEC. 3202. SUSPENSION OF STATUTE OF LIMITATIONS ON FILING REFUND CLAIMS DURING PERIODS OF DISABILITY.

(a) IN GENERAL.—Section 6511 (relating to limitations on credit or refund) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) RUNNING OF PERIODS OF LIMITATION SUSPENDED WHILE TAXPAYER IS UNABLE TO MANAGE FINANCIAL AFFAIRS DUE TO DISABILITY.—

"(1) IN GENERAL.—In the case of an individual, the running of the periods specified in subsections (a), (b), and (c) shall be suspended during any period of such individual's life that such individual is financially disabled.

"(2) FINANCIALLY DISABLED.—

"(A) IN GENERAL.—For purposes of paragraph (1), an individual is financially disabled if such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to have such an impairment unless proof of the existence thereof is furnished in such form and manner as the Secretary may require.

"(B) EXCEPTION WHERE INDIVIDUAL HAS GUARDIAN, ETC.—An individual shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to periods of disability before, on, or after the date of the enactment of this Act but shall not apply to any claim for credit or refund which (without regard to such amendment) is barred by the operation of any law or rule of law (including res judicata) as of the date of the enactment of this Act.

Subtitle D—Provisions Relating to Interest and Penalties

SEC. 3301. ELIMINATION OF INTEREST RATE DIFFERENTIAL ON OVERLAPPING PERIODS OF INTEREST ON TAX OVERPAYMENTS AND UNDERPAYMENTS.

(a) IN GENERAL.—Section 6621 (relating to determination of rate of interest) is amended by adding at the end the following new subsection:

"(d) ELIMINATION OF INTEREST ON OVERLAPPING PERIODS OF TAX OVERPAYMENTS AND UNDERPAYMENTS.—To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by this title, the net rate of interest under this section on such amounts shall be zero for such period.".

(b) CONFORMING AMENDMENT.—Subsection (f) of section 6601 (relating to satisfaction by credits) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to the extent that section 6621(d) applies.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided under paragraph (2), the amendments made by this section shall apply to interest for periods beginning after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendments made by this section shall apply to interest for periods beginning before the date of the enactment of this Act if the taxpayer—

(A) reasonably identifies and establishes periods of such tax overpayments and underpayments for which the zero rate applies, and

(B) not later than December 31, 1999, requests the Secretary of the Treasury to apply section 6621(d) of the Internal Revenue Code of 1986, as added by subsection (a), to such periods.

SEC. 3302. INCREASE IN OVERPAYMENT RATE PAYABLE TO TAXPAYERS OTHER THAN CORPORATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 6621(a)(1) (defining overpayment rate) is amended to read as follows:

"(B) 3 percentage points (2 percentage points in the case of a corporation).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to interest for the second and succeeding calendar quarters beginning after the date of the enactment of this Act.

SEC. 3303. MITIGATION OF PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.

(a) IN GENERAL.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

"(h) LIMITATION ON PENALTY ON INDIVIDUAL'S FAILURE TO PAY FOR MONTHS DURING PERIOD OF INSTALLMENT AGREEMENT.—In the case of an individual who files a return of tax on or before the due date for the return (including extensions), paragraphs (2) and (3) of subsection (a) shall each be applied by substituting '0.25' for '0.5' each place it appears for purposes of determining the addition to tax for any month during which an installment agreement under section 6159 is in effect for the payment of such tax.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply for purposes of determining additions to the tax for months beginning after December 31, 1999.

SEC. 3304. MITIGATION OF FAILURE TO DEPOSIT PENALTY.

(a) TAXPAYER MAY DESIGNATE PERIODS TO WHICH DEPOSITS APPLY.—Section 6656 (relating to underpayment of deposits) is amended by adding at the end the following new subsection:

"(e) DESIGNATION OF PERIODS TO WHICH DEPOSITS APPLY.—

"(1) IN GENERAL.—A person may, with respect to any deposit of tax to be reported on such person's return for a specified tax period, designate the period or periods within such specified tax period to which the deposit is to be applied for purposes of this section.

"(2) TIME FOR MAKING DESIGNATION.—A person may make a designation under paragraph (1) only during the 90-day period beginning on the date of a notice that a penalty under subsection (a) has been imposed for the specified tax period to which the deposit relates.".

(b) EXPANSION OF EXEMPTION FOR FIRST-TIME DEPOSITS.—

(1) IN GENERAL.—Paragraph (2) of section 6656(c) (relating to exemption for first-time depositors of employment taxes) is amended to read as follows:

"(2) such failure—

"(A) occurs during the 1st quarter that such person was required to deposit any employment tax, or

"(B) if such person is required to change the frequency of deposits of any employment tax, relates to the first deposit to which such change applies, and".

(c) PERIODS APPLY TO CURRENT LIABILITIES UNLESS DESIGNATED OTHERWISE.—Paragraph (1) of section 6656(e) (as added by subsection (a) of this section) is amended to read as follows:

"(e) DESIGNATION OF PERIODS TO WHICH DEPOSITS APPLY.—

"(1) IN GENERAL.—A deposit made under this section shall be applied to the most recent period or periods within the specified tax period to which the deposit relates, unless the person making such deposit designates a different period or periods to which such deposit is to be applied.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits required to be made after the 180th day after the date of the enactment of this Act.

(2) APPLICATION TO CURRENT LIABILITIES.—The amendment made by subsection (c) shall apply to deposits required to be made after December 31, 2001.

SEC. 3305. SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE SECRETARY FAILS TO CONTACT INDIVIDUAL TAXPAYER.

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE SECRETARY FAILS TO CONTACT TAXPAYER.—

"(1) SUSPENSION.—

"(A) IN GENERAL.—In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the tax-

payer specifically stating the taxpayer's liability and the basis for the liability before the close of the 1-year period (18-month period in the case of taxable years beginning before January 1, 2004) beginning on the later of—

"(i) the date on which the return is filed, or

"(ii) the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

"(B) SEPARATE APPLICATION.—This paragraph shall be applied separately with respect to each item or adjustment.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) any penalty imposed by section 6651,

"(B) any interest, penalty, addition to tax, or additional amount in a case involving fraud,

"(C) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return, or

"(D) any criminal penalty.

"(3) SUSPENSION PERIOD.—For purposes of this subsection, the term 'suspension period' means the period—

"(A) beginning on the day after the close of the 1-year period (18-month period in the case of taxable years beginning before January 1, 2004) under paragraph (1), and

"(B) ending on the date which is 21 days after the date on which notice described in paragraph (1)(A) is provided by the Secretary.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 3306. PROCEDURAL REQUIREMENTS FOR IMPOSITION OF PENALTIES AND ADDITIONS TO TAX.

(a) IN GENERAL.—Chapter 68 (relating to additions to the tax, additional amounts, and assessable penalties) is amended by adding at the end the following new subchapter:

"Subchapter C—Procedural Requirements

"Sec. 6751. Procedural requirements.

"SEC. 6751. PROCEDURAL REQUIREMENTS.

"(a) COMPUTATION OF PENALTY INCLUDED IN NOTICE.—The Secretary shall include with each notice of penalty under this title information with respect to the name of the penalty, the section of this title under which the penalty is imposed, and a computation of the penalty.

"(b) APPROVAL OF ASSESSMENT.—

"(1) IN GENERAL.—No penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) any addition to tax under section 6651, 6654, or 6655, or

"(B) any other penalty automatically calculated through electronic means.

"(c) PENALTIES.—For purposes of this section, the term 'penalty' includes any addition to tax or any additional amount.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 68 is amended by adding at the end the following new item:

"SUBCHAPTER C. Procedural requirements.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to notices issued, and penalties assessed, after December 31, 2000.

SEC. 3307. PERSONAL DELIVERY OF NOTICE OF PENALTY UNDER SECTION 6672.

(a) IN GENERAL.—Paragraph (1) of section 6672(b) (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by inserting "or in person" after "section 6212(b)".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6672(b) is amended by inserting "(or, in the case of such a notice delivered in person, such delivery)" after "paragraph (1)".

(2) Paragraph (3) of section 6672(b) is amended by inserting "or delivered in person" after "mailed" each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3308. NOTICE OF INTEREST CHARGES.

(a) IN GENERAL.—Chapter 67 (relating to interest) is amended by adding at the end the following new subchapter:

"Subchapter D—Notice Requirements

"Sec. 6631. Notice requirements.

"SEC. 6631. NOTICE REQUIREMENTS.

"The Secretary shall include with each notice to an individual taxpayer which includes an amount of interest required to be paid by such taxpayer under this title information with respect to the section of this title under which the interest is imposed and a computation of the interest.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 67 is amended by adding at the end the following new item:

"SUBCHAPTER D. Notice requirements.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to notices issued after December 31, 2000.

SEC. 3309. ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.

(a) IN GENERAL.—Section 6404 (relating to abatements), as amended by section 3305, is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—

"(1) IN GENERAL.—If the Secretary extends for any period the time for filing income tax returns under section 6081 and the time for paying income tax with respect to such returns under section 6161 for any taxpayer located in a Presidentially declared disaster area, the Secretary shall abate for such period the assessment of any interest prescribed under section 6601 on such income tax.

"(2) PRESIDENTIALLY DECLARED DISASTER AREA.—For purposes of paragraph (1), the term 'Presidentially declared disaster area' means, with respect to any taxpayer, any area which the President has determined warrants assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997.

(c) EMERGENCY DESIGNATION.—

(1) For the purposes of section 252(e) of the Balanced Budget and Emergency Deficit Control Act, Congress designates the provisions of this section as an emergency requirement.

(2) The amendments made by subsections (a) and (b) of this section shall only take effect upon the transmittal by the President to the Congress of a message designating the provisions of subsections (a) and (b) as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act.

Subtitle E—Protections for Taxpayers Subject to Audit or Collection Activities

PART I—DUE PROCESS

SEC. 3401. DUE PROCESS IN IRS COLLECTION ACTIONS.

(a) NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN.—Subchapter C of chapter 64 (relating to lien for taxes) is amended by inserting before the table of sections the following:

"Part I. Due process for liens.
"Part II. Liens.

"PART I—DUE PROCESS FOR LIENS

"Sec. 6320. Notice and opportunity for hearing upon filing of notice of lien.

"SEC. 6320. NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN.

"(a) REQUIREMENT OF NOTICE.—

"(1) IN GENERAL.—The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.

"(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

"(A) given in person,

"(B) left at the dwelling or usual place of business of such person, or

"(C) sent by certified or registered mail to such person's last known address,

not more than 5 business days after the day of the filing of the notice of lien.

"(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

"(A) the amount of unpaid tax,

"(B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2),

"(C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals, and

"(D) the provisions of this title and procedures relating to the release of liens on property.

"(b) RIGHT TO FAIR HEARING.—

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

"(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

"(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.

"(4) COORDINATION WITH SECTION 6330.—To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.

"(c) CONDUCT OF HEARING; REVIEW; SUSPENSIONS.—For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), and (e) of section 6330 shall apply.

"PART II—LIENS".

(b) NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.—Subchapter D of chapter 64 (relating to seizure of property for collection of taxes) is amended by inserting before the table of sections the following:

"Part I. Due process for collections.
"Part II. Levy.

"PART I—DUE PROCESS FOR COLLECTIONS

"Sec. 6330. Notice and opportunity for hearing before levy.

"SEC. 6330. NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.

"(a) REQUIREMENT OF NOTICE BEFORE LEVY.—

"(1) IN GENERAL.—No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

"(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

"(A) given in person,

"(B) left at the dwelling or usual place of business of such person, or

"(C) sent by certified or registered mail, return receipt requested, to such person's last known address,

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

"(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

"(A) the amount of unpaid tax,

"(B) the right of the person to request a hearing during the 30-day period under paragraph (2), and

"(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

"(i) the provisions of this title relating to levy and sale of property,

"(ii) the procedures applicable to the levy and sale of property under this title,

"(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

"(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159), and

"(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

"(b) RIGHT TO FAIR HEARING.—

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

"(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

"(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

"(c) MATTERS CONSIDERED AT HEARING.—In the case of any hearing conducted under this section—

"(1) REQUIREMENT OF INVESTIGATION.—The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

"(2) ISSUES AT HEARING.—

"(A) IN GENERAL.—The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

"(i) appropriate spousal defenses,

"(ii) challenges to the appropriateness of collection actions, and

"(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

"(B) UNDERLYING LIABILITY.—The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

"(3) BASIS FOR THE DETERMINATION.—The determination by an appeals officer under this subsection shall take into consideration—

"(A) the verification presented under paragraph (1),

"(B) the issues raised under paragraph (2), and

"(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

"(4) CERTAIN ISSUES PRECLUDED.—An issue may not be raised at the hearing if—

"(A) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding, and

"(B) the person seeking to raise the issue participated meaningfully in such hearing or proceeding.

This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

"(d) PROCEEDING AFTER HEARING.—

"(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination—

"(A) to the Tax Court (and the Tax Court shall have jurisdiction to hear such matter), or

"(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

"(2) JURISDICTION RETAINED AT IRS OFFICE OF APPEALS.—The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

"(A) collection actions taken or proposed with respect to such determination, and

"(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

"(e) SUSPENSION OF COLLECTIONS AND STATUTE OF LIMITATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing.

"(2) LEVY UPON APPEAL.—Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

"(f) JEOPARDY AND STATE REFUND COLLECTION.—If—

"(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy, or

"(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund,

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

"PART II—LEVY".

(c) REVIEW BY SPECIAL TRIAL JUDGES ALLOWED.—

(1) IN GENERAL.—Section 7443(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking "and" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) any proceeding under section 6320 or 6330, and".

(2) AUTHORITY TO MAKE DECISIONS.—Section 7443(c) (relating to authority to make court decisions) is amended by striking "or (3)" and inserting "(3), or (4)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to collection actions initiated after the date which is 180 days after the date of the enactment of this Act.

PART II—EXAMINATION ACTIVITIES

SEC. 3411. CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7525. CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

"(a) UNIFORM APPLICATION TO TAXPAYER COMMUNICATIONS WITH FEDERALLY AUTHORIZED PRACTITIONERS.—

"(1) GENERAL RULE.—With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

"(2) LIMITATIONS.—Paragraph (1) may only be asserted in—

"(A) any noncriminal tax matter before the Internal Revenue Service, and

"(B) any noncriminal tax proceeding in Federal court brought by or against the United States.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) FEDERALLY AUTHORIZED TAX PRACTITIONER.—The term 'federally authorized tax practitioner' means any individual who is authorized under Federal law to practice before the Internal Revenue Service if such practice is subject to Federal regulation under section 330 of title 31, United States Code.

"(B) TAX ADVICE.—The term 'tax advice' means advice given by an individual with respect to a matter which is within the scope of the individual's authority to practice described in subparagraph (A).

"(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING CORPORATE TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of such corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)).".

(b) CONFORMING AMENDMENT.—The table of sections for such chapter 77 is amended by adding at the end the following new item:

"Sec. 7525. Confidentiality privileges relating to taxpayer communications."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 3412. LIMITATION ON FINANCIAL STATUS AUDIT TECHNIQUES.

Section 7602 (relating to examination of books and witnesses) is amended by adding at the end the following new subsection:

"(d) LIMITATION ON EXAMINATION ON UNREPORTED INCOME.—The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.".

SEC. 3413. SOFTWARE TRADE SECRETS PROTECTION.

(a) IN GENERAL.—Subchapter A of chapter 78 (relating to examination and inspection) is amended by redesignating section 7612 as section 7613 and by inserting after 7611 the following new section:

"SEC. 7612. SPECIAL PROCEDURES FOR SUMMONSES FOR COMPUTER SOFTWARE.

"(a) GENERAL RULE.—For purposes of this title—

"(1) except as provided in subsection (b), no summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons to produce or analyze any tax-related computer software source code, and

"(2) any software and related materials which are provided to the Secretary under this title shall be subject to the safeguards under subsection (c).

"(b) CIRCUMSTANCES UNDER WHICH COMPUTER SOFTWARE SOURCE CODE MAY BE PROVIDED.—

"(1) IN GENERAL.—Subsection (a)(1) shall not apply to any portion, item, or component of tax-related computer software source code if—

"(A) the Secretary is unable to otherwise reasonably ascertain the correctness of any item on a return from—

"(i) the taxpayer's books, papers, records, or other data, or

"(ii) the computer software executable code (and any modifications thereof) to which such source code relates and any associated data which, when executed, produces the output to ascertain the correctness of the item,

"(B) the Secretary identifies with reasonable specificity the portion, item, or component of such source code needed to verify the correctness of such item on the return, and

"(C) the Secretary determines that the need for the portion, item, or component of such source code with respect to such item outweighs the risks of unauthorized disclosure of trade secrets.

"(2) EXCEPTIONS.—Subsection (a)(1) shall not apply to—

"(A) any inquiry into any offense connected with the administration or enforcement of the internal revenue laws,

"(B) any tax-related computer software source code acquired or developed by the taxpayer or a related person primarily for internal use by the taxpayer or such person rather than for commercial distribution,

"(C) any communications between the owner of the tax-related computer software source code and the taxpayer or related persons, or

"(D) any tax-related computer software source code which is required to be provided or made available pursuant to any other provision of this title.

"(3) COOPERATION REQUIRED.—For purposes of paragraph (1), the Secretary shall be treated as meeting the requirements of subparagraphs (A) and (B) of such paragraph if—

"(A) the Secretary determines that it is not feasible to determine the correctness of an item without access to the computer software executable code and associated data described in paragraph (1)(A)(ii),

"(B) the Secretary makes a formal request to the taxpayer for such code and data and to the owner of the computer software source code for such executable code, and

"(C) such code and data is not provided within 180 days of such request.

"(4) RIGHT TO CONTEST SUMMONS.—In any proceeding brought under section 7604 to enforce a summons issued under the authority of this subsection, the court shall, at the request of any party, hold a hearing to determine whether the applicable requirements of this subsection have been met.

"(c) SAFEGUARDS TO ENSURE PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION.—

"(1) ENTRY OF PROTECTIVE ORDER.—In any court proceeding to enforce a summons for any portion of software, the court may receive evidence and issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to such software, including requiring that any information be placed under seal to be opened only as directed by the court.

"(2) PROTECTION OF SOFTWARE.—Notwithstanding any other provision of this section, and in addition to any protections ordered pursuant to paragraph (1), in the case of software that comes into the possession or control of the Secretary in the course of any examination with respect to any taxpayer—

"(A) the software may be used only in connection with the examination of such taxpayer's return, any appeal by the taxpayer to the Internal Revenue Service Office of Appeals, any judicial proceeding (and any appeals therefrom), and any inquiry into any offense connected with the administration or enforcement of the internal revenue laws,

"(B) the Secretary shall provide, in advance, to the taxpayer and the owner of the software a written list of the names of all individuals who will analyze or otherwise have access to the software,

"(C) the software shall be maintained in a secure area or place, and, in the case of computer software source code, shall not be removed from the owner's place of business unless the owner permits, or a court orders, such removal,

"(D) the software may not be copied except as necessary to perform such analysis, and the Secretary shall number all copies made and certify in writing that no other copies have been (or will be) made,

"(E) at the end of the period during which the software may be used under subparagraph (A)—

"(i) the software and all copies thereof shall be returned to the person from whom they were obtained and any copies thereof made under subparagraph (D)

on the hard drive of a machine or other mass storage device shall be permanently deleted, and

"(ii) the Secretary shall obtain from any person who analyzes or otherwise had access to such software a written certification under penalty of perjury that all copies and related materials have been returned and that no copies were made of them,

"(F) the software may not be decompiled or disassembled,

"(G) the Secretary shall provide to the taxpayer and the owner of any interest in such software, as the case may be, a written agreement, between the Secretary and any person who is not an officer or employee of the United States and who will analyze or otherwise have access to such software, which provides that such person agrees not to—

"(i) disclose such software to any person other than persons to whom such information could be disclosed for tax administration purposes under section 6103, or

"(ii) participate for 2 years in the development of software which is intended for a similar purpose as the software examined, and

"(H) the software shall be treated as return information for purposes of section 6103.

For purposes of subparagraph (C), the owner shall make available any necessary equipment or materials for analysis of computer software source code required to be conducted on the owner's premises. The owner of any interest in the software shall be considered a party to any agreement described in subparagraph (G).

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

"(1) SOFTWARE.—The term 'software' includes computer software source code and computer software executable code.

"(2) COMPUTER SOFTWARE SOURCE CODE.—The term 'computer software source code' means—

"(A) the code written by a programmer using a programming language which is comprehensible to appropriately trained persons and is not capable of directly being used to give instructions to a computer,

"(B) related programmers' notes, design documents, memoranda, and similar documentation, and

"(C) related customer communications.

"(3) COMPUTER SOFTWARE EXECUTABLE CODE.—The term 'computer software executable code' means—

"(A) any object code, machine code, or other code readable by a computer when loaded into its memory and used directly by such computer to execute instructions, and

"(B) any related user manuals.

"(4) OWNER.—The term 'owner' shall, with respect to any software, include the developer of the software.

"(5) RELATED PERSON.—A person shall be treated as related to another person if such persons are related persons under section 267 or 707(b).

"(6) TAX-RELATED COMPUTER SOFTWARE SOURCE CODE.—The term 'tax-related computer software source code' means the

computer source code for any computer software program intended for accounting, tax return preparation or compliance, or tax planning.".

(b) UNAUTHORIZED DISCLOSURE OF SOFTWARE.—Section 7213 (relating to unauthorized disclosure of information) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) DISCLOSURE OF SOFTWARE.—Any person who willfully divulges or makes known software (as defined in section 7612(d)(1)) to any person in violation of section 7612 shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.".

(c) APPLICATION OF SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.—Paragraph (2) of section 7603(b), as amended by section 3416(a), is amended by striking "and" at the end of subparagraph (H), by striking a period at the end of subparagraph (I) and inserting ", and", and by adding at the end the following new subparagraph:

"(J) any owner or developer of a computer software source code (as defined in section 7612(d)(2)).

Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7612(b)(1)(A)(ii) to which such source code relates.".

(d) CONFORMING AMENDMENT.—The table of sections for subchapter A of chapter 78 is amended by striking the item relating to section 7612 and by inserting the following new item:

"Sec. 7612. Special procedures for summonses for computer software.
"Sec. 7613. Cross references.".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to summonses issued, and software acquired, after the date of the enactment of this Act.

(2) SOFTWARE PROTECTION.—In the case of any software acquired on or before such date of enactment, the requirements of section 7612(a)(2) of the Internal Revenue Code of 1986 (as added by such amendments) shall apply after the 90th day after such date. The preceding sentence shall not apply to the requirement under section 7612(c)(2)(G)(ii) of such Code (as so added).

SEC. 3414. THREAT OF AUDIT PROHIBITED TO COERCE TIP REPORTING ALTERNATIVE COMMITMENT AGREEMENTS.

The Secretary of the Treasury or the Secretary's delegate shall instruct employees of the Internal Revenue Service that they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer into entering into a Tip Reporting Alternative Commitment Agreement.

SEC. 3415. TAXPAYERS ALLOWED MOTION TO QUASH ALL THIRD-PARTY SUMMONSES.

(a) IN GENERAL.—Paragraph (1) of section 7609(a) (relating to summonses to which section applies) is amended by striking so

much of such paragraph as precedes "notice of the summons" and inserting the following:

"(1) IN GENERAL.—If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then".

(b) COORDINATION WITH OTHER AUTHORITY.—Section 7609 (relating to special procedures for third-party summonses) is amended by adding at the end the following new subsection:

"(j) USE OF SUMMONS NOT REQUIRED.—Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.".

(c) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 7609 is amended by striking paragraphs (3) and (4), by redesignating paragraph (5) as paragraph (3), and by striking in paragraph (3) (as so redesignated) "subsection (c)(2)(B)" and inserting "subsection (c)(2)(D)".

(2) Subsection (c) of section 7609 is amended to read as follows:

"(c) SUMMONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.

"(2) EXCEPTIONS.—This section shall not apply to any summons—

"(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person,

"(B) issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept,

"(C) issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A),

"(D) issued in aid of the collection of—

"(i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued, or

"(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i),

"(E)(i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws, and

"(ii) served on any person who is not a third-party recordkeeper (as defined in section 7603(b)), or

"(F) described in subsection (f) or (g).

"(3) RECORDS.—For purposes of this section, the term 'records' includes books, papers, and other data.".

(3) Paragraph (2) of section 7609(e) is amended by striking "third-party recordkeeper's" and all that follows through "subsection (f)" and inserting "summoned party's response to the summons".

(4) Subsection (f) of section 7609 is amended—

(A) by striking "described in subsection (c)" and inserting "described in subsection (c)(1)", and

(B) by inserting "or testimony" after "records" in paragraph (3).

(5) Subsection (g) of section 7609 is amended by striking "In the case of any summons described in subsection (c), the provisions of subsections (a)(1) and (b) shall not apply if" and inserting "A summons is described in this subsection if".

(6)(A) Subsection (i) of section 7609 is amended by striking "THIRD-PARTY RECORDKEEPER AND" in the subsection heading.

(B) Paragraph (1) of section 7609(i) is amended by striking "described in subsection (c), the third-party recordkeeper" and inserting "to which this section applies for the production of records, the summoned party".

(C) Paragraph (2) of section 7609(i) is amended—

(i) by striking "RECORDKEEPER" in the heading and inserting "SUMMONED PARTY", and

(ii) by striking "the third-party recordkeeper" and inserting "the summoned party".

(D) Paragraph (3) of section 7609(i) is amended to read as follows:

"(3) PROTECTION FOR SUMMONED PARTY WHO DISCLOSES.—Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses served after the date of the enactment of this Act.

SEC. 3416. SERVICE OF SUMMONSES TO THIRD-PARTY RECORDKEEPERS PERMITTED BY MAIL.

(a) IN GENERAL.—Section 7603 (relating to service of summons) is amended by striking "A summons issued" and inserting "(a) IN GENERAL.—A summons issued" and by adding at the end the following new subsection:

"(b) SERVICE BY MAIL TO THIRD-PARTY RECORDKEEPERS.—

"(1) IN GENERAL.—A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be served by certified or registered mail to the last known address of such recordkeeper.

"(2) THIRD-PARTY RECORDKEEPER.—For purposes of paragraph (1), the term 'third-party recordkeeper' means—

"(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank

(as defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A));

"(B) any consumer reporting agency (as defined under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)));

"(C) any person extending credit through the use of credit cards or similar devices;

"(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)));

"(E) any attorney;

"(F) any accountant;

"(G) any barter exchange (as defined in section 6045(c)(3));

"(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof, and

"(I) any enrolled agent.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to summonses served after the date of the enactment of this Act.

SEC. 3417. NOTICE OF IRS CONTACT OF THIRD PARTIES.

(a) IN GENERAL.—Section 7602 (relating to examination of books and witnesses), as amended by section 3412, is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) NOTICE OF CONTACT OF THIRD PARTIES.—

"(1) GENERAL NOTICE.—An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

"(2) NOTICE OF SPECIFIC CONTACTS.—The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

"(3) EXCEPTIONS.—This subsection shall not apply—

"(A) to any contact which the taxpayer has authorized,

"(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person, or

"(C) with respect to any pending criminal investigation.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to contacts made after the 180th day after the date of the enactment of this Act.

PART III—COLLECTION ACTIVITIES

Subpart A—Approval Process

SEC. 3421. APPROVAL PROCESS FOR LIENS, LEVIES, AND SEIZURES.

(a) IN GENERAL.—The Commissioner of Internal Revenue shall develop and implement procedures under which—

(1) a determination by an employee to file a notice of lien or levy with respect to, or to levy or seize, any property or right to property would, where appropriate, be required to be reviewed by a supervisor of the employee before the action was taken, and

(2) appropriate disciplinary action would be taken against the employee or supervisor where the procedures under paragraph (1) were not followed.

(b) REVIEW PROCESS.—The review process under subsection (a)(1) may include a certification that the employee has—

(1) reviewed the taxpayer's information,

(2) verified that a balance is due, and

(3) affirmed that the action proposed to be taken is appropriate given the taxpayer's circumstances, considering the amount due and the value of the property or right to property.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on the date of the enactment of this Act.

(2) AUTOMATED COLLECTION SYSTEM ACTIONS.—In the case of any action under an automated collection system, this section shall apply to actions initiated after December 31, 2000.

Subpart B—Liens and Levies

SEC. 3431. MODIFICATIONS TO CERTAIN LEVY EXEMPTION AMOUNTS.

(a) FUEL, ETC.—Section 6334(a)(2) (relating to fuel, provisions, furniture, and personal effects) is amended by striking "$2,500" and inserting "$6,250".

(b) BOOKS, ETC.—Section 6334(a)(3) (relating to books and tools of a trade, business, or profession) is amended by striking "$1,250" and inserting "$3,125".

(c) CONFORMING AMENDMENT.—Section 6334(g)(1) (relating to inflation adjustment) is amended—

(1) by striking "1997" and inserting "1999", and

(2) by striking "1996" in subparagraph (B) and inserting "1998".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to levies issued after the date of the enactment of this Act.

SEC. 3432. RELEASE OF LEVY UPON AGREEMENT THAT AMOUNT IS UNCOLLECTIBLE.

(a) IN GENERAL.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

"(e) RELEASE OF LEVY UPON AGREEMENT THAT AMOUNT IS NOT COLLECTIBLE.—In the case of a levy on the salary or wages payable

to or received by the taxpayer, upon agreement with the taxpayer that the tax is not collectible, the Secretary shall release such levy as soon as practicable.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to levies imposed after December 31, 1999.

SEC. 3433. LEVY PROHIBITED DURING PENDENCY OF REFUND PROCEEDINGS.

(a) IN GENERAL.—Section 6331 (relating to levy and distraint) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) NO LEVY DURING PENDENCY OF PROCEEDINGS FOR REFUND OF DIVISIBLE TAX.—

"(1) IN GENERAL.—No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid divisible tax during the pendency of any proceeding brought by such person in a proper Federal trial court for the recovery of any portion of such divisible tax which was paid by such person if—

"(A) the decision in such proceeding would be res judicata with respect to such unpaid tax, or

"(B) such person would be collaterally estopped from contesting such unpaid tax by reason of such proceeding.

"(2) DIVISIBLE TAX.—For purposes of paragraph (1), the term 'divisible tax' means—

"(A) any tax imposed by subtitle C, and

"(B) the penalty imposed by section 6672 with respect to any such tax.

"(3) EXCEPTIONS.—

"(A) CERTAIN UNPAID TAXES.—This subsection shall not apply with respect to any unpaid tax if—

"(i) the taxpayer files a written notice with the Secretary which waives the restriction imposed by this subsection on levy with respect to such tax, or

"(ii) the Secretary finds that the collection of such tax is in jeopardy.

"(B) CERTAIN LEVIES.—This subsection shall not apply to—

"(i) any levy to carry out an offset under section 6402, and

"(ii) any levy which was first made before the date that the applicable proceeding under this subsection commenced.

"(4) LIMITATION ON COLLECTION ACTIVITY; AUTHORITY TO ENJOIN COLLECTION.—

"(A) LIMITATION ON COLLECTION.—No proceeding in court for the collection of any unpaid tax to which paragraph (1) applies shall be begun by the Secretary during the pendency of a proceeding under such paragraph. This subparagraph shall not apply to—

"(i) any counterclaim in a proceeding under such paragraph, or

"(ii) any proceeding relating to a proceeding under such paragraph.

"(B) AUTHORITY TO ENJOIN.—Notwithstanding section 7421(a), a levy or collection proceeding prohibited by this subsection may be enjoined (during the period such prohibition is in force) by the court in which the proceeding under paragraph (1) is brought.

"(5) SUSPENSION OF STATUTE OF LIMITATIONS ON COLLECTION.—The period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy.

"(6) PENDENCY OF PROCEEDING.—For purposes of this subsection, a proceeding is pending beginning on the date such proceeding commences and ending on the date that a final order or judgment from which an appeal may be taken is entered in such proceeding.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to unpaid tax attributable to taxable periods beginning after December 31, 1998.

SEC. 3434. APPROVAL REQUIRED FOR JEOPARDY AND TERMINATION ASSESSMENTS AND JEOPARDY LEVIES.

(a) IN GENERAL.—Paragraph (1) of section 7429(a) (relating to review of jeopardy levy or assessment procedures) is amended to read as follows:

"(1) ADMINISTRATIVE REVIEW.—

"(A) PRIOR APPROVAL REQUIRED.—No assessment may be made under section 6851(a), 6852(a), 6861(a), or 6862, and no levy may be made under section 6331(a) less than 30 days after notice and demand for payment is made, unless the Chief Counsel for the Internal Revenue Service (or such Counsel's delegate) personally approves (in writing) such assessment or levy.

"(B) INFORMATION TO TAXPAYER.—Within 5 days after the day on which such an assessment or levy is made, the Secretary shall provide the taxpayer with a written statement of the information upon which the Secretary relied in making such assessment or levy.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxes assessed and levies made after the date of the enactment of this Act.

SEC. 3435. INCREASE IN AMOUNT OF CERTAIN PROPERTY ON WHICH LIEN NOT VALID.

(a) CERTAIN PROPERTY.—

(1) IN GENERAL.—Subsection (b) of section 6323 (relating to validity and priority against certain persons) is amended—

(A) by striking "$250" in paragraph (4) (relating to personal property purchased in casual sale) and inserting "$1,000", and

(B) by striking "$1,000" in paragraph (7) (relating to residential property subject to a mechanic's lien for certain repairs and improvements) and inserting "$5,000".

(2) INFLATION ADJUSTMENT.—Subsection (i) of section 6323 (relating to special rules) is amended by adding at the end the following new paragraph:

"(4) COST-OF-LIVING ADJUSTMENT.—In the case of notices of liens imposed by section 6321 which are filed in any calendar

year after 1998, each of the dollar amounts under paragraph (4) or (7) of subsection (b) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting 'calendar year 1996' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.".

(b) EXPANSION OF TREATMENT OF PASSBOOK LOANS.—Paragraph (10) of section 6323(b) is amended—

(1) by striking "PASSBOOK LOANS" in the heading and inserting "DEPOSIT-SECURED LOANS",

(2) by striking ", evidenced by a passbook,", and

(3) by striking all that follows "secured by such account" and inserting a period.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3436. WAIVER OF EARLY WITHDRAWAL TAX FOR IRS LEVIES ON EMPLOYER-SPONSORED RETIREMENT PLANS OR IRAS.

(a) IN GENERAL.—Section 72(t)(2)(A) (relating to subsection not to apply to certain distributions) is amended by striking "or" at the end of clauses (iv) and (v), by striking the period at the end of clause (vi) and inserting ", or", and by adding at the end the following new clause:

"(vii) made on account of a levy under section 6331 on the qualified retirement plan."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1999.

Subpart C—Seizures

SEC. 3441. PROHIBITION OF SALES OF SEIZED PROPERTY AT LESS THAN MINIMUM BID.

(a) IN GENERAL.—Section 6335(e)(1)(A)(i) (relating to determinations relating to minimum price) is amended by striking "a minimum price for which such property shall be sold" and inserting "a minimum price below which such property shall not be sold".

(b) REFERENCE TO PENALTY FOR VIOLATION.—Section 6335(e) is amended by adding at the end the following new paragraph:

"(4) CROSS REFERENCE.—

"For provision providing for civil damages for violation of paragraph (1)(A)(i), see section 7433.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales made after the date of the enactment of this Act.

SEC. 3442. ACCOUNTING OF SALES OF SEIZED PROPERTY.

(a) IN GENERAL.—Section 6340 (relating to records of sale) is amended—

(1) in subsection (a)—

(A) by striking "real", and

(B) by inserting "or certificate of sale of personal property" after "deed", and

(2) by adding at the end the following new subsection:

"(c) ACCOUNTING TO TAXPAYER.—The taxpayer with respect to whose liability the sale was conducted or who redeemed the property shall be furnished—

"(1) the record under subsection (a) (other than the names of the purchasers),

"(2) the amount from such sale applied to the taxpayer's liability, and

"(3) the remaining balance of such liability.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to seizures occurring after the date of the enactment of this Act.

SEC. 3443. UNIFORM ASSET DISPOSAL MECHANISM.

Not later than the date which is 2 years after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall implement a uniform asset disposal mechanism for sales under section 6335 of the Internal Revenue Code of 1986. The mechanism should be designed to remove any participation in such sales by revenue officers of the Internal Revenue Service and should consider the use of outsourcing.

SEC. 3444. CODIFICATION OF IRS ADMINISTRATIVE PROCEDURES FOR SEIZURE OF TAXPAYER'S PROPERTY.

(a) IN GENERAL.—Section 6331 (relating to levy and distraint), as amended by section 3433, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) NO LEVY BEFORE INVESTIGATION OF STATUS OF PROPERTY.—

"(1) IN GENERAL.—For purposes of applying the provisions of this subchapter, no levy may be made on any property or right to property which is to be sold under section 6335 until a thorough investigation of the status of such property has been completed.

"(2) ELEMENTS IN INVESTIGATION.—For purposes of paragraph (1), an investigation of the status of any property shall include—

"(A) a verification of the taxpayer's liability,

"(B) the completion of an analysis under subsection (f),

"(C) the determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to such liability, and

"(D) a thorough consideration of alternative collection methods.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3445. PROCEDURES FOR SEIZURE OF RESIDENCES AND BUSINESSES.

(a) IN GENERAL.—Section 6334(a)(13) (relating to property exempt from levy) is amended to read as follows:

"(13) RESIDENCES EXEMPT IN SMALL DEFICIENCY CASES AND PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS EXEMPT IN ABSENCE OF CERTAIN APPROVAL OR JEOPARDY.—

"(A) RESIDENCES IN SMALL DEFICIENCY CASES.—If the amount of the levy does not exceed $5,000—

"(i) any real property used as a residence by the taxpayer, or

"(ii) any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

"(B) PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS.—Except to the extent provided in subsection (e)—

"(i) the principal residence of the taxpayer (within the meaning of section 121), and

"(ii) tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.".

(b) LEVY ALLOWED IN CERTAIN CIRCUMSTANCES.—Section 6334(e) is amended to read as follows:

"(e) LEVY ALLOWED ON PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS IN CERTAIN CIRCUMSTANCES.—

"(1) PRINCIPAL RESIDENCES.—

"(A) APPROVAL REQUIRED.—A principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves (in writing) the levy of such residence.

"(B) JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction to approve a levy under subparagraph (A).

"(2) CERTAIN BUSINESS ASSETS.—Property (other than a principal residence) described in subsection (a)(13)(B) shall not be exempt from levy if—

"(A) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property, or

"(B) the Secretary finds that the collection of tax is in jeopardy.

An official may not approve a levy under subparagraph (A) unless the official determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceedings.".

(c) STATE FISH AND WILDLIFE PERMITS.—

(1) IN GENERAL.—With respect to permits issued by a State and required under State law for the harvest of fish or wildlife in the trade or business of an individual taxpayer, the term "other assets" as used in section 6334(e)(2) of the Internal Revenue Code of 1986 shall include future income which may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

(2) CONSTRUCTION.—Paragraph (1) shall not be construed to invalidate or in any way prejudice any assertion that the privilege embodied in permits described in paragraph (1) is not property or a right to property under the Internal Revenue Code of 1986.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

PART IV—PROVISIONS RELATING TO EXAMINATION AND COLLECTION ACTIVITIES

SEC. 3461. PROCEDURES RELATING TO EXTENSIONS OF STATUTE OF LIMITATIONS BY AGREEMENT.

(a) AUTHORITY TO EXTEND 10-YEAR COLLECTION PERIOD AFTER ASSESSMENT.—Section 6502(a) (relating to length of period after collection) is amended—

(1) by striking paragraph (2) and inserting:

"(2) if—

"(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into, or

"(B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.", and

(2) by striking the first sentence in the matter following paragraph (2).

(b) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.—Paragraph (4) of section 6501(c) (relating to the period for limitations on assessment and collection) is amended—

(1) by striking "Where" and inserting the following:

"(A) IN GENERAL.—Where", and

(2) by adding at the end the following new subparagraph:

"(B) NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.—The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to requests to extend the period of limitations made after December 31, 1999.

(2) PRIOR REQUEST.—If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the 10-year period referred to in section 6502(a) of the Internal Revenue Code of 1986, such extension shall expire on the latest of—

(A) the last day of such 10-year period,

(B) December 31, 2002, or

(C) in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension.

SEC. 3462. OFFERS-IN-COMPROMISE.

(a) STANDARDS FOR EVALUATION OF OFFERS-IN-COMPROMISE.—Section 7122 (relating to offers-in-compromise) is amended by adding at the end the following new subsection:

"(c) STANDARDS FOR EVALUATION OF OFFERS.—

"(1) IN GENERAL.—The Secretary shall prescribe guidelines for officers and employees of the Internal Revenue Service to determine whether an offer-in-compromise is adequate and should be accepted to resolve a dispute.

"(2) ALLOWANCES FOR BASIC LIVING EXPENSES.—

"(A) IN GENERAL.—In prescribing guidelines under paragraph (1), the Secretary shall develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses.

"(B) USE OF SCHEDULES.—The guidelines shall provide that officers and employees of the Internal Revenue Service shall determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules published under subparagraph (A) is appropriate and shall not use the schedules to the extent such use would result in the taxpayer not having adequate means to provide for basic living expenses.

"(3) SPECIAL RULES RELATING TO TREATMENT OF OFFERS.—The guidelines under paragraph (1) shall provide that—

"(A) an officer or employee of the Internal Revenue Service shall not reject an offer-in-compromise from a low-income taxpayer solely on the basis of the amount of the offer, and

"(B) in the case of an offer-in-compromise which relates only to issues of liability of the taxpayer—

"(i) such offer shall not be rejected solely because the Secretary is unable to locate the taxpayer's return or return information for verification of such liability, and

"(ii) the taxpayer shall not be required to provide a financial statement.".

(b) LEVY PROHIBITED WHILE OFFER-IN-COMPROMISE PENDING OR INSTALLMENT AGREEMENT PENDING OR IN EFFECT.—Section 6331 (relating to levy and distraint), as amended by sections 3433 and 3444, is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) NO LEVY WHILE CERTAIN OFFERS PENDING OR INSTALLMENT AGREEMENT PENDING OR IN EFFECT.—

"(1) OFFER-IN-COMPROMISE PENDING.—No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

"(A) during the period that an offer-in-compromise by such person under section 7122 of such unpaid tax is pending with the Secretary, and

"(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending).

For purposes of subparagraph (A), an offer is pending beginning on the date the Secretary accepts such offer for processing.

"(2) INSTALLMENT AGREEMENTS.—No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid tax—

"(A) during the period that an offer by such person for an installment agreement under section 6159 for payment of such unpaid tax is pending with the Secretary,

"(B) if such offer is rejected by the Secretary, during the 30 days thereafter (and, if an appeal of such rejection is filed within such 30 days, during the period that such appeal is pending),

"(C) during the period that such an installment agreement for payment of such unpaid tax is in effect, and

"(D) if such agreement is terminated by the Secretary, during the 30 days thereafter (and, if an appeal of such termination is filed within such 30 days, during the period that such appeal is pending).

"(3) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (3), (4), and (5) of subsection (i) shall apply for purposes of this subsection.".

(c) REVIEW OF REJECTIONS OF OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—

(1) IN GENERAL.—Section 7122 (relating to compromises), as amended by subsection (a), is amended by adding at the end the following new subsection:

"(d) ADMINISTRATIVE REVIEW.—The Secretary shall establish procedures—

"(1) for an independent administrative review of any rejection of a proposed offer-in-compromise or installment agreement made by a taxpayer under this section or section 6159 before such rejection is communicated to the taxpayer, and

"(2) which allow a taxpayer to appeal any rejection of such offer or agreement to the Internal Revenue Service Office of Appeals.".

(2) CONFORMING AMENDMENT.—Section 6159 (relating to installment agreements) is amended by adding at the end the following new subsection:

"(d) CROSS REFERENCE.—

"For rights to administrative review and appeal, see section 7122(d).".

(d) PREPARATION OF STATEMENT RELATING TO OFFERS-IN-COMPROMISE.—The Secretary of the Treasury shall prepare a statement which sets forth in simple, nontechnical terms the rights of a taxpayer and the obligations of the Internal Revenue Service relating to offers-in-compromise. Such statement shall—

(1) advise taxpayers who have entered into a compromise of the advantages of promptly notifying the Internal Revenue Service of any change of address or marital status,

(2) provide notice to taxpayers that in the case of a compromise terminated due to the actions of 1 spouse or former spouse, the Internal Revenue Service will, upon application, reinstate such compromise with the spouse or former spouse who remains in compliance with such compromise, and

(3) provide notice to the taxpayer that the taxpayer may appeal the rejection of an offer-in-compromise to the Internal Revenue Service Office of Appeals.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to proposed offers-in-compromise and installment agreements submitted after the date of the enactment of this Act.

(2) SUSPENSION OF COLLECTION BY LEVY.—The amendment made by subsection (b) shall apply to offers-in-compromise pending on or made after December 31, 1999.

SEC. 3463. NOTICE OF DEFICIENCY TO SPECIFY DEADLINES FOR FILING TAX COURT PETITION.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall include on each notice of deficiency under section 6212 of the Internal Revenue Code of 1986 the date determined by such Secretary (or delegate) as the last day on which the taxpayer may file a petition with the Tax Court.

(b) LATER FILING DEADLINES SPECIFIED ON NOTICE OF DEFICIENCY TO BE BINDING.—Subsection (a) of section 6213 (relating to restrictions applicable to deficiencies; petition to Tax Court) is amended by adding at the end the following new sentence: "Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.".

(c) EFFECTIVE DATE.—Subsection (a) and the amendment made by subsection (b) shall apply to notices mailed after December 31, 1998.

SEC. 3464. REFUND OR CREDIT OF OVERPAYMENTS BEFORE FINAL DETERMINATION.

(a) TAX COURT PROCEEDINGS.—Subsection (a) of section 6213 is amended—

(1) by striking ", including the Tax Court." and inserting ", including the Tax Court, and a refund may be ordered by such court of any amount collected within the period during which the Secretary is prohibited from collecting by levy or through a proceeding in court under the provisions of this subsection.", and

(2) by striking "to enjoin any action or proceeding" and inserting "to enjoin any action or proceeding or order any refund".

(b) OTHER PROCEEDINGS.—Subsection (a) of section 6512 is amended by striking the period at the end of paragraph (4) and inserting ", and", and by inserting after paragraph (4) the following new paragraphs:

"(5) As to any amount collected within the period during which the Secretary is prohibited from making the assessment or from collecting by levy or through a proceeding in court under the provisions of section 6213(a), and

"(6) As to overpayments the Secretary is authorized to refund or credit pending appeal as provided in subsection (b).".

(c) REFUND OR CREDIT PENDING APPEAL.—Paragraph (1) of section 6512(b) is amended by adding at the end the following new sentence: "If a notice of appeal in respect of the decision of the Tax Court is filed under section 7483, the Secretary is authorized to re-

fund or credit the overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3465. IRS PROCEDURES RELATING TO APPEALS OF EXAMINATIONS AND COLLECTIONS.

(a) DISPUTE RESOLUTION PROCEDURES.—

(1) IN GENERAL.—Chapter 74 (relating to closing agreements and compromises) is amended by redesignating section 7123 as section 7124 and by inserting after section 7122 the following new section:

"SEC. 7123. APPEALS DISPUTE RESOLUTION PROCEDURES.

"(a) EARLY REFERRAL TO APPEALS PROCEDURES.—The Secretary shall prescribe procedures by which any taxpayer may request early referral of 1 or more unresolved issues from the examination or collection division to the Internal Revenue Service Office of Appeals.

"(b) ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.—

"(1) MEDIATION.—The Secretary shall prescribe procedures under which a taxpayer or the Internal Revenue Service Office of Appeals may request non-binding mediation on any issue unresolved at the conclusion of—

"(A) appeals procedures, or

"(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.

"(2) ARBITRATION.—The Secretary shall establish a pilot program under which a taxpayer and the Internal Revenue Service Office of Appeals may jointly request binding arbitration on any issue unresolved at the conclusion of—

"(A) appeals procedures, or

"(B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122.".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 74 is amended by striking the item relating to section 7123 and inserting the following new items:

"Sec. 7123. Appeals dispute resolution procedures.
"Sec. 7124. Cross references.".

(b) APPEALS OFFICERS IN EACH STATE.—The Commissioner of Internal Revenue shall ensure that an appeals officer is regularly available within each State.

(c) APPEALS VIDEOCONFERENCING ALTERNATIVE FOR RURAL AREAS.—The Commissioner of Internal Revenue shall consider the use of the videoconferencing of appeals conferences between appeals officers and taxpayers seeking appeals in rural or remote areas.

SEC. 3466. APPLICATION OF CERTAIN FAIR DEBT COLLECTION PROCEDURES.

(a) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by inserting after section 6303 the following new section:

"SEC. 6304. FAIR TAX COLLECTION PRACTICES.

"(a) COMMUNICATION WITH THE TAXPAYER.—Without the prior consent of the taxpayer given directly to the Secretary or the express permission of a court of competent jurisdiction, the Secretary may not communicate with a taxpayer in connection with the collection of any unpaid tax—

"(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the taxpayer;

"(2) if the Secretary knows the taxpayer is represented by any person authorized to practice before the Internal Revenue Service with respect to such unpaid tax and has knowledge of, or can readily ascertain, such person's name and address, unless such person fails to respond within a reasonable period of time to a communication from the Secretary or unless such person consents to direct communication with the taxpayer; or

"(3) at the taxpayer's place of employment if the Secretary knows or has reason to know that the taxpayer's employer prohibits the taxpayer from receiving such communication.

In the absence of knowledge of circumstances to the contrary, the Secretary shall assume that the convenient time for communicating with a taxpayer is after 8 a.m. and before 9 p.m., local time at the taxpayer's location.

"(b) PROHIBITION OF HARASSMENT AND ABUSE.—The Secretary may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of any unpaid tax. Without limiting the general application of the foregoing, the following conduct is a violation of this subsection:

"(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

"(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

"(3) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

"(4) Except as provided under rules similar to the rules in section 804 of the Fair Debt Collection Practices Act (15 U.S.C. 1692b), the placement of telephone calls without meaningful disclosure of the caller's identity.

"(c) CIVIL ACTION FOR VIOLATIONS OF SECTION.—

"For civil action for violations of this section, see section 7433.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 64 is amended by inserting after the item relating to section 6303 the following new item:

"Sec. 6304. Fair tax collection practices.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 3467. GUARANTEED AVAILABILITY OF INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating

subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) SECRETARY REQUIRED TO ENTER INTO INSTALLMENT AGREEMENTS IN CERTAIN CASES.—In the case of a liability for tax of an individual under subtitle A, the Secretary shall enter into an agreement to accept the payment of such tax in installments if, as of the date the individual offers to enter into the agreement—

"(1) the aggregate amount of such liability (determined without regard to interest, penalties, additions to the tax, and additional amounts) does not exceed $10,000,

"(2) the taxpayer (and, if such liability relates to a joint return, the taxpayer's spouse) has not, during any of the preceding 5 taxable years—

"(A) failed to file any return of tax imposed by subtitle A,

"(B) failed to pay any tax required to be shown on any such return, or

"(C) entered into an installment agreement under this section for payment of any tax imposed by subtitle A,

"(3) the Secretary determines that the taxpayer is financially unable to pay such liability in full when due (and the taxpayer submits such information as the Secretary may require to make such determination),

"(4) the agreement requires full payment of such liability within 3 years, and

"(5) the taxpayer agrees to comply with the provisions of this title for the period such agreement is in effect.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 3468. PROHIBITION ON REQUESTS TO TAXPAYERS TO GIVE UP RIGHTS TO BRING ACTIONS.

(a) PROHIBITION.—No officer or employee of the United States may request a taxpayer to waive the taxpayer's right to bring a civil action against the United States or any officer or employee of the United States for any action taken in connection with the internal revenue laws.

(b) EXCEPTIONS.—Subsection (a) shall not apply in any case where—

(1) a taxpayer waives the right described in subsection (a) knowingly and voluntarily, or

(2) the request by the officer or employee is made in person and the taxpayer's attorney or other federally authorized tax practitioner (within the meaning of section 7525(a)(3)(A) of the Internal Revenue Code of 1986) is present, or the request is made in writing to the taxpayer's attorney or other representative.

Subtitle F—Disclosures to Taxpayers

SEC. 3501. EXPLANATION OF JOINT AND SEVERAL LIABILITY.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, establish procedures

to clearly alert married taxpayers of their joint and several liabilities on all appropriate publications and instructions.

(b) RIGHT TO LIMIT LIABILITY.—The procedures under subsection (a) shall include requirements that notice of an individual's right to relief under section 6015 of the Internal Revenue Code of 1986 shall be included in the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) and in any collection-related notices.

SEC. 3502. EXPLANATION OF TAXPAYERS' RIGHTS IN INTERVIEWS WITH THE INTERNAL REVENUE SERVICE.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) to more clearly inform taxpayers of their rights—

(1) to be represented at interviews with the Internal Revenue Service by any person authorized to practice before the Internal Revenue Service, and

(2) to suspend an interview pursuant to section 7521(b)(2) of the Internal Revenue Code of 1986.

SEC. 3503. DISCLOSURE OF CRITERIA FOR EXAMINATION SELECTION.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, incorporate into the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1) a statement which sets forth in simple and nontechnical terms the criteria and procedures for selecting taxpayers for examination. Such statement shall not include any information the disclosure of which would be detrimental to law enforcement, but shall specify the general procedures used by the Internal Revenue Service, including whether taxpayers are selected for examination on the basis of information available in the media or on the basis of information provided to the Internal Revenue Service by informants.

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

SEC. 3504. EXPLANATIONS OF APPEALS AND COLLECTION PROCESS.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, include with any 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals an explanation of the entire process from examination through collection with respect to such proposed deficiency, including the assistance available to the taxpayer from the National Taxpayer Advocate at various points in the process.

SEC. 3505. EXPLANATION OF REASON FOR REFUND DISALLOWANCE.

(a) IN GENERAL.—Section 6402 (relating to authority to make credits or refunds) is amended by adding at the end the following new subsection:

"(j) EXPLANATION OF REASON FOR REFUND DISALLOWANCE.—In the case of a disallowance of a claim for refund, the Secretary shall provide the taxpayer with an explanation for such disallowance.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disallowances after the 180th day after the date of the enactment of this Act.

SEC. 3506. STATEMENTS REGARDING INSTALLMENT AGREEMENTS.

The Secretary of the Treasury or the Secretary's delegate shall, beginning not later than July 1, 2000, provide each taxpayer who has an installment agreement in effect under section 6159 of the Internal Revenue Code of 1986 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 3507. NOTIFICATION OF CHANGE IN TAX MATTERS PARTNER.

(a) IN GENERAL.—Section 6231(a)(7) (defining tax matters partner) is amended by adding at the end the following new sentence: "The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to selections of tax matters partners made by the Secretary of the Treasury after the date of the enactment of this Act.

SEC. 3508. DISCLOSURE TO TAXPAYERS.

The Secretary of the Treasury or the Secretary's delegate shall ensure that any instructions booklet accompanying an individual Federal income tax return form (including forms 1040, 1040A, 1040EZ, and any similar or successor forms) shall include, in clear language, in conspicuous print, and in a conspicuous place, a concise description of the conditions under which return information may be disclosed to any party outside the Internal Revenue Service, including disclosure to any State or agency, body, or commission (or legal representative) thereof.

SEC. 3509. DISCLOSURE OF CHIEF COUNSEL ADVICE.

(a) IN GENERAL.—Section 6110(b)(1) (defining written determination) is amended by striking "or technical advice memorandum" and inserting "technical advice memorandum, or Chief Counsel advice".

(b) CHIEF COUNSEL ADVICE.—Section 6110 (relating to public inspection of written determinations) is amended by redesignating subsections (i), (j), (k), and (l) as subsections (j), (k), (l), and (m), respectively, and by inserting after subsection (h) the following new subsection:

"(i) SPECIAL RULES FOR DISCLOSURE OF CHIEF COUNSEL ADVICE.—

"(1) CHIEF COUNSEL ADVICE DEFINED.—

"(A) IN GENERAL.—For purposes of this section, the term 'Chief Counsel advice' means written advice or instruction, under whatever name or designation, prepared

by any national office component of the Office of Chief Counsel which—

"(i) is issued to field or service center employees of the Service or regional or district employees of the Office of Chief Counsel, and

"(ii) conveys—

"(I) any legal interpretation of a revenue provision,

"(II) any Internal Revenue Service or Office of Chief Counsel position or policy concerning a revenue provision, or

"(III) any legal interpretation of State law, foreign law, or other Federal law relating to the assessment or collection of any liability under a revenue provision.

"(B) REVENUE PROVISION DEFINED.—For purposes of subparagraph (A), the term 'revenue provision' means any existing or former internal revenue law, regulation, revenue ruling, revenue procedure, other published or unpublished guidance, or tax treaty, either in general or as applied to specific taxpayers or groups of specific taxpayers.

"(2) ADDITIONAL DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.—The Secretary may by regulation provide that this section shall apply to any advice or instruction prepared and issued by the Office of Chief Counsel which is not described in paragraph (1).

"(3) DELETIONS FOR CHIEF COUNSEL ADVICE.—In the case of Chief Counsel advice open to public inspection pursuant to this section—

"(A) paragraphs (2) through (7) of subsection (c) shall not apply, but

"(B) the Secretary may make deletions of material in accordance with subsections (b) and (c) of section 552 of title 5, United States Code, except that in applying subsection (b)(3) of such section, no statutory provision of this title shall be taken into account.

"(4) NOTICE OF INTENTION TO DISCLOSE.—

"(A) NONTAXPAYER-SPECIFIC CHIEF COUNSEL ADVICE.—In the case of Chief Counsel advice which is written without reference to a specific taxpayer or group of specific taxpayers—

"(i) subsection (f)(1) shall not apply, and

"(ii) the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, complete any deletions described in subsection (c)(1) or paragraph (3) and make the Chief Counsel advice, as so edited, open for public inspection.

"(B) TAXPAYER-SPECIFIC CHIEF COUNSEL ADVICE.—In the case of Chief Counsel advice which is written with respect to a specific taxpayer or group of specific taxpayers, the Secretary shall, within 60 days after the issuance of the Chief Counsel advice, mail the notice required by subsection (f)(1) to each such taxpayer. The notice shall include a copy of the Chief Counsel advice on which is indicated

the information that the Secretary proposes to delete pursuant to subsection (c)(1). The Secretary may also delete from the copy of the text of the Chief Counsel advice any of the information described in paragraph (3), and shall delete the names, addresses, and other identifying details of taxpayers other than the person to whom the advice pertains, except that the Secretary shall not delete from the copy of the Chief Counsel advice that is furnished to the taxpayer any information of which that taxpayer was the source.".

(c) CONFORMING AMENDMENTS.—

(1) Section 6110(f)(1) is amended by striking "The Secretary" and inserting "Except as otherwise provided by subsection (i), the Secretary".

(2) Paragraphs (1)(B) and (2) of section 6110(j)(1), as redesignated by this section, are amended by striking "subsection (g)" each place it appears and inserting "subsection (g) or (i)(4)(B)".

(3) Section 6110(k)(1)(B), as so redesignated, is amended by striking "subsection (c)" and inserting "subsection (c)(1) or (i)(3)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act.

(2) TRANSITION RULES.—The amendments made by this section shall apply to any Chief Counsel advice issued after December 31, 1985, and before the 91st day after the date of the enactment of this Act by the offices of the associate chief counsel for domestic, employee benefits and exempt organizations, and international, except that any such Chief Counsel advice shall be treated as made available on a timely basis if such advice is made available for public inspection not later than the following dates:

(A) One year after the date of the enactment of this Act, in the case of all litigation guideline memoranda, service center advice, tax litigation bulletins, criminal tax bulletins, and general litigation bulletins.

(B) Eighteen months after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1994.

(C) Three years after such date of enactment, in the case of field service advice and technical assistance to the field issued on or after January 1, 1992, and before January 1, 1994.

(D) Six years after such date of enactment, in the case of any other Chief Counsel advice issued after December 31, 1985.

(3) DOCUMENTS TREATED AS CHIEF COUNSEL ADVICE.—If the Secretary of the Treasury by regulation provides pursuant to section 6110(i)(2) of the Internal Revenue Code of 1986, as added by this section, that any additional advice or instruction issued by the Office of Chief Counsel shall be treated as Chief Counsel advice, such additional advice or instruction shall be made available for public inspection pursuant to section 6110

of such Code, as amended by this section, only in accordance with the effective date set forth in such regulation.

(4) CHIEF COUNSEL ADVICE TO BE AVAILABLE ELECTRONICALLY.—The Internal Revenue Service shall make any Chief Counsel advice issued more than 90 days after the date of the enactment of this Act and made available for public inspection pursuant to section 6110 of such Code, as amended by this section, also available by computer telecommunications within 1 year after issuance.

Subtitle G—Low Income Taxpayer Clinics

SEC. 3601. LOW INCOME TAXPAYER CLINICS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions), as amended by section 3411, is amended by adding at the end the following new section:

"SEC. 7526. LOW INCOME TAXPAYER CLINICS.

"(a) IN GENERAL.—The Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified low income taxpayer clinics.

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

"(1) QUALIFIED LOW INCOME TAXPAYER CLINIC.—

"(A) IN GENERAL.—The term 'qualified low income taxpayer clinic' means a clinic that—

"(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and

"(ii)(I) represents low income taxpayers in controversies with the Internal Revenue Service, or

"(II) operates programs to inform individuals for whom English is a second language about their rights and responsibilities under this title.

"(B) REPRESENTATION OF LOW INCOME TAXPAYERS.—A clinic meets the requirements of subparagraph (A)(ii)(I) if—

"(i) at least 90 percent of the taxpayers represented by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget, and

"(ii) the amount in controversy for any taxable year generally does not exceed the amount specified in section 7463.

"(2) CLINIC.—The term 'clinic' includes—

"(A) a clinical program at an accredited law, business, or accounting school in which students represent low income taxpayers in controversies arising under this title, and

"(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.

"(3) QUALIFIED REPRESENTATIVE.—The term 'qualified representative' means any individual (whether or not an attorney) who is authorized to practice before the Internal Revenue Service or the applicable court.

"(c) SPECIAL RULES AND LIMITATIONS.—

"(1) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $6,000,000 per year (exclusive of costs of administering the program) to grants under this section.

"(2) LIMITATION ON ANNUAL GRANTS TO A CLINIC.—The aggregate amount of grants which may be made under this section to a clinic for a year shall not exceed $100,000.

"(3) MULTI-YEAR GRANTS.—Upon application of a qualified low income taxpayer clinic, the Secretary is authorized to award a multi-year grant not to exceed 3 years.

"(4) CRITERIA FOR AWARDS.—In determining whether to make a grant under this section, the Secretary shall consider—

"(A) the numbers of taxpayers who will be served by the clinic, including the number of taxpayers in the geographical area for whom English is a second language,

"(B) the existence of other low income taxpayer clinics serving the same population,

"(C) the quality of the program offered by the low income taxpayer clinic, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing service to low income taxpayers, and

"(D) alternative funding sources available to the clinic, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the clinic.

"(5) REQUIREMENT OF MATCHING FUNDS.—A low income taxpayer clinic must provide matching funds on a dollar for dollar basis for all grants provided under this section. Matching funds may include—

"(A) the salary (including fringe benefits) of individuals performing services for the clinic, and

"(B) the cost of equipment used in the clinic.

Indirect expenses, including general overhead of the institution sponsoring the clinic, shall not be counted as matching funds.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77, as amended by section 3411, is amended by adding at the end the following new item:

"Sec. 7526. Low income taxpayer clinics.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle H—Other Matters

SEC. 3701. CATALOGING COMPLAINTS.

In collecting data for the report required under section 1211 of Taxpayer Bill of Rights 2 (Public Law 104–168), the Secretary of the Treasury or the Secretary's delegate shall, not later than January 1, 2000, maintain records of taxpayer complaints of misconduct by

Internal Revenue Service employees on an individual employee basis.

SEC. 3702. ARCHIVE OF RECORDS OF INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Subsection (l) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end the following new paragraph:

"(17) DISCLOSURE TO NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.—The Secretary shall, upon written request from the Archivist of the United States, disclose or authorize the disclosure of returns and return information to officers and employees of the National Archives and Records Administration for purposes of, and only to the extent necessary in, the appraisal of records for destruction or retention. No such officer or employee shall, except to the extent authorized by subsections (f), (i)(7), or (p), disclose any return or return information disclosed under the preceding sentence to any person other than to the Secretary, or to another officer or employee of the National Archives and Records Administration whose official duties require such disclosure for purposes of such appraisal.".

(b) CONFORMING AMENDMENTS.—Section 6103(p) is amended—

(1) in paragraph (3)(A), by striking "or (16)" and inserting "(16), or (17)",

(2) in paragraph (4), by striking "or (14)" and inserting ", (14), or (17)" in the matter preceding subparagraph (A), and

(3) in paragraph (4)(F)(ii), by striking "or (15)" and inserting ", (15), or (17)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made by the Archivist of the United States after the date of the enactment of this Act.

SEC. 3703. PAYMENT OF TAXES.

The Secretary of the Treasury or the Secretary's delegate shall establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order made payable to the United States Treasury.

SEC. 3704. CLARIFICATION OF AUTHORITY OF SECRETARY RELATING TO THE MAKING OF ELECTIONS.

Subsection (d) of section 7805 is amended by striking "by regulations or forms".

SEC. 3705. IRS EMPLOYEE CONTACTS.

(a) NOTICE.—The Secretary of the Treasury or the Secretary's delegate shall provide that—

(1) any manually generated correspondence received by a taxpayer from the Internal Revenue Service shall include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee the taxpayer may contact with respect to the correspondence,

(2) any other correspondence or notice received by a taxpayer from the Internal Revenue Service shall include in a prominent manner a telephone number that the taxpayer may contact, and

(3) an Internal Revenue Service employee shall give a taxpayer during a telephone or personal contact the employee's name and unique identifying number.

(b) SINGLE CONTACT.—The Secretary of the Treasury or the Secretary's delegate shall develop a procedure under which, to the extent practicable and if advantageous to the taxpayer, one Internal Revenue Service employee shall be assigned to handle a taxpayer's matter until it is resolved.

(c) TELEPHONE HELPLINE IN SPANISH.—The Secretary of the Treasury or the Secretary's delegate shall provide, in appropriate circumstances, that taxpayer questions on telephone helplines of the Internal Revenue Service are answered in Spanish.

(d) OTHER TELEPHONE HELPLINE OPTIONS.—The Secretary of the Treasury or the Secretary's delegate shall provide, in appropriate circumstances, on telephone helplines of the Internal Revenue Service an option for any taxpayer to talk to an Internal Revenue Service employee during normal business hours. The person shall direct phone questions of the taxpayer to other Internal Revenue Service personnel who can provide assistance to the taxpayer.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall take effect 60 days after the date of the enactment of this Act.

(2) SUBSECTION (c).—Subsection (c) shall take effect on January 1, 2000.

(3) SUBSECTION (d).—Subsection (d) shall take effect on January 1, 2000.

(4) UNIQUE IDENTIFYING NUMBER.—Any requirement under this section to provide a unique identifying number shall take effect 6 months after the date of the enactment of this Act.

SEC. 3706. USE OF PSEUDONYMS BY IRS EMPLOYEES.

(a) IN GENERAL.—Any employee of the Internal Revenue Service may use a pseudonym only if—

(1) adequate justification for the use of a pseudonym is provided by the employee, including protection of personal safety, and

(2) such use is approved by the employee's supervisor before the pseudonym is used.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to requests made after the date of the enactment of this Act.

SEC. 3707. ILLEGAL TAX PROTESTER DESIGNATION.

(a) PROHIBITION.—The officers and employees of the Internal Revenue Service—

(1) shall not designate taxpayers as illegal tax protesters (or any similar designation), and

(2) in the case of any such designation made on or before the date of the enactment of this Act—

(A) shall remove such designation from the individual master file, and

(B) shall disregard any such designation not located in the individual master file.

(b) DESIGNATION OF NONFILERS ALLOWED.—An officer or employee of the Internal Revenue Service may designate any appropriate taxpayer as a nonfiler, but shall remove such designation once the taxpayer has filed income tax returns for 2 consecutive taxable years and paid all taxes shown on such returns.

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this Act, except that the removal of any designation under subsection (a)(2)(A) shall not be required to begin before January 1, 1999.

SEC. 3708. PROVISION OF CONFIDENTIAL INFORMATION TO CONGRESS BY WHISTLEBLOWERS.

(a) IN GENERAL.—Section 6103(f) (relating to disclosure to committees of Congress) is amended by adding at the end the following new paragraph:

"(5) DISCLOSURE BY WHISTLEBLOWER.—Any person who otherwise has or had access to any return or return information under this section may disclose such return or return information to a committee referred to in paragraph (1) or any individual authorized to receive or inspect information under paragraph (4)(A) if such person believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 3709. LISTING OF LOCAL IRS TELEPHONE NUMBERS AND ADDRESSES.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable, provide that the local telephone numbers and addresses of Internal Revenue Service offices located in any particular area be listed in a telephone book for that area.

SEC. 3710. IDENTIFICATION OF RETURN PREPARERS.

(a) IN GENERAL.—The last sentence of section 6109(a) (relating to identifying numbers) is amended by striking "For purposes of this subsection" and inserting "For purposes of paragraphs (1), (2), and (3)".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 3711. OFFSET OF PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS AGAINST OVERPAYMENTS.

(a) IN GENERAL.—Section 6402 (relating to authority to make credits or refunds), as amended by section 3505, is amended by redesignating subsections (e) through (j) as subsections (f) through (k), respectively, and by inserting after subsection (d) the following new subsection:

"(e) COLLECTION OF PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS.—

"(1) IN GENERAL.—Upon receiving notice from any State that a named person owes a past-due, legally enforceable State income tax obligation to such State, the Secretary shall, under such conditions as may be prescribed by the Secretary—

"(A) reduce the amount of any overpayment payable to such person by the amount of such State income tax obligation;

"(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such State and notify such State of such person's name, taxpayer identification number, address, and the amount collected; and

"(C) notify the person making such overpayment that the overpayment has been reduced by an amount necessary to satisfy a past-due, legally enforceable State income tax obligation.

If an offset is made pursuant to a joint return, the notice under subparagraph (B) shall include the names, taxpayer identification numbers, and addresses of each person filing such return.

"(2) OFFSET PERMITTED ONLY AGAINST RESIDENTS OF STATE SEEKING OFFSET.—Paragraph (1) shall apply to an overpayment by any person for a taxable year only if the address shown on the Federal return for such taxable year of the overpayment is an address within the State seeking the offset.

"(3) PRIORITIES FOR OFFSET.—Any overpayment by a person shall be reduced pursuant to this subsection—

"(A) after such overpayment is reduced pursuant to—

"(i) subsection (a) with respect to any liability for any internal revenue tax on the part of the person who made the overpayment,

"(ii) subsection (c) with respect to past-due support, and

"(iii) subsection (d) with respect to any past-due, legally enforceable debt owed to a Federal agency, and

"(B) before such overpayment is credited to the future liability for any Federal internal revenue tax of such person pursuant to subsection (b).

If the Secretary receives notice from 1 or more agencies of the State of more than 1 debt subject to paragraph (1) that is owed by such person to such an agency, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

"(4) NOTICE; CONSIDERATION OF EVIDENCE.—No State may take action under this subsection until such State—

"(A) notifies by certified mail with return receipt the person owing the past-due State income tax liability that the State proposes to take action pursuant to this section,

"(B) gives such person at least 60 days to present evidence that all or part of such liability is not past-due or not legally enforceable,

"(C) considers any evidence presented by such person and determines that an amount of such debt is past-due and legally enforceable, and

"(D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid and that the State has made reasonable efforts to obtain payment of such State income tax obligation.

"(5) PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATION.—For purposes of this subsection, the term 'past-due, legally enforceable State income tax obligation' means a debt—

"(A)(i) which resulted from—

"(I) a judgment rendered by a court of competent jurisdiction which has determined an amount of State income tax to be due, or

"(II) a determination after an administrative hearing which has determined an amount of State income tax to be due, and

"(ii) which is no longer subject to judicial review, or

"(B) which resulted from a State income tax which has been assessed but not collected, the time for redetermination of which has expired, and which has not been delinquent for more than 10 years.

For purposes of this paragraph, the term 'State income tax' includes any local income tax administered by the chief tax administration agency of the State.

"(6) REGULATIONS.—The Secretary shall issue regulations prescribing the time and manner in which States must submit notices of past-due, legally enforceable State income tax obligations and the necessary information that must be contained in or accompany such notices. The regulations shall specify the types of State income taxes and the minimum amount of debt to which the reduction procedure established by paragraph (1) may be applied. The regulations may require States to pay a fee to reimburse the Secretary for the cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence shall be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

"(7) ERRONEOUS PAYMENT TO STATE.—Any State receiving notice from the Secretary that an erroneous payment has been made to such State under paragraph (1) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such State under such paragraph have been paid to such State).".

(b) DISCLOSURE OF CERTAIN INFORMATION TO STATES REQUESTING REFUND OFFSETS FOR PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS.—

(1) Paragraph (10) of section 6103(l) is amended by striking "(c) or (d)" each place it appears and inserting "(c), (d), or (e)".

(2) The paragraph heading for such paragraph (10) is amended by striking "SECTION 6402(c) OR 6402(d)" and inserting "SUBSECTION (c), (d), OR (e) OF SECTION 6402".

(c) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 6402 is amended by striking "(c) and (d)" and inserting "(c), (d), and (e)".

(2) Paragraph (2) of section 6402(d) is amended by striking "and before such overpayment" and inserting "and before such overpayment is reduced pursuant to subsection (e) and before such overpayment".

(3) Subsection (f) of section 6402, as redesignated by subsection (a), is amended—

(A) by striking "(c) or (d)" and inserting "(c), (d), or (e)", and

(B) by striking "Federal agency" and inserting "Federal agency or State".

(4) Subsection (h) of section 6402, as redesignated by subsection (a), is amended by striking "subsection (c)" and inserting "subsection (c) or (e)".

(d) EFFECTIVE DATE.—The amendments made by this section (other than subsection (d)) shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1999.

SEC. 3712. REPORTING REQUIREMENTS IN CONNECTION WITH EDUCATION TAX CREDIT.

(a) AMOUNTS TO BE REPORTED.—Subparagraph (C) of section 6050S(b)(2) is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by inserting after clause (i) the following new clause:

"(ii) the amount of any grant received by such individual for payment of costs of attendance and processed by the person making such return during such calendar year,",

(2) in clause (iii) (as so redesignated), by inserting "by the person making such return" after "year", and

(3) in clause (iv) (as so redesignated), by inserting "and" at the end.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 6050S(d) is amended by striking "aggregate".

(2) Subsection (e) of section 6050S is amended by inserting "(without regard to subsection (g)(2) thereof)" after "section 25A".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns required to be filed with respect to taxable years beginning after December 31, 1998.

Subtitle I—Studies

SEC. 3801. ADMINISTRATION OF PENALTIES AND INTEREST.

The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study—

(1) reviewing the administration and implementation by the Internal Revenue Service of the interest and penalty provisions of the Internal Revenue Code of 1986 (including the penalty reform provisions of the Omnibus Budget Reconciliation Act of 1989), and

(2) making any legislative and administrative recommendations the Committee or the Secretary deems appropriate to simplify penalty or interest administration and reduce taxpayer burden.

Such studies shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 1 year after the date of the enactment of this Act.

SEC. 3802. CONFIDENTIALITY OF TAX RETURN INFORMATION.

The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study of the scope and use

of provisions regarding taxpayer confidentiality, and shall report the findings of such study, together with such recommendations as the Committee or the Secretary deems appropriate, to the Congress not later than 18 months after the date of the enactment of this Act. Such study shall examine—

(1) the present protections for taxpayer privacy,

(2) any need for third parties to use tax return information,

(3) whether greater levels of voluntary compliance may be achieved by allowing the public to know who is legally required to file tax returns, but does not file tax returns,

(4) the interrelationship of the taxpayer confidentiality provisions in the Internal Revenue Code of 1986 with such provisions in other Federal law, including section 552a of title 5, United States Code (commonly known as the "Freedom of Information Act"),

(5) the impact on taxpayer privacy of the sharing of income tax return information for purposes of enforcement of State and local tax laws other than income tax laws, and including the impact on the taxpayer privacy intended to be protected at the Federal, State, and local levels under Public Law 105–35, the Taxpayer Browsing Protection Act of 1997, and

(6) whether the public interest would be served by greater disclosure of information relating to tax exempt organizations described in section 501 of the Internal Revenue Code of 1986.

SEC. 3803. STUDY OF NONCOMPLIANCE WITH INTERNAL REVENUE LAWS BY TAXPAYERS.

Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury and the Commissioner of Internal Revenue shall conduct jointly a study, in consultation with the Joint Committee on Taxation, of the noncompliance with internal revenue laws by taxpayers (including willful noncompliance and noncompliance due to tax law complexity or other factors) and report the findings of such study to Congress.

SEC. 3804. STUDY OF PAYMENTS MADE FOR DETECTION OF UNDERPAYMENTS AND FRAUD.

Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall conduct a study and report to Congress on the use of section 7623 of the Internal Revenue Code of 1986 including—

(1) an analysis of the present use of such section and the results of such use, and

(2) any legislative or administrative recommendations regarding the provisions of such section and its application.

TITLE IV—CONGRESSIONAL ACCOUNTABILITY FOR THE INTERNAL REVENUE SERVICE

Subtitle A—Oversight

SEC. 4001. EXPANSION OF DUTIES OF THE JOINT COMMITTEE ON TAXATION.

(a) IN GENERAL.—Section 8021 (relating to the powers of the Joint Committee on Taxation) is amended by adding at the end the following new subsections:

"(e) INVESTIGATIONS.—The Joint Committee shall review all requests (other than requests by the chairman or ranking member of a Committee or Subcommittee) for investigations of the Internal Revenue Service by the General Accounting Office, and approve such requests when appropriate, with a view towards eliminating overlapping investigations, ensuring that the General Accounting Office has the capacity to handle the investigation, and ensuring that investigations focus on areas of primary importance to tax administration.

"(f) RELATING TO JOINT REVIEWS.—

"(1) IN GENERAL.—The Chief of Staff, and the staff of the Joint Committee, shall provide such assistance as is required for joint reviews described in paragraph (2).

"(2) JOINT REVIEWS.—Before June 1 of each calendar year after 1998 and before 2004, there shall be a joint review of the strategic plans and budget for the Internal Revenue Service and such other matters as the Chairman of the Joint Committee deems appropriate. Such joint review shall be held at the call of the Chairman of the Joint Committee and shall include two members of the majority and one member of the minority from each of the Committees on Finance, Appropriations, and Governmental Affairs of the Senate, and the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives.".

(b) EFFECTIVE DATES.—

(1) Subsection (e) of section 8021 of the Internal Revenue Code of 1986, as added by subsection (a) of this section, shall apply to requests made after the date of the enactment of this Act.

(2) Subsection (f) of such section shall take effect on the date of the enactment of this Act.

SEC. 4002. COORDINATED OVERSIGHT REPORTS.

(a) IN GENERAL.—Paragraph (3) of section 8022 (relating to the duties of the Joint Committee on Taxation) is amended to read as follows:

"(3) REPORTS.—

"(A) To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

"(B) Subject to amounts specifically appropriated to carry out this subparagraph, to report, at least once each Congress, to the Committee on Finance and the Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system as it may deem advisable.

"(C) To report, for each calendar year after 1998 and before 2004, to the Committees on Finance, Appropriations, and Governmental Affairs of the Senate, and to the Committees on Ways and Means, Appropriations, and Government Reform and Oversight of the House of Representatives, with respect to—

"(i) strategic and business plans for the Internal Revenue Service;

"(ii) progress of the Internal Revenue Service in meeting its objectives;

"(iii) the budget for the Internal Revenue Service and whether it supports its objectives;

"(iv) progress of the Internal Revenue Service in improving taxpayer service and compliance;

"(v) progress of the Internal Revenue Service on technology modernization; and

"(vi) the annual filing season.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Century Date Change

SEC. 4011. CENTURY DATE CHANGE.

It is the sense of Congress that—

(1) the Internal Revenue Service should place a high priority on resolving the century date change computing problems, and

(2) the Internal Revenue Service efforts to resolve the century date change computing problems should be funded fully to provide for certain resolution of such problems.

Subtitle C—Tax Law Complexity

SEC. 4021. ROLE OF THE INTERNAL REVENUE SERVICE.

It is the sense of Congress that the Internal Revenue Service should provide Congress with an independent view of tax administration, and that during the legislative process, the tax writing committees of Congress should hear from front-line technical experts at the Internal Revenue Service with respect to the administrability of pending amendments to the Internal Revenue Code of 1986.

SEC. 4022. TAX LAW COMPLEXITY ANALYSIS.

(a) COMMISSIONER STUDY.—

(1) IN GENERAL.—The Commissioner of Internal Revenue shall conduct each year after 1998 an analysis of the sources of

complexity in administration of the Federal tax laws. Such analysis may include an analysis of—

(A) questions frequently asked by taxpayers with respect to return filing,

(B) common errors made by taxpayers in filling out their returns,

(C) areas of law which frequently result in disagreements between taxpayers and the Internal Revenue Service,

(D) major areas of law in which there is no (or incomplete) published guidance or in which the law is uncertain,

(E) areas in which revenue officers make frequent errors interpreting or applying the law,

(F) the impact of recent legislation on complexity, and

(G) forms supplied by the Internal Revenue Service, including the time it takes for taxpayers to complete and review forms, the number of taxpayers who use each form, and how recent legislation has affected the time it takes to complete and review forms.

(2) REPORT.—The Commissioner shall not later than March 1 of each year report the results of the analysis conducted under paragraph (1) for the preceding year to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The report shall include any recommendations—

(A) for reducing the complexity of the administration of Federal tax laws, and

(B) for repeal or modification of any provision the Commissioner believes adds undue and unnecessary complexity to the administration of the Federal tax laws.

(b) ANALYSIS TO ACCOMPANY CERTAIN LEGISLATION.—

(1) IN GENERAL.—The Joint Committee on Taxation, in consultation with the Internal Revenue Service and the Department of the Treasury, shall include a tax complexity analysis in each report for legislation, or provide such analysis to members of the committee reporting the legislation as soon as practicable after the report is filed, if—

(A) such legislation is reported by the Committee on Finance in the Senate, the Committee on Ways and Means of the House of Representatives, or any committee of conference, and

(B) such legislation includes a provision which would directly or indirectly amend the Internal Revenue Code of 1986 and which has widespread applicability to individuals or small businesses.

(2) TAX COMPLEXITY ANALYSIS.—For purposes of this subsection, the term "tax complexity analysis" means, with respect to any legislation, a report on the complexity and administrative difficulties of each provision described in paragraph (1)(B) which—

(A) includes—

(i) an estimate of the number of taxpayers affected by the provision, and

(ii) if applicable, the income level of taxpayers affected by the provision, and

(B) should include (if determinable)—

(i) the extent to which tax forms supplied by the Internal Revenue Service would require revision and whether any new forms would be required,

(ii) the extent to which taxpayers would be required to keep additional records,

(iii) the estimated cost to taxpayers to comply with the provision,

(iv) the extent to which enactment of the provision would require the Internal Revenue Service to develop or modify regulatory guidance,

(v) the extent to which the provision may result in disagreements between taxpayers and the Internal Revenue Service, and

(vi) any expected impact on the Internal Revenue Service from the provision (including the impact on internal training, revision of the Internal Revenue Manual, reprogramming of computers, and the extent to which the Internal Revenue Service would be required to divert or redirect resources in response to the provision).

(3) LEGISLATION SUBJECT TO POINT OF ORDER IN HOUSE OF REPRESENTATIVES.—

(A) LEGISLATION REPORTED BY COMMITTEE ON WAYS AND MEANS.—Clause 2(l) of rule XI of the Rules of the House of Representatives is amended by adding at the end the following new subparagraph:

"(8) The report of the Committee on Ways and Means on any bill or joint resolution containing any provision amending the Internal Revenue Code of 1986 shall include a Tax Complexity Analysis prepared by the Joint Committee on Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 unless the Committee on Ways and Means causes to have such Analysis printed in the Congressional Record prior to the consideration of the bill or joint resolution.".

(B) CONFERENCE REPORTS.—Rule XXVIII of the Rules of the House of Representatives is amended by adding at the end the following new clause:

"7. It shall not be in order to consider the report of a committee of conference which contains any provision amending the Internal Revenue Code of 1986 unless—

"(a) the accompanying joint explanatory statement contains a Tax Complexity Analysis prepared by the Joint Committee on Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998, or

"(b) such Analysis is printed in the Congressional Record prior to the consideration of the report.".

(C) RULES OF HOUSE OF REPRESENTATIVES.—This paragraph is enacted by the House of Representatives—

(i) as an exercise of the rulemaking power of the House of Representatives, and as such it is deemed a part of the Rules of the House, and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the House to change its rules at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(4) EFFECTIVE DATE.—This subsection shall apply to legislation considered on and after January 1, 1999.

TITLE V—ADDITIONAL PROVISIONS

SEC. 5001. LOWER CAPITAL GAINS RATES TO APPLY TO PROPERTY HELD MORE THAN 1 YEAR.

(a) GENERAL RULE.—

(1) Paragraph (5) of section 1(h) is amended to read as follows:

"(5) 28-PERCENT RATE GAIN.—For purposes of this subsection, the term '28-percent rate gain' means the excess (if any) of—

"(A) the sum of—

"(i) collectibles gain, and

"(ii) section 1202 gain, over

"(B) the sum of—

"(i) collectibles loss,

"(ii) the net short-term capital loss, and

"(iii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.".

(2) Subparagraph (A) of section 1(h)(6) is amended by striking "18 months" and inserting "1 year".

(3) Clauses (i) and (ii) of section 1(h)(7)(A) are amended to read as follows:

"(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

"(ii) the excess (if any) of—

"(I) the amount described in paragraph (5)(B), over

"(II) the amount described in paragraph (5)(A).".

(4) So much of paragraph (13) of section 1(h) as precedes subparagraph (C) is amended to read as follows:

"(13) SPECIAL RULES.—

"(A) DETERMINATION OF 28-PERCENT RATE GAIN.—In applying paragraph (5)—

"(i) the amount determined under subparagraph (A) of paragraph (5) shall include long-term capital gain (not otherwise described in such subparagraph)—

"(I) which is properly taken into account for the portion of the taxable year before May 7, 1997, or

"(II) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998,

"(ii) the amount determined under subparagraph (B) of paragraph (5) shall include long-term capital loss (not otherwise described in such subparagraph)—

"(I) which is properly taken into account for the portion of the taxable year before May 7, 1997, or

"(II) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998, and

"(iii) subparagraph (B) of paragraph (5) (as in effect immediately before the enactment of this clause) shall apply to amounts properly taken into account before January 1, 1998.

"(B) DETERMINATION OF UNRECAPTURED SECTION 1250 GAIN.—The amount determined under paragraph (7)(A) shall not include gain—

"(i) which is properly taken into account for the portion of the taxable year before May 7, 1997, or

"(ii) from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998.".

(5) Paragraphs (11) and (12) of section 1223, and section 1235(a), are each amended by striking "18 months" each place it appears and inserting "1 year".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after December 31, 1997.

(2) SUBSECTION (a)(5).—The amendments made by subsection (a)(5) shall take effect on January 1, 1998.

SEC. 5002. CLARIFICATION OF EXCLUSION OF MEALS FOR CERTAIN EMPLOYEES.

(a) IN GENERAL.—Subsection (b) of section 119 (relating to meals or lodging furnished for the convenience of the employer) is amended by adding at the end the following new paragraph:

"(4) MEALS FURNISHED TO EMPLOYEES ON BUSINESS PREMISES WHERE MEALS OF MOST EMPLOYEES ARE OTHERWISE EXCLUDABLE.—All meals furnished on the business premises of an employer to such employer's employees shall be treated as furnished for the convenience of the employer if, without regard to this paragraph, more than half of the employees to whom such meals are furnished on such premises are furnished such meals for the convenience of the employer.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 5003. CLARIFICATION OF DESIGNATION OF NORMAL TRADE RELATIONS.

(a) FINDINGS AND POLICY.—

(1) FINDINGS.—The Congress makes the following findings:

(A) Since the 18th century, the principle of nondiscrimination among countries with which the United

States has trade relations, commonly referred to as "most-favored-nation" treatment, has been a cornerstone of United States trade policy.

(B) Although the principle remains firmly in place as a fundamental concept in United States trade relations, the term "most-favored-nation" is a misnomer which has led to public misunderstanding.

(C) It is neither the purpose nor the effect of the most-favored-nation principle to treat any country as "most favored". To the contrary, the principle reflects the intention to confer on a country the same trade benefits that are conferred on any other country, that is, the intention not to discriminate among trading partners.

(D) The term "normal trade relations" is a more accurate description of the principle of nondiscrimination as it applies to the tariffs applicable generally to imports from United States trading partners, that is, the general rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States.

(2) POLICY.—It is the sense of the Congress that—

(A) the language used in United States laws, treaties, agreements, executive orders, directives, and regulations should more clearly and accurately reflect the underlying principles of United States trade policy; and

(B) accordingly, the term "normal trade relations" should, where appropriate, be substituted for the term "most-favored-nation".

(b) CHANGE IN TERMINOLOGY.—

*(1) TRADE EXPANSION ACT OF 1962.—The heading for section 251 of the Trade Expansion Act of 1962 (19 U.S.C. 1881) is amended to read as follows: "**NORMAL TRADE RELATIONS**".*

(2) TRADE ACT OF 1974.—(A) Section 402 of the Trade Act of 1974 (19 U.S.C. 2432) is amended by striking "(most-favored-nation treatment)" each place it appears and inserting "(normal trade relations)".

(B) Section 601(9) of the Trade Act of 1974 (19 U.S.C. 2481(9)) is amended by striking "most-favored-nation treatment" and inserting "trade treatment based on normal trade relations (known under international law as most-favored-nation treatment)".

(3) CFTA.—Section 302(a)(3)(C) of the United States Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended by striking "the most-favored-nation rate of duty" each place it appears and inserting "the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States".

(4) NAFTA.—Section 202(n) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3332(n)) is amended by striking "most-favored-nation".

(5) URUGUAY ROUND AGREEMENTS ACT.—Section 135(a)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3555(a)(2)) is amended by striking "most-favored-nation" and inserting "normal trade relations".

(6) SEED ACT.—Section 2(c)(11) of the Support for East European Democracy (SEED) Act of 1989 (22 U.S.C. 5401(c)(11)) is amended—

(A) by striking "(commonly referred to as 'most favored nation status')", and

(B) by striking "MOST FAVORED NATION TRADE STATUS" in the heading and inserting "NORMAL TRADE RELATIONS".

(7) UNITED STATES-HONG KONG POLICY ACT OF 1992.—Section 103(4) of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5713(4)) is amended by striking "(commonly referred to as 'most-favored-nation status')".

(c) SAVINGS PROVISIONS.—Nothing in this section shall affect the meaning of any provision of law, Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States relating to the principle of "most-favored-nation" (or "most favored nation") treatment. Any Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States that has been issued, made, granted, or allowed to become effective and that is in effect on the effective date of this Act, or was to become effective on or after the effective date of this Act, shall continue in effect according to its terms until modified, terminated, superseded, set aside, or revoked in accordance with law.

TITLE VI—TECHNICAL CORRECTIONS

SEC. 6001. SHORT TITLE; COORDINATION WITH OTHER TITLES.

(a) SHORT TITLE.—This title may be cited as the "Tax Technical Corrections Act of 1998".

(b) COORDINATION WITH OTHER TITLES.—For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.

SEC. 6002. DEFINITIONS.

For purposes of this title—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) 1997 ACT.—The term "1997 Act" means the Taxpayer Relief Act of 1997.

SEC. 6003. AMENDMENTS RELATED TO TITLE I OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 101(a) OF 1997 ACT.—

(1) Subsection (d) of section 24 of the 1986 Code is amended—

(A) by striking paragraphs (3) and (4),

(B) by redesignating paragraph (5) as paragraph (3), and

(C) by striking paragraphs (1) and (2) and inserting the following new paragraphs:

"(1) IN GENERAL.—In the case of a taxpayer with 3 or more qualifying children for any taxable year, the aggregate credits allowed under subpart C shall be increased by the lesser of—

"(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 26(a), or

"(B) the amount by which the aggregate amount of credits allowed by this subpart (without regard to this subsection) would increase if the limitation imposed by section 26(a) were increased by the excess (if any) of—

"(i) the taxpayer's social security taxes for the taxable year, over

"(ii) the credit allowed under section 32 (determined without regard to subsection (n)) for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section 26(a).

"(2) REDUCTION OF CREDIT TO TAXPAYER SUBJECT TO ALTERNATIVE MINIMUM TAX.—The credit determined under this subsection for the taxable year shall be reduced by the excess (if any) of—

"(A) the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year, over

"(B) the amount of the reduction under section 32(h) with respect to such taxpayer for such taxable year.".

(2) Paragraph (3) of section 24(d) of the 1986 Code (as redesignated by paragraph (1)) is amended by striking "paragraph (3)" and inserting "paragraph (1)".

(b) AMENDMENTS RELATED TO SECTION 101(b) OF 1997 ACT.—

(1) The subsection (m) of section 32 of the 1986 Code added by section 101(b) of the 1997 Act is amended to read as follows:

"(n) SUPPLEMENTAL CHILD CREDIT.—

"(1) IN GENERAL.—In the case of a taxpayer with respect to whom a credit is allowed under section 24(a) for the taxable year, the credit otherwise allowable under this section shall be increased by the lesser of—

"(A) the excess of—

"(i) the credits allowed under subpart A (determined after the application of section 26 and without regard to this subsection), over

"(ii) the credits which would be allowed under subpart A after the application of section 26, determined without regard to section 24 and this subsection, or

"(B) the excess of—

"(i) the sum of the credits allowed under this part (determined without regard to sections 31, 33, and 34 and this subsection), over

"(ii) the sum of the regular tax and the social security taxes (as defined in section 24(d)).

The credit determined under this subsection shall be allowed without regard to any other provision of this section, including subsection (d).

"(2) COORDINATION WITH OTHER CREDITS.—The amount of the credit under this subsection shall reduce the amount of the

credits otherwise allowable under subpart A for the taxable year (determined after the application of section 26), but the amount of the credit under this subsection (and such reduction) shall not be taken into account in determining the amount of any other credit allowable under this part.".

SEC. 6004. AMENDMENTS RELATED TO TITLE II OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 201 OF 1997 ACT.—

(1) The item relating to section 25A in the table of sections for subpart A of part IV of subchapter A of chapter 1 of the 1986 Code is amended to read as follows:

"Sec. 25A. Hope and Lifetime Learning credits.".

(2) Subsection (a) of section 6050S of the 1986 Code is amended to read as follows:

"(a) IN GENERAL.—Any person—

"(1) which is an eligible educational institution—

"(A) which receives payments for qualified tuition and related expenses with respect to any individual for any calendar year, or

"(B) which makes reimbursements or refunds (or similar amounts) to any individual of qualified tuition and related expenses,

"(2) which is engaged in a trade or business of making payments to any individual under an insurance arrangement as reimbursements or refunds (or similar amounts) of qualified tuition and related expenses, or

"(3) except as provided in regulations, which is engaged in a trade or business and, in the course of which, receives from any individual interest aggregating $600 or more for any calendar year on 1 or more qualified education loans,

shall make the return described in subsection (b) with respect to the individual at such time as the Secretary may by regulations prescribe.".

(3) Subparagraph (A) of section 201(c)(2) of the 1997 Act is amended to read as follows:

"(A) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (x) through (xv) as clauses (xi) through (xvi), respectively, and by inserting after clause (ix) the following new clause:

"'(x) section 6050S (relating to returns relating to payments for qualified tuition and related expenses),'".

(b) AMENDMENTS RELATED TO SECTION 202 OF 1997 ACT.—

(1) Paragraph (1) of section 221(e) of the 1986 Code is amended by inserting "by the taxpayer solely" after "incurred" the first place it appears.

(2) Subsection (d) of section 221 of the 1986 Code is amended by adding at the end the following new sentence: "Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section.".

(c) AMENDMENTS RELATED TO SECTION 211 OF 1997 ACT.—

(1) Paragraph (3) of section 135(c) of the 1986 Code is amended to read as follows:

"(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' has the meaning given such term by section 529(e)(5).".

(2) Subparagraph (A) of section 529(c)(3) of the 1986 Code is amended by striking "section 72(b)" and inserting "section 72".

(3) Paragraph (2) of section 529(e) of the 1986 Code is amended to read as follows:

"(2) MEMBER OF FAMILY.—The term 'member of the family' means, with respect to any designated beneficiary—

"(A) the spouse of such beneficiary,

"(B) an individual who bears a relationship to such beneficiary which is described in paragraphs (1) through (8) of section 152(a), and

"(C) the spouse of any individual described in subparagraph (B).".

(d) AMENDMENTS RELATED TO SECTION 213 OF 1997 ACT.—

(1) Section 530(b)(1) of the 1986 Code (defining education individual retirement account) is amended by inserting "an individual who is" before "the designated beneficiary" in the material preceding subparagraph (A).

(2)(A) Section 530(b)(1)(E) of the 1986 Code (defining education individual retirement account) is amended to read as follows:

"(E) Except as provided in subsection (d)(7), any balance to the credit of the designated beneficiary on the date on which the beneficiary attains age 30 shall be distributed within 30 days after such date to the beneficiary or, if the beneficiary dies before attaining age 30, shall be distributed within 30 days after the date of death of such beneficiary.".

(B) Paragraph (7) of section 530(d) of the 1986 Code is amended by inserting at the end the following new sentence: "In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8).".

(C) Subsection (d) of section 530 of the 1986 Code is amended by adding at the end the following new paragraph:

"(8) DEEMED DISTRIBUTION ON REQUIRED DISTRIBUTION DATE.—In any case in which a distribution is required under subsection (b)(1)(E), any balance to the credit of a designated beneficiary as of the close of the 30-day period referred to in such subsection for making such distribution shall be deemed distributed at the close of such period.".

(3)(A) Paragraph (1) of section 530(d) of the 1986 Code is amended by striking "section 72(b)" and inserting "section 72".

(B) Subsection (e) of section 72 of the 1986 Code is amended by inserting after paragraph (8) the following new paragraph:

"(9) EXTENSION OF PARAGRAPH (2)(B) TO QUALIFIED STATE TUITION PROGRAMS AND EDUCATIONAL INDIVIDUAL RETIREMENT ACCOUNTS.—Notwithstanding any other provision of this subsection, paragraph (2)(B) shall apply to amounts received under a qualified State tuition program (as defined in section 529(b))

or under an education individual retirement account (as defined in section 530(b)). The rule of paragraph (8)(B) shall apply for purposes of this paragraph.".

(4) Paragraph (2) of section 135(d) of the 1986 Code is amended to read as follows:

"(2) COORDINATION WITH OTHER HIGHER EDUCATION BENEFITS.—The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by—

"(A) the amount of such expenses which are taken into account in determining the credit allowable to the taxpayer or any other person under section 25A with respect to such expenses, and

"(B) the amount of such expenses which are taken into account in determining the exclusion under section 530(d)(2).".

(5) Section 530(d)(2) of the 1986 Code (relating to distributions for qualified higher education expenses) is amended by adding at the end the following new subparagraph:

"(D) DISALLOWANCE OF EXCLUDED AMOUNTS AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed to the taxpayer under any other section of this chapter for any qualified education expenses to the extent taken into account in determining the amount of the exclusion under this paragraph.".

(6) Section 530(d)(4)(B) of the 1986 Code (relating to exceptions) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or", and by adding at the end the following new clause:

"(iv) an amount which is includible in gross income solely because the taxpayer elected under paragraph (2)(C) to waive the application of paragraph (2) for the taxable year.".

(7) So much of section 530(d)(4)(C) of the 1986 Code as precedes clause (ii) thereof is amended to read as follows:

"(C) CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

"(i) such distribution is made on or before the day prescribed by law (including extensions of time) for filing the beneficiary's return of tax for the taxable year or, if the beneficiary is not required to file such a return, the 15th day of the 4th month of the taxable year following the taxable year, and".

(8)(A) Paragraph (5) of section 530(d) of the 1986 Code is amended by striking the first sentence and inserting the following new sentence: "Paragraph (1) shall not apply to any amount paid or distributed from an education individual retirement account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another education individual retirement account for the benefit of the same beneficiary or a member of the family

(within the meaning of section 529(e)(2)) of such beneficiary who has not attained age 30 as of such date.".

(B) Paragraph (6) of section 530(d) of the 1986 Code is amended by inserting before the period "and has not attained age 30 as of the date of such change".

(9) Subparagraph (C) of section 135(c)(2) of the 1986 Code is amended—

(A) by inserting "AND EDUCATION INDIVIDUAL RETIREMENT ACCOUNTS" in the heading after "PROGRAM", and

(B) by striking "section 529(c)(3)(A)" and inserting "section 72".

(10)(A) Paragraph (1) of section 4973(e) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—In the case of education individual retirement accounts maintained for the benefit of any 1 beneficiary, the term 'excess contributions' means the sum of—

"(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $500 (or, if less, the sum of the maximum amounts permitted to be contributed under section 530(c) by the contributors to such accounts for such year),

"(B) if any amount is contributed (other than a contribution described in section 530(b)(2)(B)) during such year to a qualified State tuition program for the benefit of such beneficiary, any amount contributed to such accounts for such taxable year, and

"(C) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

"(i) the distributions out of the accounts for the taxable year (other than rollover distributions), and

"(ii) the excess (if any) of the maximum amount which may be contributed to the accounts for the taxable year over the amount contributed to the accounts for the taxable year.".

(B) Paragraph (2) of section 4973(e) of the 1986 Code is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(e) AMENDMENTS RELATED TO SECTION 224 OF 1997 ACT.—

(1) Clauses (vi) and (vii) of section 170(e)(6)(B) of the 1986 Code are each amended by striking "entity's" and inserting "donee's".

(2) Clause (iv) of section 170(e)(6)(B) of the 1986 Code is amended by striking "organization or entity" and inserting "donee".

(3) Subclause (I) of section 170(e)(6)(C)(ii) of the 1986 Code is amended by striking "an entity" and inserting "a donee".

(4) Section 170(e)(6)(F) of the 1986 Code (relating to termination) is amended by striking "1999" and inserting "2000".

(f) AMENDMENTS RELATED TO SECTION 225 OF 1997 ACT.—

(1) The last sentence of section 108(f)(2) of the 1986 Code is amended to read as follows:

"The term 'student loan' includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refi-

nance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).".

(2) Section 108(f)(3) of the 1986 Code is amended by striking "(or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D))".

(g) AMENDMENTS RELATED TO SECTION 226 OF 1997 ACT.—

(1) Section 226(a) of the 1997 Act is amended by striking "section 1397E" and inserting "section 1397D".

(2) Section 1397E(d)(4)(B) of the 1986 Code is amended by striking "local education agency as defined" and inserting "local educational agency as defined".

(3) Section 1397E is amended by adding at the end the following new subsection:

"(h) CREDIT TREATED AS ALLOWED UNDER PART IV OF SUBCHAPTER A.—For purposes of subtitle F, the credit allowed by this section shall be treated as a credit allowable under part IV of subchapter A of this chapter.".

(4) Subsection (g) of section 1397E of the 1986 Code is amended by inserting "(determined without regard to subsection (c))" after "section".

(5) Subparagraph (D) of section 42(j)(4) of the 1986 Code is amended by striking "subpart A, B, D, or G of this part" and inserting "this chapter".

(6) Paragraph (4) of section 49(b) of the 1986 Code is amended by striking "subpart A, B, D, or G" and inserting "this chapter".

(7) Subparagraph (C) of section 50(a)(5) of the 1986 Code is amended by striking "subpart A, B, D, or G" and inserting "this chapter".

SEC. 6005. AMENDMENTS RELATED TO TITLE III OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 301 OF 1997 ACT.—

(1) Section 219(g) of the 1986 Code is amended—

(A) by inserting "or the individual's spouse" after "individual" in paragraph (1), and

(B) by striking paragraph (7) and inserting:

"(7) SPECIAL RULE FOR SPOUSES WHO ARE NOT ACTIVE PARTICIPANTS.—If this subsection applies to an individual for any taxable year solely because their spouse is an active participant, then, in applying this subsection to the individual (but not their spouse)—

"(A) the applicable dollar amount under paragraph (3)(B)(i) shall be $150,000, and

"(B) the amount applicable under paragraph (2)(A)(ii) shall be $10,000.".

(2) Paragraph (2) of section 301(a) of the 1997 Act is amended by inserting "after '$10,000'" before the period.

(b) AMENDMENTS RELATED TO SECTION 302 OF 1997 ACT.—

(1) Section 408A(c)(3)(A) of the 1986 Code is amended by striking "shall be reduced" and inserting "shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced".

(2) Section 408A(c)(3) of the 1986 Code (relating to limits based on modified adjusted gross income) is amended—

(A) by inserting "or a married individual filing a separate return" after "joint return" in subparagraph (A)(ii),

(B) in subparagraph (B)—

(i) by inserting ", for the taxable year of the distribution to which such contribution relates" after "if", and

(ii) by striking "for such taxable year" in clause (i), and

(C) by striking "and the deduction under section 219 shall be taken into account" in subparagraph (C)(i).

(3)(A) Section 408A(d)(2) of the 1986 Code (defining qualified distribution) is amended by striking subparagraph (B) and inserting the following new subparagraph:

"(B) DISTRIBUTIONS WITHIN NONEXCLUSION PERIOD.—A payment or distribution from a Roth IRA shall not be treated as a qualified distribution under subparagraph (A) if such payment or distribution is made within the 5-taxable year period beginning with the 1st taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual.".

(B) Section 408A(d)(2) of the 1986 Code is amended by adding at the end the following new subparagraph:

"(C) DISTRIBUTIONS OF EXCESS CONTRIBUTIONS AND EARNINGS.—The term 'qualified distribution' shall not include any distribution of any contribution described in section 408(d)(4) and any net income allocable to the contribution.".

(4) Section 408A(d)(3) of the 1986 Code (relating to rollovers from IRAs other than Roth IRAs) is amended—

(A) by striking clause (iii) of subparagraph (A) and inserting:

"(iii) unless the taxpayer elects not to have this clause apply for any taxable year, any amount required to be included in gross income for such taxable year by reason of this paragraph for any distribution before January 1, 1999, shall be so included ratably over the 4-taxable year period beginning with such taxable year.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year."; and

(B) by adding at the end the following new subparagraph:

"(F) SPECIAL RULES FOR CONTRIBUTIONS TO WHICH 4-YEAR AVERAGING APPLIES.—In the case of a qualified rollover contribution to a Roth IRA of a distribution to which subparagraph (A)(iii) applied, the following rules shall apply:

"(i) ACCELERATION OF INCLUSION.—

"(I) IN GENERAL.—The amount required to be included in gross income for each of the first 3 taxable years in the 4-year period under subpara-

graph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

"(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 4-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.

"(ii) DEATH OF DISTRIBUTEE.—

"(I) IN GENERAL.—If the individual required to include amounts in gross income under such subparagraph dies before all of such amounts are included, all remaining amounts shall be included in gross income for the taxable year which includes the date of death.

"(II) SPECIAL RULE FOR SURVIVING SPOUSE.—If the spouse of the individual described in subclause (I) acquires the individual's entire interest in any Roth IRA to which such qualified rollover contribution is properly allocable, the spouse may elect to treat the remaining amounts described in subclause (I) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date for the spouse's taxable year which includes the date of death.

"(G) SPECIAL RULE FOR APPLYING SECTION 72.—

"(i) IN GENERAL.—If—

"(I) any portion of a distribution from a Roth IRA is properly allocable to a qualified rollover contribution described in this paragraph, and

"(II) such distribution is made within the 5-taxable year period beginning with the taxable year in which such contribution was made,

then section 72(t) shall be applied as if such portion were includible in gross income.

"(ii) LIMITATION.—Clause (i) shall apply only to the extent of the amount of the qualified rollover contribution includible in gross income under subparagraph (A)(i)."

(5)(A) Section 408A(d)(4) of the 1986 Code is amended to read as follows:

"(4) AGGREGATION AND ORDERING RULES.—

"(A) AGGREGATION RULES.—Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.

"(B) ORDERING RULES.—For purposes of applying this section and section 72 to any distribution from a Roth IRA, such distribution shall be treated as made—

"(i) from contributions to the extent that the amount of such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA, and

"(ii) from such contributions in the following order:

"(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

"(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

Any distribution allocated to a qualified rollover contribution under clause (ii)(II) shall be allocated first to the portion of such contribution required to be included in gross income.".

(B) Section 408A(d)(1) of the 1986 Code is amended to read as follows:

"(1) EXCLUSION.—Any qualified distribution from a Roth IRA shall not be includible in gross income.".

(6)(A) Section 408A(d) of the 1986 Code (relating to distribution rules) is amended by adding at the end the following new paragraph:

"(6) TAXPAYER MAY MAKE ADJUSTMENTS BEFORE DUE DATE.—

"(A) IN GENERAL.—Except as provided by the Secretary, if, on or before the due date for any taxable year, a taxpayer transfers in a trustee-to-trustee transfer any contribution to an individual retirement plan made during such taxable year from such plan to any other individual retirement plan, then, for purposes of this chapter, such contribution shall be treated as having been made to the transferee plan (and not the transferor plan).

"(B) SPECIAL RULES.—

"(i) TRANSFER OF EARNINGS.—Subparagraph (A) shall not apply to the transfer of any contribution unless such transfer is accompanied by any net income allocable to such contribution.

"(ii) NO DEDUCTION.—Subparagraph (A) shall apply to the transfer of any contribution only to the extent no deduction was allowed with respect to the contribution to the transferor plan.".

(B) Section 408A(d)(3) of the 1986 Code, as amended by this subsection, is amended by striking subparagraph (D) and by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively.

(7) Section 408A(d) of the 1986 Code, as amended by paragraph (6), is amended by adding at the end the following new paragraph:

"(7) DUE DATE.—For purposes of this subsection, the due date for any taxable year is the date prescribed by law (includ-

ing extensions of time) for filing the taxpayer's return for such taxable year.".

(8)(A) Section 4973(f) of the 1986 Code is amended—

(i) by striking "such accounts" in paragraph (1)(A) and inserting "Roth IRAs", and

(ii) by striking "to the accounts" in paragraph (2)(B) and inserting "by the individual to all individual retirement plans".

(B) Section 4973(b) of the 1986 Code is amended—

(i) by inserting "a contribution to a Roth IRA or" after "other than" in paragraph (1)(A), and

(ii) by inserting "(including the amount contributed to a Roth IRA)" after "annuities" in paragraph (2)(C).

(C) Section 302(b) of the 1997 Act is amended by striking "Section 4973(b)" and inserting "Section 4973".

(9) Section 408A of the 1986 Code is amended by adding at the end the following new subsection:

"(f) INDIVIDUAL RETIREMENT PLAN.—For purposes of this section—

"(1) a simplified employee pension or a simple retirement account may not be designated as a Roth IRA, and

"(2) contributions to any such pension or account shall not be taken into account for purposes of subsection (c)(2)(B).".

(c) AMENDMENTS RELATED TO SECTION 303 OF 1997 ACT.—

(1) Section 72(t)(8)(E) of the 1986 Code is amended—

(A) by striking "120 days" and inserting "120th day", and

(B) by striking "60 days" and inserting "60th day".

(2)(A) Section 402(c)(4) of the 1986 Code is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", by inserting at the end the following new subparagraph:

"(C) any hardship distribution described in section 401(k)(2)(B)(i)(IV).".

(B) Section 403(b)(8)(B) of the 1986 Code is amended by inserting "(including paragraph (4)(C) thereof)" after "section 402(c)".

(C) The amendments made by this paragraph shall apply to distributions after December 31, 1998.

(d) AMENDMENTS RELATED TO SECTION 311 OF 1997 ACT.—

(1) Subsection (h) of section 1 of the 1986 Code (relating to maximum capital gains rate) is amended to read as follows:

"(h) MAXIMUM CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(i) taxable income reduced by the net capital gain, or

"(ii) the lesser of—

"(I) the amount of taxable income taxed at a rate below 28 percent, or

"(II) taxable income reduced by the adjusted net capital gain,

"(B) 10 percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

"(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 28 percent, over

"(ii) the taxable income reduced by the adjusted net capital gain,

"(C) 20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B),

"(D) 25 percent of the excess (if any) of—

"(i) the unrecaptured section 1250 gain (or, if less, the net capital gain), over

"(ii) the excess (if any) of—

"(I) the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

"(II) taxable income, and

"(E) 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

"(2) REDUCED CAPITAL GAIN RATES FOR QUALIFIED 5-YEAR GAIN.—

"(A) REDUCTION IN 10-PERCENT RATE.—In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(B) shall be 8 percent with respect to so much of the amount to which the 10-percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

"(B) REDUCTION IN 20-PERCENT RATE.—The rate under paragraph (1)(C) shall be 18 percent with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of—

"(i) the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph, or

"(ii) the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000),

and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.

"(3) NET CAPITAL GAIN TAKEN INTO ACCOUNT AS INVESTMENT INCOME.—For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero)

by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

"(4) ADJUSTED NET CAPITAL GAIN.—For purposes of this subsection, the term 'adjusted net capital gain' means net capital gain reduced (but not below zero) by the sum of—

"(A) unrecaptured section 1250 gain, and

"(B) 28-percent rate gain.

"(5) 28-PERCENT RATE GAIN.—For purposes of this subsection—

"(A) IN GENERAL.—The term '28-percent rate gain' means the excess (if any) of—

"(i) the sum of—

"(I) the aggregate long-term capital gain from property held for more than 1 year but not more than 18 months,

"(II) collectibles gain, and

"(III) section 1202 gain, over

"(ii) the sum of—

"(I) the aggregate long-term capital loss (not described in subclause (IV)) from property referred to in clause (i)(I),

"(II) collectibles loss,

"(III) the net short-term capital loss, and

"(IV) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

"(B) SPECIAL RULES.—

"(i) SHORT SALE GAINS AND HOLDING PERIODS.—Rules similar to the rules of section 1233(b) shall apply where the substantially identical property has been held more than 1 year but not more than 18 months; except that, for purposes of such rules—

"(I) section 1233(b)(1) shall be applied by substituting '18 months' for '1 year' each place it appears, and

"(II) the holding period of such property shall be treated as being 1 year on the day before the earlier of the date of the closing of the short sale or the date such property is disposed of.

"(ii) LONG-TERM LOSSES.—Section 1233(d) shall be applied separately by substituting '18 months' for '1 year' each place it appears.

"(iii) OPTIONS.—A rule similar to the rule of section 1092(f) shall apply where the stock was held for more than 18 months.

"(iv) SECTION 1256 CONTRACTS.—Amounts treated as long-term capital gain or loss under section 1256(a)(3) shall be treated as attributable to property held for more than 18 months.

"(6) COLLECTIBLES GAIN AND LOSS.—For purposes of this subsection—

"(A) IN GENERAL.—The terms 'collectibles gain' and 'collectibles loss' mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section

408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 18 months but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

"(B) PARTNERSHIPS, ETC.—For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

"(7) UNRECAPTURED SECTION 1250 GAIN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'unrecaptured section 1250 gain' means the excess (if any) of—

"(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if—

"(I) section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, and

"(II) only gain from property held for more than 18 months were taken into account, over

"(ii) the excess (if any) of—

"(I) the amount described in paragraph (5)(A)(ii), over

"(II) the amount described in paragraph (5)(A)(i).

"(B) LIMITATION WITH RESPECT TO SECTION 1231 PROPERTY.—The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231(c)(3)) for such year.

"(8) SECTION 1202 GAIN.—For purposes of this subsection, the term 'section 1202 gain' means an amount equal to the gain excluded from gross income under section 1202(a).

"(9) QUALIFIED 5-YEAR GAIN.—For purposes of this subsection, the term 'qualified 5-year gain' means the aggregate long-term capital gain from property held for more than 5 years. The determination under the preceding sentence shall be made without regard to collectibles gain, gain described in paragraph (7)(A)(i), and section 1202 gain.

"(10) COORDINATION WITH RECAPTURE OF NET ORDINARY LOSSES UNDER SECTION 1231.—If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

"(11) REGULATIONS.—The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

"(12) PASS-THRU ENTITY DEFINED.—For purposes of this subsection, the term 'pass-thru entity' means—

"(A) a regulated investment company,

"(B) a real estate investment trust,

"(C) an S corporation,

"(D) a partnership,

"(E) an estate or trust,

"(F) a common trust fund,

"(G) a foreign investment company which is described in section 1246(b)(1) and for which an election is in effect under section 1247, and

"(H) a qualified electing fund (as defined in section 1295).

"(13) SPECIAL RULES FOR PERIODS DURING 1997.—

"(A) DETERMINATION OF 28-PERCENT RATE GAIN.—In applying paragraph (5)—

"(i) the amount determined under subclause (I) of paragraph (5)(A)(i) shall include long-term capital gain (not otherwise described in paragraph (5)(A)(i)) which is properly taken into account for the portion of the taxable year before May 7, 1997,

"(ii) the amounts determined under subclause (I) of paragraph (5)(A)(ii) shall include long-term capital loss (not otherwise described in paragraph (5)(A)(ii)) which is properly taken into account for the portion of the taxable year before May 7, 1997, and

"(iii) clauses (i)(I) and (ii)(I) of paragraph (5)(A) shall be applied by not taking into account any gain and loss on property held for more than 1 year but not more than 18 months which is properly taken into account for the portion of the taxable year after May 6, 1997, and before July 29, 1997.

"(B) OTHER SPECIAL RULES.—

"(i) DETERMINATION OF UNRECAPTURED SECTION 1250 GAIN NOT TO INCLUDE PRE-MAY 7, 1997 GAIN.—The amount determined under paragraph (7)(A)(i) shall not include gain properly taken into account for the portion of the taxable year before May 7, 1997.

"(ii) OTHER TRANSITIONAL RULES FOR 18-MONTH HOLDING PERIOD.—Paragraphs (6)(A) and (7)(A)(i)(II) shall be applied by substituting '1 year' for '18 months' with respect to gain properly taken into account for the portion of the taxable year after May 6, 1997, and before July 29, 1997.

"(C) SPECIAL RULES FOR PASS-THRU ENTITIES.—In applying this paragraph with respect to any pass-thru entity, the determination of when gains and loss are properly taken into account shall be made at the entity level.".

(2) Paragraph (3) of section 55(b) of the 1986 Code is amended to read as follows:

"(3) MAXIMUM RATE OF TAX ON NET CAPITAL GAIN OF NON-CORPORATE TAXPAYERS.—The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

"(A) the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the lesser of—

"(i) the net capital gain, or

"(ii) the sum of—

"(I) the adjusted net capital gain, plus

"(II) the unrecaptured section 1250 gain, plus

"(B) 10 percent of so much of the adjusted net capital gain (or, if less, taxable excess) as does not exceed the amount on which a tax is determined under section 1(h)(1)(B), plus

"(C) 20 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (B), plus

"(D) 25 percent of the amount of taxable excess in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (B) and (C). Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h) but computed with the adjustments under this part.".

(3) Section 57(a)(7) of the 1986 Code is amended by adding at the end the following new sentence: "In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting '28 percent' for '42 percent'.".

(4) Paragraphs (11) and (12) of section 1223, and section 1235(a), of the 1986 Code are each amended by striking "1 year" each place it appears and inserting "18 months".

(e) AMENDMENTS RELATED TO SECTION 312 OF 1997 ACT.—

(1) Paragraph (2) of section 121(b) of the 1986 Code is amended to read as follows:

"(2) SPECIAL RULES FOR JOINT RETURNS.—In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property—

"(A) $500,000 LIMITATION FOR CERTAIN JOINT RETURNS.—Paragraph (1) shall be applied by substituting '$500,000' for '$250,000' if—

"(i) either spouse meets the ownership requirements of subsection (a) with respect to such property,

"(ii) both spouses meet the use requirements of subsection (a) with respect to such property, and

"(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

"(B) OTHER JOINT RETURNS.—If such spouses do not meet the requirements of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of

the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.".

(2) Section 121(c)(1) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to—

"(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

"(B)(i) the shorter of—

"(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence, or

"(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

"(ii) 2 years.".

(3) Section 312(d)(2) of the 1997 Act (relating to sales before date of the enactment) is amended by inserting "on or" before "before" each place it appears in the text and heading.

(f) AMENDMENTS RELATED TO SECTION 313 OF 1997 ACT.—

(1) Subsection (a) of section 1045 of such Code is amended—

(A) by striking "an individual" and inserting "a taxpayer other than a corporation", and

(B) by striking "such individual" and inserting "such taxpayer".

(2) Subsection (b) of section 1045 of the 1986 Code is amended by adding at the end the following new paragraph:

"(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (f), (g), (h), (i), (j), and (k) of section 1202 shall apply.".

SEC. 6006. AMENDMENT RELATED TO TITLE IV OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 401 OF 1997 ACT.—Paragraph (1) of section 55(e) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—

"(A) $7,500,000 GROSS RECEIPTS TEST.—The tentative minimum tax of a corporation shall be zero for any taxable year if the corporation's average annual gross receipts for all 3-taxable-year periods ending before such taxable year does not exceed $7,500,000. For purposes of the preceding sentence, only taxable years beginning after December 31, 1993, shall be taken into account.

"(B) $5,000,000 GROSS RECEIPTS TEST FOR FIRST 3-YEAR PERIOD.—Subparagraph (A) shall be applied by substituting '$5,000,000' for '$7,500,000' for the first 3-taxable-

year period (or portion thereof) of the corporation which is taken into account under subparagraph (A).

"(C) FIRST TAXABLE YEAR CORPORATION IN EXISTENCE.—If such taxable year is the first taxable year that such corporation is in existence, the tentative minimum tax of such corporation for such year shall be zero.

"(D) SPECIAL RULES.—For purposes of this paragraph, the rules of paragraphs (2) and (3) of section 448(c) shall apply.".

(b) AMENDMENT RELATED TO SECTION 402 OF 1997 ACT.—Subsection (c) of section 168 of the 1986 Code is amended—

(1) by striking paragraph (2), and

(2) by striking the portion of such subsection preceding the table in paragraph (1) and inserting the following:

"(c) APPLICABLE RECOVERY PERIOD.—For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:".

SEC. 6007. AMENDMENTS RELATED TO TITLE V OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 501 OF 1997 ACT.—

(1) Subsection (c) of section 2631 of the 1986 Code is amended to read as follows:

"(c) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any calendar year after 1998, the $1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

"(A) $1,000,000, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.

"(2) ALLOCATION OF INCREASE.—Any increase under paragraph (1) for any calendar year shall apply only to generation-skipping transfers made during or after such calendar year; except that no such increase for calendar years after the calendar year in which the transferor dies shall apply to transfers by such transferor.".

(2) Subsection (f) of section 501 of the 1997 Act is amended by inserting "(other than the amendment made by subsection (d))" after "this section".

(b) AMENDMENTS RELATED TO SECTION 502 OF 1997 ACT.—

(1)(A) Section 2033A of the 1986 Code is hereby moved to the end of part IV of subchapter A of chapter 11 of the 1986 Code and redesignated as section 2057.

(B) So much of such section 2057 (as so redesignated) as precedes subsection (b) thereof is amended to read as follows:

"SEC. 2057. FAMILY-OWNED BUSINESS INTERESTS.

"(a) GENERAL RULE.—

"(1) ALLOWANCE OF DEDUCTION.—For purposes of the tax imposed by section 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate

shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent which are described in subsection (b)(2).

"(2) MAXIMUM DEDUCTION.—The deduction allowed by this section shall not exceed $675,000.

"(3) COORDINATION WITH UNIFIED CREDIT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if this section applies to an estate, the applicable exclusion amount under section 2010 shall be $625,000.

"(B) INCREASE IN UNIFIED CREDIT IF DEDUCTION IS LESS THAN $675,000.—If the deduction allowed by this section is less than $675,000, the amount of the applicable exclusion amount under section 2010 shall be increased (but not above the amount which would apply to the estate without regard to this section) by the excess of $675,000 over the amount of the deduction allowed.".

(C) Subparagraph (A) of section 2057(b)(2) of the 1986 Code (as so redesignated) is amended by striking "(without regard to this section)".

(D) Subsection (c) of section 2057 of the 1986 Code (as so redesignated) is amended by striking "(determined without regard to this section)".

(E) The table of sections for part III of subchapter A of chapter 11 of the 1986 Code is amended by striking the item relating to section 2033A.

(F) The table of sections for part IV of such subchapter is amended by adding at the end the following new item:

"Sec. 2057. Family-owned business interests.".

(2) Section 2057(b)(3) of the 1986 Code (as so redesignated) is amended to read as follows:

"(3) INCLUDIBLE GIFTS OF INTERESTS.—The amount of the gifts of qualified family-owned business interests determined under this paragraph is the sum of—

"(A) the amount of such gifts from the decedent to members of the decedent's family taken into account under section 2001(b)(1)(B), plus

"(B) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death.".

(3)(A) Section 2057(e)(2)(C) of the 1986 Code (as so redesignated) is amended by striking "(as defined in section 543(a))" and inserting "(as defined in section 543(a) without regard to paragraph (2)(B) thereof) if such trade or business were a corporation".

(B) Clause (ii) of section 2057(e)(2)(D) of the 1986 Code (as so redesignated) is amended by striking "income of which is described in section 543(a) or" and inserting "personal holding company income (as defined in subparagraph (C)) or income described".

(C) Paragraph (2) of section 2057(e) of the 1986 Code (as so redesignated) is amended by adding at the end the following new flush sentence:

"In the case of a lease of property on a net cash basis by the decedent to a member of the decedent's family, income from such lease shall not be treated as personal holding company income for purposes of subparagraph (C), and such property shall not be treated as an asset described in subparagraph (D)(ii), if such income and property would not be so treated if the lessor had engaged directly in the activities engaged in by the lessee with respect to such property.".

(4) Paragraph (2) of section 2057(f) of the 1986 Code (as so redesignated) is amended—

(A) by striking "(as determined under rules similar to the rules of section 2032A(c)(2)(B))", and

(B) by adding at the end the following new subparagraph:

"(C) ADJUSTED TAX DIFFERENCE.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The adjusted tax difference attributable to a qualified family-owned business interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under clause (ii)) as the value of such interest bears to the value of all qualified family-owned business interests described in subsection (b)(2).

"(ii) ADJUSTED TAX DIFFERENCE WITH RESPECT TO THE ESTATE.—For purposes of clause (i), the term 'adjusted tax difference with respect to the estate' means the excess of what would have been the estate tax liability but for the election under this section over the estate tax liability. For purposes of this clause, the term 'estate tax liability' means the tax imposed by section 2001 reduced by the credits allowable against such tax.".

(5)(A) Paragraph (1) of section 2057(e) of the 1986 Code (as so redesignated) is amended by adding at the end the following new flush sentence:

"For purposes of the preceding sentence, a decedent shall be treated as engaged in a trade or business if any member of the decedent's family is engaged in such trade or business.".

(B) Subsection (f) of section 2057 of the 1986 Code (as so redesignated) is amended by adding at the end the following new paragraph:

"(3) USE IN TRADE OR BUSINESS BY FAMILY MEMBERS.—A qualified heir shall not be treated as disposing of an interest described in subsection (e)(1)(A) by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of such individual's family.".

(6) Paragraph (1) of section 2057(g) of the 1986 Code (as so redesignated) is amended by striking "or (M)".

(7) Paragraph (3) of section 2057(i) of the 1986 Code (as so redesignated) is amended by redesignating subparagraphs (L),

(M), and (N) as subparagraphs (N), (O), and (P), respectively, and by inserting after subparagraph (K) the following new subparagraphs:

"(L) Section 2032A(g) (relating to application to interests in partnerships, corporations, and trusts).

"(M) Subsections (h) and (i) of section 2032A.".

(c) AMENDMENTS RELATED TO SECTION 503 OF THE 1997 ACT.—

(1) Clause (iii) of section 6166(b)(7)(A) of the 1986 Code is amended to read as follows:

"(iii) for purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.".

(2) Clause (iii) of section 6166(b)(8)(A) of the 1986 Code is amended to read as follows:

"(iii) 2-PERCENT INTEREST RATE NOT TO APPLY.—For purposes of applying section 6601(j), the 2-percent portion (as defined in such section) shall be treated as being zero.".

(d) AMENDMENT RELATED TO SECTION 505 OF THE 1997 ACT.—Paragraphs (1) and (2) of section 7479(a) of the 1986 Code are each amended by striking "an estate," and inserting "an estate (or with respect to any property included therein),".

(e) AMENDMENTS RELATED TO SECTION 506 OF THE 1997 ACT.—

(1) Paragraph (1) of section 506(e) of the 1997 Act is amended by striking "and (c)" and inserting ", (c), and (d)".

(2)(A) Paragraph (9) of section 6501(c) of the 1986 Code is amended by striking the last sentence.

(B) Subsection (f) of section 2001 of the 1986 Code is amended to read as follows:

"(f) VALUATION OF GIFTS.—

"(1) IN GENERAL.—If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on—

"(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), or

"(B) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

"(2) FINAL DETERMINATION.—For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if—

"(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return,

"(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer, or

"(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.".

(B) Subsection (c) of section 2504 of the 1986 Code is amended to read as follows:

"(c) VALUATION OF GIFTS.—If the time has expired under section 6501 within which a tax may be assessed under this chapter 12 (or under corresponding provisions of prior laws) on—

"(1) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)), or

"(2) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined (within the meaning of section 2001(f)(2)) for purposes of this chapter.".

(f) AMENDMENTS RELATED TO SECTION 507 OF 1997 ACT.—

(1) Paragraph (3) of section 1(g) of the 1986 Code is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(2) Section 641 of the 1986 Code is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(3) Paragraph (4) of section 1361(e) of the 1986 Code is amended by striking "section 641(d)" and inserting "section 641(c)".

(4) Subparagraph (A) of section 6103(e)(1) of the 1986 Code is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(g) AMENDMENTS RELATED TO SECTION 508 OF 1997 ACT.—

(1) Subsection (c) of section 2031 of the 1986 Code is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following new paragraph:

"(9) TREATMENT OF EASEMENTS GRANTED AFTER DEATH.—In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.".

(2) The first sentence of paragraph (6) of section 2031(c) of the 1986 Code is amended by striking all that follows "shall be made" and inserting "on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return.".

SEC. 6008. AMENDMENTS RELATED TO TITLE VII OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1400 OF 1986 CODE.—Section 1400(b)(2)(B) of the 1986 Code is amended by inserting "as determined on the basis of the 1990 census" after "percent".

(b) AMENDMENT RELATED TO SECTION 1400A OF 1986 CODE.—Subsection (a) of section 1400A of the 1986 Code is amended by inserting before the period "and section 1394(b)(3)(B)(iii) shall be applied without regard to the employee residency requirement".

(c) AMENDMENTS RELATED TO SECTION 1400B OF 1986 CODE.—

(1) Section 1400B(b) of the 1986 Code is amended by inserting after paragraph (4) the following new paragraph:

"(5) TREATMENT OF DC ZONE TERMINATION.—The termination of the designation of the DC Zone shall be disregarded

for purposes of determining whether any property is a DC Zone asset.".

(2) Paragraph (6) of section 1400B(b) of the 1986 Code is amended by striking "(4)(A)(ii)" and inserting "(4)(A)(i) or (ii)".

(3) Section 1400B(c) of the 1986 Code is amended by striking "entity which is an".

(4) Section 1400B(d)(2) of the 1986 Code is amended by inserting "as determined on the basis of the 1990 census" after "percent".

(d) AMENDMENTS RELATED TO SECTION 1400C OF 1986 CODE.—

(1) Paragraph (1) of section 1400C(b) of the 1986 Code is amended by inserting "and subsection (d)" after "this subsection".

(2) Paragraph (1) of section 1400C(c) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence in the District of Columbia during the 1-year period ending on the date of the purchase of the principal residence to which this section applies.".

(3) Subparagraph (B) of section 1400C(e)(2) of the 1986 Code is amended by inserting before the period "on the date the taxpayer first occupies such residence".

(4) Paragraph (3) of section 1400C(e) of the 1986 Code is amended by striking all that follows "principal residence" and inserting "on the date such residence is purchased.".

(5) Subsection (i) of section 1400C of the 1986 Code is amended to read as follows:

"(i) APPLICATION OF SECTION.—This section shall apply to property purchased after August 4, 1997, and before January 1, 2001.".

(6) Subsection (c) of section 23 of the 1986 Code is amended by inserting "and section 1400C" after "other than this section".

(7) Subparagraph (C) of section 25(e)(1) of the 1986 Code is amended by striking "section 23" and inserting "sections 23 and 1400C".

SEC. 6009. AMENDMENTS RELATED TO TITLE IX OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 908 OF 1997 ACT.—Paragraph (6) of section 5041(b) of the 1986 Code is amended by inserting "which is a still wine" after "hard cider".

(b) AMENDMENT RELATED TO SECTION 964 OF 1997 ACT.—

(1) IN GENERAL.—Subparagraph (C) of section 7704(g)(3) of the 1986 Code is amended by striking the period at the end and inserting "and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A).".

(2) EFFECTIVE DATE.—The second sentence of section 7704(g)(3)(C) of the 1986 Code (as added by paragraph (1)) shall apply to taxable years beginning after the date of the enactment of this Act.

(c) AMENDMENT RELATED TO SECTION 971 OF 1997 ACT.—Clause (ii) of section 280F(a)(1)(C) is amended by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)".

(d) AMENDMENT RELATED TO SECTION 976 OF 1997 ACT.—Section 6103(d)(5) of the 1986 Code is amended by striking "section 967 of the Taxpayer Relief Act of 1997." and inserting "section 976 of the Taxpayer Relief Act of 1997. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.".

(e) AMENDMENT RELATED TO SECTION 977 OF 1997 ACT.—Paragraph (2) of section 977(e) of the 1997 Act is amended to read as follows:

> *"(2) NON-AMTRAK STATE.—The term 'non-Amtrak State' means any State which is not receiving intercity passenger rail service from the Corporation as of the date of the enactment of this Act.".*

SEC. 6010. AMENDMENTS RELATED TO TITLE X OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1001 OF 1997 ACT.—

(1) Paragraph (2) of section 1259(b) of the 1986 Code is amended—

(A) by striking "debt" each place it appears in clauses (i), (ii), and (iii) of subparagraph (A) and inserting "position",

(B) by striking "and" at the end of subparagraph (A), and

(C) by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) any hedge with respect to a position described in subparagraph (A), and".

(2) Section 1259(d)(1) of the 1986 Code is amended by inserting "(including cash)" after "property".

(3) Subparagraph (D) of section 475(f)(1) of the 1986 Code is amended by adding at the end the following new sentence: "Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704.".

(4) Subparagraph (C) of section 1001(d)(3) of the 1997 Act is amended by striking "within the 30-day period beginning on" and inserting "before the close of the 30th day after".

(b) AMENDMENT RELATED TO SECTION 1011 OF 1997 ACT.—Paragraph (1) of section 1059(g) of the 1986 Code is amended by striking "and in the case of stock held by pass-thru entities" and inserting ", in the case of stock held by pass-thru entities, and in the case of consolidated groups".

(c) AMENDMENTS RELATED TO SECTION 1012 OF 1997 ACT.—

(1) Paragraph (1) of section 1012(d) of the 1997 Act is amended by striking "1997, pursuant" and inserting "1997; except that the amendment made by subsection (a) shall apply to such distributions only if pursuant".

(2) Subparagraph (A) of section 355(e)(3) of the 1986 Code is amended—

(A) by striking "shall not be treated as described in" and inserting "shall not be taken into account in applying", and

(B) by striking clause (iv) and inserting the following new clause:

"(iv) The acquisition of stock in the distributing corporation or any controlled corporation to the extent that the percentage of stock owned directly or indirectly in such corporation by each person owning stock in such corporation immediately before the acquisition does not decrease.".

(3)(A) Subsection (c) of section 351 of the 1986 Code is amended to read as follows:

"(c) SPECIAL RULES WHERE DISTRIBUTION TO SHAREHOLDERS.—

"(1) IN GENERAL.—In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

"(2) SPECIAL RULE FOR SECTION 355.—If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock shall not be taken into account in determining control for purposes of this section.".

(B) Clause (ii) of section 368(a)(2)(H) of the 1986 Code is amended to read as follows:

"(ii) in the case of a transaction with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock shall not be taken into account.".

(d) AMENDMENTS RELATED TO SECTION 1013 OF 1997 ACT.—

(1) Paragraph (5) of section 304(b) of the 1986 Code is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(2) Subsection (b) of section 304 of the 1986 Code is amended by adding at the end the following new paragraph:

"(6) AVOIDANCE OF MULTIPLE INCLUSIONS, ETC.—In the case of any acquisition to which subsection (a) applies in which the acquiring corporation or the issuing corporation is a foreign corporation, the Secretary shall prescribe such regulations as are appropriate in order to eliminate a multiple inclusion of any item in income by reason of this subpart and to provide appropriate basis adjustments (including modifications to the application of sections 959 and 961).".

(e) AMENDMENTS RELATED TO SECTION 1014 OF 1997 ACT.—

(1) Paragraph (1) of section 351(g) of the 1986 Code is amended by adding "and" at the end of subparagraph (A) and by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

"(B) if (and only if) the transferor receives stock other than nonqualified preferred stock—

"(i) subsection (b) shall apply to such transferor, and

"(ii) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).".

(2) Clause (ii) of section 354(a)(2)(C) of 1986 Code is amended by adding at the end the following new subclause:

"(III) EXTENSION OF STATUTE OF LIMITATIONS.—The statutory period for the assessment of any deficiency attributable to a corporation failing to be a family-owned corporation shall not expire before the expiration of 3 years after the date the Secretary is notified by the corporation (in such manner as the Secretary may prescribe) of such failure, and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(f) AMENDMENT RELATED TO SECTION 1024 OF 1997 ACT.—Section 6331(h)(1) of the 1986 Code is amended by striking "The effect of a levy" and inserting "If the Secretary approves a levy under this subsection, the effect of such levy".

(g) AMENDMENTS RELATED TO SECTION 1031 OF 1997 ACT.—

(1) Subsection (l) of section 4041 of the 1986 Code is amended by striking "subsection (e) or (f)" and inserting "subsection (f) or (g)".

(2) Subsection (b) of section 9502 of the 1986 Code is amended by moving the sentence added at the end of paragraph (1) to the end of such subsection.

(3) Subsection (c) of section 6421 of the 1986 Code is amended—

(A) by striking "(2)(A)" and inserting "(2)", and

(B) by adding at the end the following sentence: "Subsection (a) shall not apply to gasoline to which this subsection applies.".

(h) AMENDMENTS RELATED TO SECTION 1032 OF 1997 ACT.—

(1) Section 1032(a) of the 1997 Act is amended by striking "Subsection (a) of section 4083" and inserting "Paragraph (1) of section 4083(a)".

(2) Section 1032(e)(12)(A) of the 1997 Act shall be applied as if "gasoline, diesel fuel," were the material proposed to be stricken.

(3) Paragraph (1) of section 4082(d) of the 1986 Code is amended to read as follows:

"(1) AVIATION-GRADE KEROSENE.—Subsection (a)(2) shall not apply to aviation-grade kerosene (as determined under regulations prescribed by the Secretary) which the Secretary determines is destined for use as a fuel in an aircraft.".

(4) Paragraph (3) of section 4082(d) of the 1986 Code is amended by striking "a removal, entry, or sale of kerosene to" and inserting "kerosene received by".

(5) Paragraph (1) of section 4101(e) of the 1986 Code is amended by striking "dyed diesel fuel and kerosene" and inserting "such fuel in a dyed form".

(i) AMENDMENT RELATED TO SECTION 1034 OF 1997 ACT.—Paragraph (3) of section 4251(d) of the 1986 Code is amended by striking "other similar arrangement" and inserting "any other similar arrangement".

(j) AMENDMENTS RELATED TO SECTION 1041 OF 1997 ACT.—

(1) Subparagraph (A) of section 512(b)(13) of the 1986 Code is amended by inserting "or accrues" after "receives".

(2) Subclause (I) of section 512(b)(13)(B)(i) of the 1986 Code is amended by striking "(as defined in section 513A(a)(5)(A))".

(3) Paragraph (2) of section 1041(b) of the 1997 Act is amended to read as follows:

"(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any amount received or accrued during the first 2 taxable years beginning on or after the date of the enactment of this Act if such amount is received or accrued pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such amount is received or accrued. The preceding sentence shall not apply to any amount which would (but for the exercise of an option to accelerate payment of such amount) be received or accrued after such 2 taxable years.".

(k) AMENDMENTS RELATED TO SECTION 1053 OF 1997 ACT.—

(1) Section 853 of the 1986 Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TREATMENT OF TAXES NOT ALLOWED AS A CREDIT UNDER SECTION 901(k).—This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of section 901(k).".

(2) Subsection (c) of section 853 of the 1986 Code is amended by striking the last sentence.

(3) Subparagraph (A) of section 901(k)(4) of the 1986 Code is amended by striking "securities business" and inserting "business as a securities dealer".

(l) AMENDMENT RELATED TO SECTION 1055 OF 1997 ACT.—Section 6611(g)(1) of the 1986 Code is amended by striking "(e), and (h)" and inserting "and (e)".

(m) AMENDMENT RELATED TO SECTION 1061 OF 1997 ACT.—Subsection (c) of section 751 of the 1986 Code is amended by striking "731" each place it appears and inserting "731, 732,".

(n) AMENDMENT RELATED TO SECTION 1083 OF 1997 ACT.—Section 1083(a)(2) of the 1997 Act is amended—

(1) by striking "21" and inserting "20", and

(2) by striking "22" and inserting "21".

(o) AMENDMENTS RELATED TO SECTION 1084 OF 1997 ACT.—

(1) Paragraph (3) of section 264(a) of the 1986 Code is amended by striking "subsection (c)" and inserting "subsection (d)".

(2) Paragraph (4) of section 264(a) of the 1986 Code is amended by striking "subsection (d)" and inserting "subsection (e)".

(3)(A) Paragraph (4) of section 264(f) of the 1986 Code is amended by adding at the end the following new subparagraph:

"(E) MASTER CONTRACTS.—If coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract for purposes of subparagraph (A). For purposes of the preceding sentence, the term 'master contract' shall not include any group life insurance contract (as defined in section 848(e)(2)).".

(B) The second sentence of section 1084(d) of the 1997 Act is amended by striking "but" and all that follows and inserting "except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of the Internal Revenue Code of 1986), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives.".

(4)(A) Clause (iv) of section 264(f)(5)(A) of the 1986 Code is amended by striking the second sentence.

(B) Subparagraph (B) of section 6724(d)(1) of the 1986 Code is amended by striking "or" at the end of clause (xv), by striking the period at the end of clause (xvi) and inserting ", or", and by adding at the end the following new clause:

"(xvii) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts).".

(C) Paragraph (2) of section 6724(d) of the 1986 Code is amended by striking "or" at the end of subparagraph (Y), by striking the period at the end of subparagraph (Z) and inserting "or", and by adding at the end the following new subparagraph:

"(AA) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts).".

(5) Subparagraph (A) of section 264(f)(8) of the 1986 Code is amended by striking "subsection (d)(5)(B)" and inserting "subsection (e)(5)(B)".

(p) AMENDMENTS RELATED TO SECTION 1085 OF 1997 ACT.—

(1) Paragraph (5) of section 32(c) of the 1986 Code is amended—

(A) by inserting before the period at the end of subparagraph (A) "and increased by the amounts described in subparagraph (C)",

(B) by adding "or" at the end of clause (iii) of subparagraph (B), and

(C) by striking all that follows subclause (II) of subparagraph (B)(iv) and inserting the following:

"(III) other trades or businesses.

For purposes of clause (iv), there shall not be taken into account items which are attributable to a trade or business which consists of the performance of services by the taxpayer as an employee.

"(C) CERTAIN AMOUNTS INCLUDED.—An amount is described in this subparagraph if it is—

"(i) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, or

"(ii) amounts received as a pension or annuity, and any distributions or payments received from an individual retirement plan, by the taxpayer during the taxable year to the extent not included in gross income.

Clause (ii) shall not include any amount which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.".

(2) Clause (v) of section 32(c)(2)(B) of the 1986 Code is amended by inserting "shall be taken into account" before ", but only".

(3) The text of paragraph (3) of section 1085(a) of the 1997 Act is amended to read as follows: "Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting ", and", and by inserting after subparagraph (J) the following new subparagraph:

"(K) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit).".

(q) AMENDMENT RELATED TO SECTION 1088 OF 1997 ACT.—Section 1088(b)(2)(C) of the 1997 Act is amended by inserting "more than 1 year" before "after".

(r) AMENDMENT RELATED TO SECTION 1089 OF 1997 ACT.—Paragraphs (1)(C) and (2)(C) of section 664(d) of the 1986 Code are each amended by adding ", and" at the end.

SEC. 6011. AMENDMENTS RELATED TO TITLE XI OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1103 OF 1997 ACT.—The paragraph (3) of section 59(a) added by section 1103 of the 1997 Act is redesignated as paragraph (4).

(b) AMENDMENTS RELATED TO SECTION 1121 OF 1997 ACT.—

(1) Subsection (e) of section 1297 of the 1986 Code is amended by adding at the end the following new paragraph:

"(4) TREATMENT OF HOLDERS OF OPTIONS.—Paragraph (1) shall not apply to stock treated as owned by a person by reason of section 1298(a)(4) (relating to the treatment of a person that has an option to acquire stock as owning such stock) unless such person establishes that such stock is owned (within the meaning of section 958(a)) by a United States shareholder (as defined in section 951(b)) who is not exempt from tax under this chapter.".

(2) Section 1298(a)(2)(B) of the 1986 Code is amended by adding at the end the following new sentence: "Section 1297(e) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph.".

(c) AMENDMENTS RELATED TO SECTION 1122 OF 1997 ACT.—

(1) Section 672(f)(3)(B) of the 1986 Code is amended by striking "section 1296" and inserting "section 1297".

(2) Paragraph (1) of section 1291(d) of the 1986 Code is amended by adding at the end the following new sentence: "In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not

apply, except that rules similar to the rules of section 1296(j) shall apply.".

(3) Subsection (d) of section 1296 of the 1986 Code is amended by adding at the end the following new sentence: "In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years.".

(d) AMENDMENT RELATED TO SECTION 1123 OF 1997 ACT.—The subsection (e) of section 1297 of the 1986 Code added by section 1123 of the 1997 Act is redesignated as subsection (f).

(e) AMENDMENTS RELATED TO SECTION 1131 OF 1997 ACT.—

(1) Section 991 of the 1986 Code is amended by striking "except for the tax imposed by chapter 5".

(2) Section 6013 of the 1986 Code is amended by striking "chapters 1 and 5" each place it appears in paragraphs (1)(A) and (5) of subsection (g) and in subsection (h)(1) and inserting "chapter 1" .

(f) AMENDMENT RELATED TO SECTION 1142 OF 1997 ACT.—

(1) Paragraph (2) of section 6038(a) of the 1986 Code is amended by striking "by regulations".

(2) Paragraph (3) of section 6038(a) of the 1986 Code is amended by striking "such information" and all that follows through the period and inserting "the Secretary has prescribed the furnishing of such information on or before the first day of such annual accounting period.".

(3) Paragraph (4) of section 6038(e) of the 1986 Code is amended by striking "corporation" and inserting "foreign business entity" each place it appears.

(g) AMENDMENT RELATED TO SECTION 1144 OF 1997 ACT.—Paragraphs (1) and (2) of section 1144(c) of the 1997 Act are each amended by striking "6038B(b)" and inserting "6038B(c) (as redesignated by subsection (b))".

SEC. 6012. AMENDMENTS RELATED TO TITLE XII OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1204 OF 1997 ACT.—The last sentence of section 162(a) of the 1986 Code is amended by striking "investigate" and all that follows and inserting "investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.".

(b) AMENDMENTS RELATED TO SECTION 1205 OF 1997 ACT.—

(1) Section 6311(e)(1) of the 1986 Code is amended by striking "section 6103(k)(8)" and inserting "section 6103(k)(9)".

(2) Paragraph (8) of section 6103(k) of the 1986 Code (as added by section 1205(c)(1) of the 1997 Act) is redesignated as paragraph (9).

(3) The subsection (g) of section 7431 of the 1986 Code added by section 1205 of the 1997 Act is redesignated as subsection (h) and is amended by striking "(8)" in the heading and inserting "(9)".

(4) Section 1205(c)(3) of the 1997 Act shall be applied as if it read as follows:

"(3) Section 6103(p)(3)(A), as amended by section 1026(b)(1)(A) of the 1997 Act, is amended by striking 'or (8)' and inserting '(8), or (9)' ".

(5) Section 1213(b) of the 1997 Act is amended by striking "section 6724(d)(1)(A)" and inserting "section 6724(d)(1)".

(c) AMENDMENT RELATED TO SECTION 1221 OF 1997 ACT.—Paragraph (2) of section 774(d) of the 1986 Code is amended by inserting before the period "or 857(b)(3)(D)".

(d) AMENDMENT RELATED TO SECTION 1223 OF 1997 ACT.—Subsection (c) of section 6724 of the 1986 Code is amended by inserting before the period "(more than 100 information returns in the case of a partnership having more than 100 partners)".

(e) AMENDMENT RELATED TO SECTION 1226 OF 1997 ACT.—Section 1226 of the 1997 Act is amended by striking "ending on or" and inserting "beginning".

(f) AMENDMENT RELATED TO SECTION 1231 OF 1997 ACT.—Subsection (c) of section 6211 of the 1986 Code is amended—

(1) by striking "SUBCHAPTER C" in the heading and inserting "SUBCHAPTERS C AND D", and

(2) by striking "subchapter C" in the text and inserting "subchapters C and D".

(g) AMENDMENT RELATED TO SECTION 1256 OF 1997 ACT.—Subparagraph (A) of section 857(d)(3) of the 1986 Code is amended by striking "earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies)" and inserting "earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply".

(h) AMENDMENT RELATED TO SECTION 1285 OF 1997 ACT.—Section 7430(b) of the 1986 Code is amended by redesignating paragraph (5) as paragraph (4).

SEC. 6013. AMENDMENTS RELATED TO TITLE XIII OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1305 OF 1997 ACT.—

(1) Section 646 of the 1986 Code is redesignated as section 645.

(2) The item relating to section 646 in the table of sections for subpart A of part I of subchapter J of chapter 1 of the 1986 Code is amended by striking "Sec. 646" and inserting "Sec. 645".

(3) Paragraph (1) of section 2652(b) of the 1986 Code is amended by striking "section 646" and inserting "section 645".

(4)(A) Paragraph (1) of section 2652(b) of the 1986 Code is amended by striking the second sentence.

(B) Subsection (b) of section 2654 of the 1986 Code is amended by adding at the end the following new sentence: "For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645.".

(b) AMENDMENTS RELATED TO SECTION 1309 OF 1997 ACT.—

(1) Subsection (b) of section 685 of the 1986 Code is amended by adding at the end the following new flush sentence:

"A trust shall not fail to be treated as meeting the requirement of paragraph (6) by reason of the death of an individual but only during the 60-day period beginning on the date of such death.".

(2) Subsection (f) of section 685 of the 1986 Code is amended by inserting before the period at the end "and of trusts terminated during the year".

SEC. 6014. AMENDMENTS RELATED TO TITLE XIV OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1421 OF 1997 ACT.—

(1) Paragraph (1) of section 5054(a) of the 1986 Code is amended—

(A) by inserting ", or imported into the United States and transferred to a brewery free of tax under section 5418," after "produced in the United States" in the text, and

(B) by inserting "; CERTAIN IMPORTED BEER" after "PRODUCED IN THE UNITED STATES" in the heading.

(2) Paragraph (2) of section 5054(a) of the 1986 Code is amended by inserting "and not transferred to a brewery free of tax under section 5418" after "United States".

(3) Section 5056 of the 1986 Code is amended by striking "produced in the United States" each place it appears and inserting "removed for consumption or sale".

(b) AMENDMENTS RELATED TO SECTION 1422 OF 1997 ACT.—

(1) Paragraph (2) of section 5043(a) of the 1986 Code is amended by inserting "which are not transferred to a bonded wine cellar free of tax under section 5364" after "foreign wines".

(2) Subsection (a) of section 5044 of the 1986 Code is amended by striking "produced in the United States" and inserting "removed from a bonded wine cellar".

(3) Section 5364 of the 1986 Code is amended by striking "Wine imported or brought into" and inserting "Natural wine (as defined in section 5381) imported or brought into".

(c) AMENDMENT RELATED TO SECTION 1434 OF 1997 ACT.—Paragraph (2) of section 4052(f) of the 1986 Code is amended by striking "this section" and inserting "such section".

(d) AMENDMENT RELATED TO SECTION 1436 OF 1997 ACT.—Paragraph (2) of section 4091(a) of the 1986 Code is amended by inserting "or on which tax has been credited or refunded" after "such paragraph".

(e) AMENDMENT RELATED TO SECTION 1453 OF 1997 ACT.—Subparagraph (D) of section 7430(c)(4) of the 1986 Code is amended by striking "subparagraph (A)(iii)" and inserting "subparagraph (A)(ii)".

SEC. 6015. AMENDMENTS RELATED TO TITLE XV OF 1997 ACT.

(a) AMENDMENT RELATED TO SECTION 1501 OF 1997 ACT.—The paragraph (8) of section 408(p) of the 1986 Code added by section 1501(b) of the 1997 Act is redesignated as paragraph (9).

(b) AMENDMENT RELATED TO SECTION 1505 OF 1997 ACT.—Section 1505(d)(2) of the 1997 Act is amended by striking "(b)(12)" and inserting "(b)(12)(A)(i)".

(c) AMENDMENTS RELATED TO SECTION 1529 OF 1997 ACT.—

(1) Section 1529(a) of the 1997 Act is amended to read as follows:

"(a) GENERAL RULE.—Amounts to which this section applies which are received by an individual (or the survivors of the individual) as a result of hypertension or heart disease of the individual

shall be excludable from gross income under section 104(a)(1) of the Internal Revenue Code of 1986.".

(2) Section 1529(b)(1)(B) of the 1997 Act is amended to read as follows:

"(B) under—

"(i) a State law (as amended on May 19, 1992) which irrebuttably presumed that heart disease and hypertension are work-related illnesses but only for employees hired before July 1, 1992, or

"(ii) any other statute, ordinance, labor agreement, or similar provision as a disability pension payment or in the nature of a disability pension payment attributable to employment as a police officer or fireman, but only if the individual is referred to in the State law described in clause (i); and".

(d) AMENDMENT RELATED TO SECTION 1530 OF 1997 ACT.—Subparagraph (C) of section 404(a)(9) of the 1986 Code (as added by section 1530 of the 1997 Act) is redesignated as subparagraph (D) and is amended by striking "A qualified" and inserting "QUALIFIED GRATUITOUS TRANSFERS.—A qualified".

(e) AMENDMENT RELATED TO SECTION 1531 OF 1997 ACT.—Subsection (f) of section 9811 of the 1986 Code (as added by section 1531 of the 1997 Act) is redesignated as subsection (e).

SEC. 6016. AMENDMENTS RELATED TO TITLE XVI OF 1997 ACT.

(a) AMENDMENTS RELATED TO SECTION 1601(d) OF 1997 ACT.—

(1) AMENDMENTS RELATED TO SECTION 1601(d)(1)—

(A) Section 408(p)(2)(D)(i) of the 1986 Code is amended by striking "or (B)" in the last sentence.

(B) Section 408(p) of the 1986 Code is amended by adding at the end the following new paragraph:

"(10) SPECIAL RULES FOR ACQUISITIONS, DISPOSITIONS, AND SIMILAR TRANSACTIONS.—

"(A) IN GENERAL.—An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

"(i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II), and

"(ii) the qualified salary reduction arrangement maintained by the employer would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

"(B) APPLICABLE REQUIREMENT.—For purposes of this paragraph, the term 'applicable requirement' means—

"(i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer,

"(ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer, and

"(iii) the participation requirements under paragraph (4).

"(C) TRANSITION PERIOD.—For purposes of this paragraph, the term 'transition period' means the period beginning on the date of any transaction described in subpara-

graph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.".

(C) Section 408(p)(2) of the 1986 Code is amended—

(i) by striking "the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i)" in the last sentence of subparagraph (C)(i)(II) and inserting "the preceding sentence shall not apply", and

(ii) by striking clause (iii) of subparagraph (D).

(2) AMENDMENT TO SECTION 1601(d)(4).—Section 1601(d)(4)(A) of the 1997 Act is amended—

(A) by striking "Section 403(b)(11)" and inserting "Paragraphs (7)(A)(ii) and (11) of section 403(b)", and

(B) by striking "403(b)(1)" in clause (ii) and inserting "403(b)(10)".

(b) AMENDMENT RELATED TO SECTION 1601(f)(4) OF 1997 ACT.—Subsection (d) of section 6427 of the 1986 Code is amended—

(1) by striking "HELICOPTERS" in the heading and inserting "OTHER AIRCRAFT USES", and

(2) by inserting "or a fixed-wing aircraft" after "helicopter".

SEC. 6017. AMENDMENT RELATED TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.

(a) IN GENERAL.—Subparagraph (B) of section 6427(i)(2) of the 1986 Code is amended to read as follows:

"(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed during the 1st quarter following the last quarter included in the claim.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 9009 of the Transportation Equity Act for the 21st Century.

SEC. 6018. AMENDMENTS RELATED TO SMALL BUSINESS JOB PROTECTION ACT OF 1996.

(a) AMENDMENT RELATING TO SECTION 1116.—Subparagraph (C) of section 1116(b)(2) of the Small Business Job Protection Act of 1996 is amended by striking "chapter 68" and inserting "chapter 61".

(b) AMENDMENT RELATING TO SECTION 1421.—Section 408(d)(7) of the 1986 Code is amended—

(1) by inserting "or 402(k)" after "section 402(h)" in subparagraph (B) thereof, and

(2) by inserting "OR SIMPLE RETIREMENT ACCOUNTS" after "PENSIONS" in the heading thereof.

(c) AMENDMENT RELATING TO SECTION 1431.—Subparagraph (E) of section 1431(c)(1) of the Small Business Job Protection Act of 1996 is amended to read as follows:

"(E) Section 414(q)(5), as redesignated by subparagraph (A), is amended by striking 'under paragraph (4) or the number of officers taken into account under paragraph (5)'".

(d) AMENDMENT RELATING TO SECTION 1604.—Paragraph (3) of section 1604(b) of such Act is amended—

(1) by striking "such Code" and inserting "the Internal Revenue Code of 1986", and

(2) by striking "such date of enactment" and inserting "the date of the enactment of this Act".

(e) AMENDMENT RELATING TO SECTION 1609.—Paragraph (1) of section 1609(h) of such Act is amended by striking "paragraph (3)(A)(i)" and inserting "paragraph (3)(A)".

(f) AMENDMENTS RELATING TO SECTION 1807.—

(1) Subparagraph (A) of section 23(b)(2) of the 1986 Code (relating to income limitation on credit for adoption expenses) is amended by inserting "(determined without regard to subsection (c))" after "for any taxable year".

(2) Paragraph (3) of section 1807(c) of the Small Business Job Protection Act of 1996 is amended by striking "Clause (i)" and inserting "Clause (ii)".

(g) AMENDMENT RELATING TO SECTION 1903.—Subsection (b) of section 1903 of such Act shall be applied as if "or" in the material proposed to be stricken were capitalized.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 to which they relate.

SEC. 6019. AMENDMENTS RELATED TO TAXPAYER BILL OF RIGHTS 2.

(a) IN GENERAL.—Subsection (b) of section 6104 of the 1986 Code is amended by adding at the end the following new sentence: "In the case of an organization described in section 501(d), this subsection shall not apply to copies referred to in section 6031(b) with respect to such organization.".

(b) PUBLIC INSPECTION.—Subparagraph (C) of section 6104(e)(1) of the 1986 Code is amended by adding at the end the following new sentence: "In the case of an organization described in section 501(d), subparagraph (A) shall not require the disclosure of the copies referred to in section 6031(b) with respect to such organization.".

(c) DISCLOSURE TO AUTHORIZED REPRESENTATIVES OF THE TAXPAYER.—Paragraph (6) of section 6103(e) of the 1986 Code is amended by striking "or (5)" and inserting "(5), (8), or (9)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 6020. AMENDMENT RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1993.

(a) IN GENERAL.—Section 196(c) of the 1986 Code is amended by striking "and" at the end of paragraph (6), by striking the period at the end of paragraph (7), and insert ", and", and by adding at the end the following new paragraph:

"(8) the employer social security credit determined under section 45B(a).".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 13443 of the Revenue Reconciliation Act of 1993.

SEC. 6021. AMENDMENT RELATED TO REVENUE RECONCILIATION ACT OF 1990.

(a) IDENTIFICATION REQUIREMENT FOR INDIVIDUALS ELIGIBLE FOR EARNED INCOME CREDIT.—Subparagraph (F) of section 32(c)(1) of the 1986 Code is amended by striking "The term 'eligible individual' does not include any individual who does not include on the

return of tax for the taxable year—" and inserting "No credit shall be allowed under this section to an eligible individual who does not include on the return of tax for the taxable year—".

(b) IDENTIFICATION REQUIREMENT FOR QUALIFYING CHILDREN UNDER EARNED INCOME CREDIT.—

(1) IN GENERAL.—Clause (i) of section 32(c)(3)(D) of the 1986 Code is amended to read as follows:

"(i) IN GENERAL.—A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.".

(2) INDIVIDUALS WHO DO NOT INCLUDE TIN, ETC., OF ANY QUALIFYING CHILD.—Paragraph (1) of section 32(c) of the 1986 Code is amended by adding at the end the following new subparagraph:

"(G) INDIVIDUALS WHO DO NOT INCLUDE TIN, ETC., OF ANY QUALIFYING CHILD.—No credit shall be allowed under this section to any eligible individual who has 1 or more qualifying children if no qualifying child of such individual is taken into account under subsection (b) by reason of paragraph (3)(D).".

(3) CONFORMING AMENDMENT.—Subparagraph (A) of section 32(c)(3) is amended by inserting "and" at the end of clause (ii), by striking ", and" at the end of clause (iii) and inserting a period, and by striking clause (iv).

(c) EFFECTIVE DATES.—

(1) ELIGIBLE INDIVIDUALS.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 451 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) QUALIFYING CHILDREN.—The amendments made by subsection (b) shall take effect as if included in the amendments made by section 11111 of Revenue Reconciliation Act of 1990.

SEC. 6022. AMENDMENT RELATED TO TAX REFORM ACT OF 1986.

(a) IN GENERAL.—Section 6401(b)(1) of the 1986 Code is amended by striking "and D" and inserting "D, and G".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 701(b) of the Tax Reform Act of 1986.

SEC. 6023. MISCELLANEOUS CLERICAL AND DEADWOOD CHANGES.

(1) The heading for subparagraph (B) of section 45A(b)(1) of the 1986 Code is amended by striking "TARGETED JOBS CREDIT" and inserting "WORK OPPORTUNITY CREDIT".

(2) The subsection heading for section 59(b) of the 1986 Code is amended by striking "SECTION 936 CREDIT" and inserting "CREDITS UNDER SECTION 30A OR 936".

(3) Subsection (n) of section 72 of the 1986 Code is amended by inserting "(as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996)" after "section 101(b)(2)(D)".

(4) Subparagraph (A) of section 72(t)(3) of the 1986 Code is amended by striking "(A)(v)," and inserting "(A)(v)".

(5) Clause (ii) of section 142(f)(3)(A) of the 1986 Code is amended by striking "1997, (" and inserting "1997 (".

(6) The last sentence of paragraph (3) of section 501(n) of the 1986 Code is amended by striking "subparagraph (C)(ii)" and inserting "subparagraph (E)(ii)".

(7) Subsection (o) of section 501 of the 1986 Code is amended by striking "section 1853(e)" and inserting "section 1855(d)".

(8) The heading for subclause (II) of section 512(b)(17)(B)(ii) of the 1986 Code is amended by striking "RULE" and inserting "RULE".

(9) Clause (ii) of section 543(d)(5)(A) of the 1986 Code is amended by striking "section 563(c)" and inserting "section 563(d)".

(10) Subparagraph (B) of section 871(f)(2) of the 1986 Code is amended by striking "(19 U.S.C. 2462)" and inserting "19 U.S.C. 2461 et seq.)".

(11) Paragraph (2) of section 1017(a) of the 1986 Code is amended by striking "(b)(2)(D)" and inserting "(b)(2)(E)".

(12) Subparagraph (D) of section 1250(d)(4) of the 1986 Code is amended by striking "the last sentence of section 1033(b)" and inserting "section 1033(b)(2)".

(13) Paragraph (5) of section 3121(a) of the 1986 Code is amended—

(A) by striking the semicolon at the end of subparagraph (F) and inserting a comma,

(B) by striking "or" at the end of subparagraph (G), and

(C) by striking the period at the end of subparagraph (I) and inserting a semicolon.

(14) Paragraph (19) of section 3401(a) of the 1986 Code is amended by inserting "for" before "any benefit provided to".

(15) Paragraph (21) of section 3401(a) of the 1986 Code is amended by inserting "for" before "any payment made".

(16) Sections 4092(b) and 6427(q)(2) of the 1986 Code are each amended by striking "section 4041(c)(4)" and inserting "section 4041(c)(2)".

(17) Sections 4221(c) and 4222(d) of the 1986 Code are each amended by striking "4053(a)(6)" and inserting "4053(6)".

(18)(A) The heading of section 4973 of the 1986 Code is amended to read as follows:

"SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO CERTAIN TAX-FAVORED ACCOUNTS AND ANNUITIES.".

(B) The item relating to section 4973 in the table of sections for chapter 43 of the 1986 Code is amended to read as follows:

"Sec. 4973. Tax on excess contributions to certain tax-favored accounts and annuities.".

(19) Section 4975 of the 1986 Code is amended—

(A) in subsection (c)(3) by striking "exempt for the tax" and inserting "exempt from the tax", and

(B) in subsection (i) by striking "Secretary of Treasury" and inserting "Secretary of the Treasury".

(20) Paragraph (1) of section 6039(a) of the 1986 Code is amended by inserting "to any person" after "transfers".

(21) Subparagraph (A) of section 6050R(b)(2) of the 1986 Code is amended by striking the semicolon at the end thereof and inserting a comma.

(22) Subparagraph (A) of section 6103(h)(4) of the 1986 Code is amended by inserting "if" before "the taxpayer is a party to".

(23) Paragraph (5) of section 6416(b) of the 1986 Code is amended by striking "section 4216(e)(1)" each place it appears and inserting "section 4216(d)(1)".

(24)(A) Section 6421 of the 1986 Code is amended by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(B) Subsection (b) of section 34 of the 1986 Code is amended by striking "section 6421(j)" and inserting "section 6421(i)".

(C) Subsections (a) and (b) of section 6421 of the 1986 Code are each amended by striking "subsection (j)" and inserting "subsection (i)".

(25) Paragraph (3) of section 6427(f) of the 1986 Code is amended by striking ", (e),".

(26)(A) Section 6427 of the 1986 Code, as amended by paragraph (16), is amended by redesignating subsections (n), (p), (q), and (r) as subsections (m), (n), (o), and (p), respectively.

(B) Paragraphs (1) and (2)(A) of section 6427(i) of the 1986 Code are each amended by striking "(q)" and inserting "(o)".

(27) Subsection (m) of section 6501 of the 1986 Code is amended by striking "election under" and all that follows through "(or any" and inserting "election under section 30(d)(4), 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any".

(28) The paragraph heading of paragraph (2) of section 7702B(e) of the 1986 Code is amended by inserting "SECTION" after "APPLICATION OF".

(29) Paragraph (3) of section 7434(b) of the 1986 Code is amended by striking "attorneys fees" and inserting "attorneys' fees".

(30) Subparagraph (B) of section 7872(f)(2) of the 1986 Code is amended by striking "foregone" and inserting "forgone".

(31) Subsection (e) of section 9502 of the 1986 Code is amended to read as follows:

"(e) CERTAIN TAXES ON ALCOHOL MIXTURES TO REMAIN IN GENERAL FUND.—For purposes of this section, the amounts which would (but for this subsection) be required to be appropriated under subparagraphs (A), (C), and (D) of subsection (b)(1) shall be reduced by—

"(1) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

"(2) 0.67 cent per gallon in the case of fuel used in producing a mixture described in paragraph (1).".

(32) The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 6024. EFFECTIVE DATE.

Except as otherwise provided in this title, the amendments made by this title shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 to which they relate.

TITLE VII—REVENUE PROVISIONS

SEC. 7001. CLARIFICATION OF DEDUCTION FOR DEFERRED COMPENSATION.

(a) IN GENERAL.—Section 404(a) (relating to deduction for contributions of an employer to an employee's trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end the following new paragraph:

"(11) DETERMINATIONS RELATING TO DEFERRED COMPENSATION.—For purposes of determining under this section—

"(A) whether compensation of an employee is deferred compensation, and

"(B) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by subsection (a) to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

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

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

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 3-taxable year period beginning with such first taxable year.

SEC. 7002. TERMINATION OF EXCEPTION FOR CERTAIN REAL ESTATE INVESTMENT TRUSTS FROM THE TREATMENT OF STAPLED ENTITIES.

(a) IN GENERAL.—Notwithstanding paragraph (3) of section 136(c) of the Tax Reform Act of 1984 (relating to stapled stock; stapled entities), the REIT gross income provisions shall be applied by treating the activities and gross income of members of the stapled REIT group properly allocable to any nonqualified real property interest held by the exempt REIT or any stapled entity which is a member of such group (or treated under subsection (c) as held by such REIT or stapled entity) as the activities and gross income of the exempt REIT in the same manner as if the exempt REIT and such group were 1 entity.

(b) NONQUALIFIED REAL PROPERTY INTEREST.—For purposes of this section—

(1) IN GENERAL.—The term "nonqualified real property interest" means, with respect to any exempt REIT, any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity.

(2) EXCEPTION FOR BINDING CONTRACTS, ETC.—Such term shall not include any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity if—

(A) the acquisition is pursuant to a written agreement (including a put option, buy-sell agreement, and an agreement relating to a third party default) which was binding on such date and at all times thereafter on such REIT or stapled entity, or

(B) the acquisition is described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(3) IMPROVEMENTS AND LEASES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term "nonqualified real property interest" shall not include—

(i) any improvement to land owned or leased by the exempt REIT or any member of the stapled REIT group, and

(ii) any repair to, or improvement of, any improvement owned or leased by the exempt REIT or any member of the stapled REIT group,

if such ownership or leasehold interest is a qualified real property interest.

(B) LEASES.—The term "nonqualified real property interest" shall not include—

(i) any lease of a qualified real property interest if such lease is not otherwise such an interest, or

(ii) any renewal of a lease which is a qualified real property interest,

but only if the rent on any lease referred to in clause (i) or any renewal referred to in clause (ii) does not exceed an arm's length rate.

(C) TERMINATION WHERE CHANGE IN USE.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to any improvement placed in service after December 31, 1999, which is part of a change in the use of the property to which such improvement relates unless the cost of such improvement does not exceed 200 percent of—

(I) the cost of such property, or

(II) if such property is substituted basis property (as defined in section 7701(a)(42) of the Internal Revenue Code of 1986), the fair market value of the property at the time of acquisition.

(ii) BINDING CONTRACTS.—For purposes of clause (i), an improvement shall be treated as placed in service before January 1, 2000, if such improvement is placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

(4) EXCEPTION FOR PERMITTED TRANSFERS, ETC.—The term "nonqualified real property interest" shall not include any interest in real property acquired solely as a result of a direct or indirect contribution, distribution, or other transfer of such interest from the exempt REIT or any member of the stapled REIT group to such REIT or any such member, but only to the extent the aggregate of the interests of the exempt REIT and all sta-

pled entities in such interest in real property (determined in accordance with subsection (c)(1)) is not increased by reason of the transfer.

(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—Notwithstanding any other provision of this section, all interests in real property held by an exempt REIT or any stapled entity with respect to such REIT (or treated under subsection (c) as held by such REIT or stapled entity) shall be treated as nonqualified real property interests unless—

(A) such stapled entity was a stapled entity with respect to such REIT as of March 26, 1998, and at all times thereafter, and

(B) as of March 26, 1998, and at all times thereafter, such REIT was a real estate investment trust.

(6) QUALIFIED REAL PROPERTY INTEREST.—The term "qualified real property interest" means any interest in real property other than a nonqualified real property interest.

(c) TREATMENT OF PROPERTY HELD BY 10-PERCENT SUBSIDIARIES.—For purposes of this section—

(1) IN GENERAL.—Any exempt REIT and any stapled entity shall be treated as holding their proportionate shares of each interest in real property held by any 10-percent subsidiary entity of the exempt REIT or stapled entity, as the case may be.

(2) PROPERTY HELD BY 10-PERCENT SUBSIDIARIES TREATED AS NONQUALIFIED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any interest in real property held by a 10-percent subsidiary entity of an exempt REIT or stapled entity shall be treated as a nonqualified real property interest.

(B) EXCEPTION FOR INTERESTS IN REAL PROPERTY HELD ON MARCH 26, 1998, ETC.—In the case of an entity which was a 10-percent subsidiary entity of an exempt REIT or stapled entity on March 26, 1998, and at all times thereafter, an interest in real property held by such subsidiary entity shall be treated as a qualified real property interest if such interest would be so treated if held or acquired directly by the exempt REIT or the stapled entity.

(3) REDUCTION IN QUALIFIED REAL PROPERTY INTERESTS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—If, after March 26, 1998, an exempt REIT or stapled entity increases its ownership interest in a subsidiary entity to which paragraph (2)(B) applies above its ownership interest in such subsidiary entity as of such date, the additional portion of each interest in real property which is treated as held by the exempt REIT or stapled entity by reason of such increased ownership shall be treated as a nonqualified real property interest.

(4) SPECIAL RULES FOR DETERMINING OWNERSHIP.—For purposes of this subsection—

(A) percentage ownership of an entity shall be determined in accordance with subsection (e)(4),

(B) interests in the entity which are acquired by an exempt REIT or a member of the stapled REIT group in any acquisition described in an agreement, announcement, or

filing described in subsection (b)(2) shall be treated as acquired on March 26, 1998, and

(C) except as provided in guidance prescribed by the Secretary, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

(5) TREATMENT OF 60-PERCENT PARTNERSHIPS.—

(A) IN GENERAL.—If, as of March 26, 1998—

(i) an exempt REIT or stapled entity held directly or indirectly at least 60 percent of the capital or profits interest in a partnership, and

(ii) 90 percent or more of the capital interests and 90 percent or more of the profits interests in such partnership (other than interests held directly or indirectly by the exempt REIT or stapled entity) are, or will be, redeemable or exchangeable for consideration the amount of which is determined by reference to the value of shares of stock in the exempt REIT or stapled entity (or both),

paragraph (3) shall not apply to such partnership, and such REIT or entity shall be treated for all purposes of this section as holding all of the capital and profits interests in such partnership.

(B) LIMITATION TO 1 PARTNERSHIP.—If, as of January 1, 1999, more than 1 partnership owned by any exempt REIT or stapled entity meets the requirements of subparagraph (A), only the largest such partnership on such date (determined by aggregate asset bases) shall be treated as meeting such requirements.

(C) MIRROR ENTITY.—For purposes of subparagraph (A), an interest in a partnership formed after March 26, 1998, shall be treated as held by an exempt REIT or stapled entity on March 26, 1998, if such partnership is formed to mirror the stapling of an exempt REIT and a stapled entity in connection with an acquisition agreed to or announced on or before March 26, 1998.

(d) TREATMENT OF PROPERTY SECURED BY MORTGAGE HELD BY EXEMPT REIT OR MEMBER OF STAPLED REIT GROUP.—

(1) IN GENERAL.—In the case of any nonqualified obligation held by an exempt REIT or any member of the stapled REIT group, the REIT gross income provisions shall be applied by treating the exempt REIT as having impermissible tenant service income equal to—

(A) the interest income from such obligation which is properly allocable to the property described in paragraph (2), and

(B) the income of any member of the stapled REIT group from services described in paragraph (2) with respect to such property.

If the income referred to in subparagraph (A) or (B) is of a 10-percent subsidiary entity, only the portion of such income which is properly allocable to the exempt REIT's or the stapled entity's interest in the subsidiary entity shall be taken into account.

(2) NONQUALIFIED OBLIGATION.—Except as otherwise provided in this subsection, the term "nonqualified obligation" means any obligation secured by a mortgage on an interest in real property if the income of any member of the stapled REIT group for services furnished with respect to such property would be impermissible tenant service income were such property held by the exempt REIT and such services furnished by the exempt REIT.

(3) EXCEPTION FOR CERTAIN MARKET RATE OBLIGATIONS.—Such term shall not include any obligation—

(A) payments under which would be treated as interest if received by a REIT, and

(B) the rate of interest on which does not exceed an arm's length rate.

(4) EXCEPTION FOR EXISTING OBLIGATIONS.—Such term shall not include any obligation—

(A) which is secured on March 26, 1998, by an interest in real property, and

(B) which is held on such date by the exempt REIT or any entity which is a member of the stapled REIT group on such date and at all times thereafter,

but only so long as such obligation is secured by such interest, and the interest payable on such obligation is not changed to a rate which exceeds an arm's length rate unless such change is pursuant to the terms of the obligation in effect on March 26, 1998. The preceding sentence shall not cease to apply by reason of the refinancing of the obligation if (immediately after the refinancing) the principal amount of the obligation resulting from the refinancing does not exceed the principal amount of the refinanced obligation (immediately before the refinancing) and the interest payable on such refinanced obligation does not exceed an arm's length rate.

(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—A rule similar to the rule of subsection (b)(5) shall apply for purposes of this subsection.

(6) INCREASE IN AMOUNT OF NONQUALIFIED OBLIGATIONS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—A rule similar to the rule of subsection (c)(3) shall apply for purposes of this subsection.

(7) COORDINATION WITH SUBSECTION (a).—This subsection shall not apply to the portion of any interest in real property that the exempt REIT or stapled entity holds or is treated as holding under this section without regard to this subsection.

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

(1) REIT GROSS INCOME PROVISIONS.—The term "REIT gross income provisions" means—

(A) paragraphs (2), (3), and (6) of section 856(c) of the Internal Revenue Code of 1986, and

(B) section 857(b)(5) of such Code.

(2) EXEMPT REIT.—The term "exempt REIT" means a real estate investment trust to which section 269B of the Internal Revenue Code of 1986 does not apply by reason of paragraph (3) of section 136(c) of the Tax Reform Act of 1984.

(3) STAPLED REIT GROUP.—The term "stapled REIT group" means, with respect to an exempt REIT, the group consisting of—

(A) all entities which are stapled entities with respect to the exempt REIT, and

(B) all entities which are 10-percent subsidiary entities of the exempt REIT or any such stapled entity.

(4) 10-PERCENT SUBSIDIARY ENTITY.—

(A) IN GENERAL.—The term "10-percent subsidiary entity" means, with respect to any exempt REIT or stapled entity, any entity in which the exempt REIT or stapled entity (as the case may be) directly or indirectly holds at least a 10-percent interest.

(B) EXCEPTION FOR CERTAIN C CORPORATION SUBSIDIARIES OF REITS.—A corporation which would, but for this subparagraph, be treated as a 10-percent subsidiary of an exempt REIT shall not be so treated if such corporation is taxable under section 11 of the Internal Revenue Code of 1986.

(C) 10-PERCENT INTEREST.—The term "10-percent interest" means—

(i) in the case of an interest in a corporation, ownership of 10 percent (by vote or value) of the stock in such corporation,

(ii) in the case of an interest in a partnership, ownership of 10 percent of the capital or profits interest in the partnership, and

(iii) in any other case, ownership of 10 percent of the beneficial interests in the entity.

(5) OTHER DEFINITIONS.—Terms used in this section which are used in section 269B or section 856 of such Code shall have the respective meanings given such terms by such section.

(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to carry out the purposes of this section, including guidance to prevent the avoidance of such purposes and to prevent the double counting of income.

(g) EFFECTIVE DATE.—This section shall apply to taxable years ending after March 26, 1998.

SEC. 7003. CERTAIN CUSTOMER RECEIVABLES INELIGIBLE FOR MARK-TO-MARKET TREATMENT.

(a) CERTAIN RECEIVABLES NOT ELIGIBLE FOR MARK TO MARKET.—Section 475(c) (relating to definitions) is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULES FOR CERTAIN RECEIVABLES.—

"(A) IN GENERAL.—Paragraph (2)(C) shall not include any nonfinancial customer paper.

"(B) NONFINANCIAL CUSTOMER PAPER.—For purposes of subparagraph (A), the term 'nonfinancial customer paper' means any receivable which—

"(i) is a note, bond, debenture, or other evidence of indebtedness,

"(ii) arises out of the sale of nonfinancial goods or services by a person the principal activity of which is

the selling or providing of nonfinancial goods or services, and

"(iii) is held by such person (or a person who bears a relationship to such person described in section 267(b) or 707(b)) at all times since issue."

(b) REGULATIONS.—Section 475(g) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) to prevent the use by taxpayers of subsection (c)(4) to avoid the application of this section to a receivable that is inventory in the hands of the taxpayer (or a person who bears a relationship to the taxpayer described in sections 267(b) of 707(b)).".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

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

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

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable year period beginning with such first taxable year.

SEC. 7004. MODIFICATION OF AGI LIMIT FOR CONVERSIONS TO ROTH IRAS.

(a) IN GENERAL.—Section 408A(c)(3)(C)(i) (relating to limits based on modified adjusted gross income) is amended to read as follows:

"(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that—

"(I) any amount included in gross income under subsection (d)(3) shall not be taken into account, and

"(II) any amount included in gross income by reason of a required distribution under a provision described in paragraph (5) shall not be taken into account for purposes of subparagraph (B)(i).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

TITLE VIII—IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO

SEC. 8001. IDENTIFICATION OF LIMITED TAX BENEFITS SUBJECT TO LINE ITEM VETO.

Section 1021(a)(3) of the Congressional Budget and Impoundment Control Act of 1974 shall only apply to—

(1) section 3105 (relating to administrative appeal of adverse IRS determination of tax-exempt status of bond issue), and

(2) section 3445(c) (relating to State fish and wildlife permits).

TITLE IX—TECHNICAL CORRECTIONS TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

SEC. 9001. SHORT TITLE.

This title may be cited as the "TEA 21 Restoration Act".

SEC. 9002. AUTHORIZATION AND PROGRAM SUBTITLE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1101(a) of the Transportation Equity Act for the 21st Century is amended—

(1) in paragraph (13)—

(A) by striking "$1,025,695,000" and inserting "$1,029,583,500";

(B) by striking "$1,398,675,000" and inserting "$1,403,977,500";

(C) by striking "$1,678,410,000" the first place it appears and inserting "$1,684,773,000";

(D) by striking "$1,678,410,000" the second place it appears and inserting "$1,684,773,000";

(E) by striking "$1,771,655,000" the first place it appears and inserting "$1,778,371,500"; and

(F) by striking "$1,771,655,000" the second place it appears and inserting "$1,778,371,500"; and

(2) in paragraph (14)—

(A) by striking "1998" and inserting "1999"; and

(B) by inserting before "$5,000,000" the following: "$10,000,000 for fiscal year 1998".

(b) OBLIGATION LIMITATIONS.—

(1) GENERAL LIMITATION.—Section 1102(a) of such Act is amended—

(A) in paragraph (2) by striking "$25,431,000,000" and inserting "$25,511,000,000";

(B) in paragraph (3) by striking "$26,155,000,000" and inserting "$26,245,000,000";

(C) in paragraph (4) by striking "$26,651,000,000" and inserting "$26,761,000,000";

(D) in paragraph (5) by striking "$27,235,000,000" and inserting "$27,355,000,000"; and

(E) in paragraph (6) by striking "$27,681,000,000" and inserting "$27,811,000,000".

(2) TRANSPORTATION RESEARCH PROGRAMS.—Section 1102(e) of such Act is amended—

(A) by striking "3" and inserting "5";

(B) by striking "VI" and inserting "V"; and

(C) by inserting before the period at the end the following: "; except that obligation authority made available for such programs under such limitations shall remain available for a period of 3 fiscal years".

(3) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—Section 1102(f) of such Act is amended by striking "(other than the program under section 160 of title 23, United States Code)".

(c) APPORTIONMENTS.—Section 1103 of such Act is amended—

(1) in subsection (l) by adding at the end the following:

"(5) Section 150 of such title, and the item relating to such section in the analysis for chapter 1 of such title, are repealed.";

(2) in subsection (n) by inserting "of title 23, United States Code" after "206"; and

(3) by adding at the end the following:

"(o) TECHNICAL ADJUSTMENTS.—Section 104 of title 23, United States Code, is amended—

"(1) in subsection (a)(1) (as amended by subsection (a) of this section) by striking 'under section 103';

"(2) in subsection (b) (as amended by subsection (b) of this section)—

"(A) in paragraph (1)(A) by striking '1999 through 2003' and inserting '1998 through 2002'; and

"(B) in paragraph (4)(B)(i) by striking 'on lanes on Interstate System' and all that follows through 'in each State' and inserting 'on Interstate System routes open to traffic in each State'; and

"(3) in subsection (e)(2) (as added by subsection (d)(6) of this section) by striking '104, 144, or 157' and inserting '104, 105, or 144'.".

(d) MINIMUM GUARANTEE.—Section 1104 of such Act is amended by adding at the end the following:

"(c) TECHNICAL ADJUSTMENTS.—Section 105 of title 23, United States Code (as amended by subsection (a) of this section), is amended—

"(1) in subsection (a) by adding at the end the following: 'The minimum amount allocated to a State under this section for a fiscal year shall be $1,000,000.';

"(2) in subsection (c)(1) by striking '50 percent of';

"(3) in subsection (c)(1)(A) by inserting '(other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs)' after 'subsection (a)';

"(4) in subsection (c)(1)(B) by striking 'all States' and inserting 'each State';

"(5) in subsection (c)(2)—

"(A) by striking 'apportion' and inserting 'administer'; and

"(B) by striking 'apportioned' and inserting 'administered'; and

"(6) in subsection (f)—

"(A) by inserting 'percentage' before 'return' each place it appears;

"(B) in paragraph (2) by striking 'for the preceding fiscal year was equal to or less than' and inserting 'in the table in subsection (b) was equal to'; and

"(C) in paragraph (3)—

"(i) by inserting 'proportionately' before 'adjust';

"(ii) by striking 'set forth'; and

"(iii) by striking 'do not exceed' and inserting 'is equal to'.".

(e) REVENUE ALIGNED BUDGET AUTHORITY.—Section 1105 of such Act is amended by adding at the end the following:

"(c) TECHNICAL CORRECTIONS.—Section 110 of such title (as amended by subsection (a)) is amended—

"(1) by striking subsection (a) and inserting the following: '(a) IN GENERAL.—

'(1) ALLOCATION.—On October 15 of fiscal year 2000 and each fiscal year thereafter, the Secretary shall allocate for such fiscal year an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C 901(b)(2)(B)(ii)(I)(cc)) if the amount determined pursuant to such section for such fiscal year is greater than zero.

'(2) REDUCTION.—If the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C 901(b)(2)(B)(ii)(I)(cc)) for fiscal year 2000 or any fiscal year thereafter is less than zero, the Secretary on October 1 of the succeeding fiscal year shall reduce proportionately the amount of sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief) by an aggregate amount equal to the amount determined pursuant to such section.';

"(2) in subsections (b)(2) and (b)(4) by striking 'subsection (a)' and inserting 'subsection (a)(1)'; and

"(3) in subsection (c) by striking 'Maintenance program, the' and inserting 'and'.".

(f) INTERSTATE MAINTENANCE PROGRAM.—Section 1107 of such Act is amended by adding at the end the following:

"(d) TECHNICAL AMENDMENTS.—Section 119 of such title (as amended by subsection (a)) is amended—

"(1) in subsection (b)—

"(A) by striking '104(b)(5)(B)' and inserting '104(b)(4)'; and

"(B) by striking '104(b)(5)(A)' each place it appears and inserting '104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century)'; and

"(2) in subsection (c) by striking '104(b)(5)(B)' each place it appears and inserting '104(b)(4)'.".

(g) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—Section 1110(d)(2) of such Act is amended—

(1) by striking "149(c)" and inserting "149(e)"; and

(2) by striking "that reduce" and inserting "reduce".

(h) HIGHWAY USE TAX EVASION PROJECTS.—Section 1114 of such Act is amended by adding at the end the following:

"(c) TECHNICAL ADJUSTMENTS.—Section 143 of title 23, United States Code (as amended by subsection (a) of this section), is amended—

"(1) in subsection (c)(1) by striking 'April 1' and inserting 'August 1';

"(2) in subsection (c)(3) by inserting 'PRIORITY' after 'FUNDING'; and

"(3) in subsection (c)(3) by inserting 'and prior to funding any other activity under this section,' after '2003,'.".

(i) FEDERAL LANDS HIGHWAYS PROGRAM.—Section 1115 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(f) CONFORMING AMENDMENTS.—

"(1) FEDERAL SHARE.—Subsections (j) and (k) of section 120 of title 23, United States Code (as added by subsection (a) of this section), are redesignated as subsections (k) and (l), respectively.

"(2) RESERVATION OF FUNDS.—Section 202(d)(4)(B) of such title (as added by subsection (b)(4) of this section) is amended by striking 'to, apply sodium acetate/formate de-icer to,' and inserting ', sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions'.

"(3) ELIMINATION OF DUPLICATIVE PROVISION.—Section 144(g) of such title is amended by striking paragraph (4).".

(j) WOODROW WILSON MEMORIAL BRIDGE CORRECTION.—Section 1116 of such Act is amended by adding at the end the following:

"(e) TECHNICAL CORRECTION.—Sections 404(5) and 407(c)(2)(C)(iii) of such Act (as amended by subsections (a)(2) and (b)(2), respectively) are amended by striking 'the record of decision' each place it appears and inserting 'a record of decision'.".

(k) TECHNICAL CORRECTION.—Section 1117 of such Act is amended in subsections (a) and (b) by striking "section 102" each place it appears and inserting "section 1101(a)(6)".

SEC. 9003. RESTORATIONS TO GENERAL PROVISIONS SUBTITLE.

(a) IN GENERAL.—Subtitle B of title I of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"SEC. 1224. NATIONAL HISTORIC COVERED BRIDGE PRESERVATION.

"(a) HISTORIC COVERED BRIDGE DEFINED.—In this section, the term 'historic covered bridge' means a covered bridge that is listed or eligible for listing on the National Register of Historic Places.

"(b) HISTORIC COVERED BRIDGE PRESERVATION.—Subject to the availability of appropriations under subsection (d), the Secretary shall—

"(1) collect and disseminate information concerning historic covered bridges;

"(2) foster educational programs relating to the history and construction techniques of historic covered bridges;

"(3) conduct research on the history of historic covered bridges; and

"(4) conduct research, and study techniques, on protecting historic covered bridges from rot, fire, natural disasters, or weight-related damage.

"(c) DIRECT FEDERAL ASSISTANCE.—

"(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make a grant to a State that submits an application to the Secretary that demonstrates a need for assistance in carrying out 1 or more historic covered bridge projects described in paragraph (2).

"(2) TYPES OF PROJECT.—A grant under paragraph (1) may be made for a project—

"(A) to rehabilitate or repair a historic covered bridge; and

"(B) to preserve a historic covered bridge, including through—

"(i) installation of a fire protection system, including a fireproofing or fire detection system and sprinklers;

"(ii) installation of a system to prevent vandalism and arson; or

"(iii) relocation of a bridge to a preservation site.

"(3) AUTHENTICITY.—A grant under paragraph (1) may be made for a project only if—

"(A) to the maximum extent practicable, the project—

"(i) is carried out in the most historically appropriate manner; and

"(ii) preserves the existing structure of the historic covered bridge; and

"(B) the project provides for the replacement of wooden components with wooden components, unless the use of wood is impracticable for safety reasons.

"(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with a grant under this subsection shall be 80 percent.

"(d) FUNDING.—There is authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 1999 through 2003. Such funds shall remain available until expended.

"SEC. 1225. SUBSTITUTE PROJECT.

"(a) APPROVAL OF PROJECT.—Notwithstanding any other provision of law, upon the request of the Mayor of the District of Columbia, the Secretary may approve substitute highway and transit projects under section 103(e)(4) of title 23, United States Code (as in effect on the day before the date of enactment of this Act), in lieu of construction of the Barney Circle Freeway project in the District of Columbia, as identified in the 1991 Interstate Cost Estimate.

"(b) ELIGIBILITY FOR FEDERAL ASSISTANCE.—Upon approval of any substitute project or projects under subsection (a)—

"(1) the cost of construction of the Barney Circle Freeway Modification project shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956; and

"(2) substitute projects approved pursuant to this section shall be funded from interstate construction funds apportioned or allocated to the District of Columbia that are not expended and not subject to lapse on the date of enactment of this Act.

"(c) FEDERAL SHARE.—The Federal share payable on account of a project or activity approved under this section shall be 85 percent of the cost thereof; except that the exception set forth in section 120(b)(2) of title 23, United States Code, shall apply.

"(d) LIMITATION ON ELIGIBILITY.—Any substitute project approved pursuant to subsection (a) (for which the Secretary finds that sufficient Federal funds are available) must be under contract for construction, or construction must have commenced, before the last day of the 4-year period beginning on the date of enactment of this Act. If the substitute project is not under contract for construction, or construction has not commenced, by such last day, the Secretary shall withdraw approval of the substitute project.

"SEC. 1226. FISCAL, ADMINISTRATIVE, AND OTHER AMENDMENTS.

"(a) ADVANCED CONSTRUCTION.—Section 115 of title 23, United States Code, is amended—

"(1) in subsection (b)—

"(A) by moving the text of paragraph (1) (including subparagraphs (A) and (B)) 2 ems to the left;

"(B) by striking 'PROJECTS' and all that follows through 'When a State' and inserting 'PROJECTS.—When a State';

"(C) by striking paragraphs (2) and (3);

"(D) by striking '(A) prior' and inserting '(1) prior'; and

"(E) by striking '(B) the project' and inserting '(2) the project';

"(2) by striking subsection (c); and

"(3) by redesignating subsection (d) as subsection (c).

"(b) AVAILABILITY OF FUNDS.—Section 118 of such title is amended—

"(1) in the subsection heading of subsection (b) by striking '; DISCRETIONARY PROJECTS'; and

"(2) by striking subsection (e) and inserting the following:

'(e) EFFECT OF RELEASE OF FUNDS.—Any Federal-aid highway funds released by the final payment on a project, or by the modification of the project agreement, shall be credited to the same program funding category previously apportioned to the State and shall be immediately available for expenditure.'.

"(c) ADVANCES TO STATES.—Section 124 of such title is amended—

"(1) by striking '(a)' the first place it appears; and

"(2) by striking subsection (b).

"(d) DIVERSION.—Section 126 of such title, and the item relating to such section in the analysis for chapter 1 of such title, are repealed.".

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of such Act is amended by inserting after the item relating to section 1222 the following:

"Sec. 1223. Transportation assistance for Olympic cities.
"Sec. 1224. National historic covered bridge preservation.
"Sec. 1225. Substitute project.
"Sec. 1226. Fiscal, administrative, and other amendments.".

(c) METROPOLITAN PLANNING TECHNICAL ADJUSTMENT.—Section 1203 of such Act is amended by adding at the end the following:

"(o) TECHNICAL ADJUSTMENT.—Section 134(h)(5)(A) of title 23, United States Code (as amended by subsection (h) of this section), is amended by striking 'for implementation'.".

(d) AMENDMENTS TO PRIOR SURFACE TRANSPORTATION LAWS.—Section 1211 of such Act is amended—

(1) in subsection (i)(3)(E) by striking "subparagraph (D)" and inserting "subparagraph (C)";

(2) in subsection (i) by adding at the end the following:

"(4) TECHNICAL AMENDMENTS.—Section 1105(e)(5)(B)(i) of such Act (as amended by paragraph (3) of this subsection) is amended—

"(A) by striking 'subsection (c)(18)(B)(i)' and inserting 'subsection (c)(18)(D)(i)';

"(B) by striking 'subsection (c)(18)(B)(ii)' and inserting 'subsection (c)(18)(D)(ii)'; and

"(C) by adding at the end the following: 'The portion of the route referred to in subsection (c)(36) is designated as Interstate Route I–86.'.";

(3) by striking subsection (j);

(4) in subsection (k)—

(A) by striking "along" in paragraph (1) and inserting "from"; and

(B) by adding at the end the following:

"(4) TEXAS STATE HIGHWAY 99.—Texas State Highway 99 (also known as 'Grand Parkway') shall be considered as 1 option in the I–69 route studies performed by the Texas Department of Transportation for the designation of I–69 Bypass in Houston, Texas."; and

(5) by redesignating subsections (g) through (i) and (k) through (n) as subsections (f) through (h) and (i) through (l), respectively.

(e) MISCELLANEOUS.—Section 1212 of such Act is amended—

(1) in the second sentence of subsection (q)(1) by striking "advance curriculum" and inserting "advanced curriculum";

(2) in subsection (r)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out paragraph (1) $2,000,000 for fiscal year 1999 and $2,500,000 for fiscal year 2000.";

(3) in subsection (s)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

"(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out paragraph (1) $23,000,000 for fiscal year 1999.";

(4) in subsection (u)—

(A) by inserting "the Secretary shall approve, and" before "the Commonwealth";

(B) by inserting a comma after "with"; and

(C) by inserting "(as redefined by this Act)" after "80"; and

(5) by redesignating subsections (k) through (z) as subsections (e) through (t), respectively.

(f) PUERTO RICO HIGHWAY PROGRAM.—Section 1214(r) of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(3) TREATMENT OF FUNDS.—Amounts made available to carry out this subsection for a fiscal year shall be administered as follows:

"(A) For purposes of this subsection, such amounts shall be treated as being apportioned to Puerto Rico under sections 104(b), 144, and 206 of title 23, United States Code, for each program funded under such sections in an amount determined by multiplying—

"(i) the aggregate of such amounts for the fiscal year; by

"(ii) the ratio that—

"(I) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 1997; bears to

"(II) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

"(B) The amounts treated as being apportioned to Puerto Rico under each section referred to in subparagraph (A) shall be deemed to be required to be apportioned to Puerto Rico under such section for purposes of the imposition of any penalty provisions in titles 23 and 49, United States Code.

"(C) Subject to subparagraph (B), nothing in this subsection shall be construed as affecting any allocation under section 105 of title 23, United States Code, and any apportionment under sections 104 and 144 of such title.".

(g) DESIGNATED TRANSPORTATION ENHANCEMENT ACTIVITIES.—Section 1215 of such Act—

(1) is amended in each of subsections (d), (e), (f), and (g)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out paragraph

(1) the amounts specified in such paragraph for the fiscal years specified in such paragraph.''; and

(2) in subsection (d)(1) by inserting ''on Route 50'' after ''measures''.

(h) ELIGIBILITY.—Section 1217 of such Act is amended—

(1) in subsection (d) by striking ''104(b)(4)'' and inserting ''104(b)(5)(A)'';

(2) in subsection (i) by striking ''120(l)(1)'' and inserting ''120(j)(1)''; and

(3) in subsection (j) by adding at the end the following: ''$3,000,000 of the amounts made available for item 164 of the table contained in section 1602 shall be made available on October 1, 1998, to the Pennsylvania Turnpike Commission to carry out this subsection.''.

(i) MAGNETIC LEVITATION TRANSPORTATION TECHNOLOGY DEPLOYMENT PROGRAM.—Section 1218 of such Act is amended by adding at the end the following:

''(c) TECHNICAL AMENDMENTS.—Section 322 of title 23, United States Code (as added by subsection (a) of this section), is amended—

''(1) in subsection (a)(3) by striking 'or under 50 miles per hour';

''(2) in subsection (d)—

''(A) in paragraph (1) by striking 'or low-speed'; and

''(B) in paragraph (2)—

''(i) in subparagraph (A) by striking '(h)(1)(A)' and inserting '(h)(1)'; and

''(ii) in subparagraph (B) by striking '(h)(4)' and inserting '(h)(3)';

''(3) in subsection (h)(1)(B)(i) by inserting '(other than subsection (i))' after 'this section'; and

''(4) by adding at the end the following:

'(i) LOW-SPEED PROJECT.—

'(1) IN GENERAL.—Notwithstanding any other provision of this section, of the funds made available by subsection (h)(1)(A) to carry out this section, $5,000,000 shall be made available to the Secretary to make grants for the research and development of low-speed superconductivity magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits.

'(2) NONCONTRACT AUTHORITY AUTHORIZATION OF APPROPRIATIONS.—

'(A) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection such sums as are necessary for each of fiscal years 2000 through 2003.

'(B) AVAILABILITY.—Notwithstanding section 118(a), funds made available under subparagraph (A)—

'(i) shall not be available in advance of an annual appropriation; and

'(ii) shall remain available until expended.'.''.

(j) TRANSPORTATION ASSISTANCE FOR OLYMPIC CITIES.—Section 1223(f) of such Act is amended by inserting before the period at the end the following: "or Special Olympics International".

SEC. 9004. RESTORATIONS TO PROGRAM STREAMLINING AND FLEXIBILITY SUBTITLE.

(a) IN GENERAL.—Subtitle C of title I of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"SEC. 1311. DISCRETIONARY GRANT SELECTION CRITERIA AND PROCESS.

"(a) ESTABLISHMENT OF CRITERIA.—The Secretary shall establish criteria for all discretionary programs funded from the Highway Trust Fund (other than the Mass Transit Account). To the extent practicable, such criteria shall conform to the Executive Order No. 12893 (relating to infrastructure investment).

"(b) SELECTION PROCESS.—

"(1) LIMITATION ON ACCEPTANCE OF APPLICATIONS.—Before accepting applications for grants under any discretionary program for which funds are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) by this Act (including the amendments made by this Act), the Secretary shall publish the criteria established under subsection (a). Such publication shall identify all statutory criteria and any criteria established by regulation that will apply to the program.

"(2) EXPLANATION.—Not less often than quarterly, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a list of the projects selected under discretionary programs funded from the Highway Trust Fund (other than the Mass Transit Account) and an explanation of how the projects were selected based on the criteria established under subsection (a).

"(c) MINIMUM COVERED PROGRAMS.—At a minimum, the criteria established under subsection (a) and the selection process established by subsection (b) shall apply to the following programs:

"(1) The intelligent transportation system deployment program under title V.

"(2) The national corridor planning and development program.

"(3) The coordinated border infrastructure and safety program.

"(4) The construction of ferry boats and ferry terminal facilities.

"(5) The national scenic byways program.

"(6) The Interstate discretionary program.

"(7) The discretionary bridge program.".

(b) CONFORMING AMENDMENTS.—The table of contents contained in section 1(b) of such Act is amended—

(1) by striking the following:

"Sec. 1309. Major investment study integration."

and inserting the following:

"Sec. 1308. Major investment study integration.";

and

(2) by inserting after the item relating to section 1310 the following:

"Sec. 1311. Discretionary grant selection criteria and process.".

(c) REVIEW PROCESS.—Section 1309 of the Transportation Equity Act for the 21st Century is amended—

(1) in subsection (a)(1) by inserting after "highway construction" the following: "and mass transit";

(2) in subsection (d) by inserting after "Code," the following: "or chapter 53 of title 49, United States Code,"; and

(3) in subsection (e)(1)—

(A) by inserting "or recipient" after "a State";

(B) by inserting after "provide funds" the following: "for a highway project"; and

(C) by inserting after "Code," the following: "or for a mass transit project made available under chapter 53 of title 49, United States Code,".

SEC. 9005. RESTORATIONS TO SAFETY SUBTITLE.

(a) IN GENERAL.—Subtitle D of title I of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"SEC. 1405. OPEN CONTAINER LAWS.

"(a) ESTABLISHMENT.—Chapter 1 of title 23, United States Code, is amended by inserting after section 153 the following:

'§ 154. Open container requirements

'(a) DEFINITIONS.—In this section, the following definitions apply:

'(1) ALCOHOLIC BEVERAGE.—The term "alcoholic beverage" has the meaning given the term in section 158(c).

'(2) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated exclusively on a rail or rails.

'(3) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term "open alcoholic beverage container" means any bottle, can, or other receptacle—

'(A) that contains any amount of alcoholic beverage; and

'(B)(i) that is open or has a broken seal; or

'(ii) the contents of which are partially removed.

'(4) PASSENGER AREA.—The term "passenger area" shall have the meaning given the term by the Secretary by regulation.

'(b) OPEN CONTAINER LAWS.—

'(1) IN GENERAL.—For the purposes of this section, each State shall have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

'(2) MOTOR VEHICLES DESIGNED TO TRANSPORT MANY PASSENGERS.—For the purposes of this section, if a State has in ef-

fect a law that makes unlawful the possession of any open alcoholic beverage container by the driver (but not by a passenger)—

'(A) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or

'(B) in the living quarters of a house coach or house trailer,

the State shall be deemed to have in effect a law described in this subsection with respect to such a motor vehicle for each fiscal year during which the law is in effect.

'(c) TRANSFER OF FUNDS.—

'(1) FISCAL YEARS 2001 AND 2002.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

'(A) to be used for alcohol-impaired driving countermeasures; or

'(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

'(2) FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

'(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 152.

'(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

'(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (1) or (2) may be derived from 1 or more of the following:

'(A) The apportionment of the State under section 104(b)(1).

'(B) The apportionment of the State under section 104(b)(3).

'(C) The apportionment of the State under section 104(b)(4).

'(6) TRANSFER OF OBLIGATION AUTHORITY.—

'(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

'(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

'(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year; by

'(ii) the ratio that—

'(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

'(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

'(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.'.

"(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of such title is amended by inserting after the item relating to section 153 the following:

'154. Open container requirements.'.

"SEC. 1406. MINIMUM PENALTIES FOR REPEAT OFFENDERS FOR DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.

"(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following:

'§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence

'(a) DEFINITIONS.—In this section, the following definitions apply:

'(1) ALCOHOL CONCENTRATION.—The term "alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

'(2) DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.—The terms "driving while intoxicated" and "driving under the influence" mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

'(3) LICENSE SUSPENSION.—The term "license suspension" means the suspension of all driving privileges.

'(4) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not in-

clude a vehicle operated solely on a rail line or a commercial vehicle.

'(5) REPEAT INTOXICATED DRIVER LAW.—The term ''repeat intoxicated driver law'' means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

'(A) receive a driver's license suspension for not less than 1 year;

'(B) be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;

'(C) receive an assessment of the individual's degree of abuse of alcohol and treatment as appropriate; and

'(D) receive—

'(i) in the case of the second offense—

'(I) an assignment of not less than 30 days of community service; or

'(II) not less than 5 days of imprisonment; and

'(ii) in the case of the third or subsequent offense—

'(I) an assignment of not less than 60 days of community service; or

'(II) not less than 10 days of imprisonment.

'(b) TRANSFER OF FUNDS.—

'(1) FISCAL YEARS 2001 AND 2002.—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

'(A) to be used for alcohol-impaired driving countermeasures; or

'(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

'(2) FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

'(3) USE FOR HAZARD ELIMINATION PROGRAM.—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 152.

'(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

'(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (1) or (2) may be derived from 1 or more of the following:

'(A) The apportionment of the State under section 104(b)(1).

'(B) The apportionment of the State under section 104(b)(3).

'(C) The apportionment of the State under section 104(b)(4).

'(6) TRANSFER OF OBLIGATION AUTHORITY.—

'(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

'(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

'(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year; by

'(ii) the ratio that—

'(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

'(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

'(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.'.

"(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of such title is amended by adding at the end the following:

'164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.'."

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of such Act is amended by inserting after the item relating to section 1403 the following:

"Sec. 1404. Safety incentives to prevent operation of motor vehicles by intoxicated persons.

"Sec. 1405. Open container laws.

"Sec. 1406. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.".

(c) ROADSIDE SAFETY TECHNOLOGIES.—Section 1402(a)(2) of such Act is amended by striking "directive" and inserting "redirective".

SEC. 9006. ELIMINATION OF DUPLICATE PROVISIONS.

(a) SAN MATEO COUNTY, CALIFORNIA.—Section 1113 of the Transportation Equity Act for the 21st Century is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (c) as subsection (d).

(b) VALUE PRICING PILOT PROGRAM.—Section 1216(a) of such Act is amended by adding at the end the following:

"(8) CONFORMING AMENDMENTS.—

"(A) Section 1012(b)(6) of such Act (as amended by paragraph (5) of this subsection) is amended by striking '146(c)' and inserting '102(a)'.

"(B) Section 1012(b)(8) of such Act (as added by paragraph (7) of this subsection) is amended—

"(i) in subparagraph (C) by striking 'under this subsection' and inserting 'to carry out this subsection';

"(ii) in subparagraph (D)—

"(I) by striking 'under this paragraph' and inserting 'to carry out this subsection'; and

"(II) by striking 'by this paragraph' and inserting 'to carry out this subsection';

"(iii) by striking subparagraph (A); and

"(iv) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.".

(c) NATIONAL DEFENSE HIGHWAYS OUTSIDE THE UNITED STATES.—Section 1214(e) of such Act is amended to read as follows:

"(e) MINNESOTA TRANSPORTATION HISTORY NETWORK.—

"(1) IN GENERAL.—The Secretary shall award a grant to the Minnesota Historical Society for the establishment of the Minnesota Transportation History Network to include major exhibits, interpretive programs at national historic landmark sites, and outreach programs with county and local historical organizations.

"(2) COORDINATION.—In carrying out subsection (a), the Secretary shall coordinate with officials of the Minnesota Historical Society.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $1,000,000 for each of fiscal years 1998 through 2003 to carry out this subsection.

"(4) APPLICABILITY OF TITLE 23.—Funds authorized by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall remain available until expended.".

(d) ENTRANCE PAVING AT NINIGRET NATIONAL WILDLIFE REFUGE.—Section 1214(i) of such Act is amended by striking "$750,000" each place it appears and inserting "$75,000".

SEC. 9007. HIGHWAY FINANCE.

(a) IN GENERAL.—Section 1503 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(c) TECHNICAL AMENDMENTS.—Section 188 of title 23, United States Code (as added by subsection (a) of this section), is amended—

"(1) in subsection (a)(2) by striking '1998' and inserting '1999'; and

"(2) in subsection (c)—

"(A) by striking '1998' and inserting '1999'; and

"(B) by striking the table and inserting the following:

'Fiscal year:	***Maximum amount of credit:***
1999	*$1,600,000,000*
2000	*$1,800,000,000*
2001	*$2,200,000,000*
2002	*$2,400,000,000*
2003	*$2,600,000,000.'.".*

(b) CONFORMING AMENDMENTS.—The table of contents contained in section 1(b) of the Transportation Equity Act for the 21st Century is amended—

(1) in the item relating to section 1119 by striking "and safety"; and

(2) by striking the items relating to subtitle E of title I and inserting the following:

"Subtitle E—Finance

"CHAPTER 1—TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION

"Sec. 1501. Short title.
"Sec. 1502. Findings.
"Sec. 1503. Establishment of program.
"Sec. 1504. Duties of the Secretary.

"CHAPTER 2—STATE INFRASTRUCTURE BANK PILOT PROGRAM

"Sec. 1511. State infrastructure bank pilot program.".

SEC. 9008. HIGH PRIORITY PROJECTS TECHNICAL CORRECTIONS.

The table contained in section 1602 of the Transportation Equity Act for the 21st Century is amended—

(1) in item 1 by striking "1.275" and inserting "1.7";

(2) in item 82 by striking "30.675" and inserting "32.4";

(3) in item 107 by striking "1.125" and inserting "1.44";

(4) in item 121 by striking "10.5" and inserting "5.0";

(5) in item 140 by inserting "-VFHS Center" after "Park";

(6) in item 151 by striking "5.666" and inserting "8.666";

(7) in item 164—

(A) by inserting ", and $3,000,000 for the period of fiscal years 1998 and 1999 shall be made available to carry out section 1217(j)" after "Pennsylvania"; and

(B) by striking "25" and inserting "24.78";

(8) by striking item 166 and inserting the following:

"166.	Michigan	Improve Tenth Street, Port Huron	1.8";

(9) by striking item 242 and inserting the following:

"242.	Minnesota	Construct Third Street North, CSAH 81, Waite Park and St. Cloud	1.0";

(10) by striking item 250 and inserting the following:

"250.	Indiana	Reconstruct Old Merridan Corridor from Pennsylvania Avenue to Gilford Road	1.35";

(11) in item 255 by striking "2.25" and inserting "3.0";

(12) in item 263 by striking "Upgrade Highway 99 between State Highway 70 and Lincoln Road, Sutter County" and inserting "Upgrade Highway 99, Sutter County";

(13) in item 288 by striking "3.75" and inserting "5.0";

(14) in item 290 by striking "3.5" and inserting "3.0";

(15) in item 345 by striking "8" and inserting "19.4";

(16) in item 418 by striking "2" and inserting "2.5";

(17) in item 421 by striking "11" and inserting "6";

(18) in item 508 by striking "1.8" and inserting "2.4";

(19) by striking item 525 and inserting the following:

"525.	Alaska	Construct Bradfield Canal Road	1";

(20) in item 540 by striking "1.5" and inserting "2.0";

(21) in item 576 by striking "0.52275" and inserting "0.69275";

(22) in item 588 by striking "2.5" and inserting "3.0";

(23) in item 591 by striking "10" and inserting "5";

(24) in item 635 by striking "1.875" and inserting "2.15";

(25) in item 669 by striking "3" and inserting "3.5";

(26) in item 702 by striking "10.5" and inserting "10";

(27) in item 746 by inserting ", and for the purchase of the Block House in Scott County, Virginia" after "Forest";

(28) in item 755 by striking "1.125" and inserting "1.5";

(29) in item 769 by striking "Construct new I–95 interchange with Highway 99W, Tehama County" and inserting "Construct new I–5 interchange with Highway 99W, Tehama County";

(30) in item 770 by striking "1.35" and inserting "1.0";

(31) in item 789 by striking "2.0625" and inserting "1.0";

(32) in item 803 by striking "Tomahark" and inserting "Tomahawk";

(33) in item 836 by striking "Construct" and all that follows through "for" and inserting "To the National Park Service for construction of the";

(34) in item 854 by striking "0.75" and inserting "1";

(35) in item 863 by striking "9" and inserting "4.75";

(36) in item 887 by striking "0.75" and inserting "3.21";

(37) in item 891 by striking "19.5" and inserting "25.0";

(38) in item 902 by striking "10.5" and inserting "14.0";

(39) by striking item 1065 and inserting the following:

"1065.	Texas	Construct a 4-lane divided highway on Artcraft Road from I–10 to Route 375 in El Paso	5";

(40) in item 1192 by striking "24.97725" and inserting "24.55725";

(41) in item 1200 by striking "Upgrade (all weather) on U.S. 2, U.S. 41, and M 35" and inserting "Upgrade (all weather) on Delta County's reroute of U.S. 2, U.S. 41, and M 35";

(42) in item 1245 by striking "3" and inserting "3.5";

(43) in item 1271 by striking "Spur" and all that follows through "U.S. 59" and inserting "rail-grade separations (Rosenberg Bypass) at U.S. 59(S)";

(44) in item 1278 by striking "28.18" and inserting "22.0";

(45) in item 1288 by inserting "30" after "U.S.";

(46) in item 1338 by striking "5.5" and inserting "3.5";

(47) in item 1383 by striking "0.525" and inserting "0.35";

(48) in item 1395 by striking "Construct" and all that follows through "Road" and inserting "Upgrade Route 219 between Meyersdale and Somerset";

(49) in item 1468 by striking "Reconstruct" and all that follows through "U.S. 23" and inserting "Conduct engineering and design and improve I–94 in Calhoun and Jackson Counties";

(50) in item 1474—

(A) by striking "in Euclid" and inserting "and London Road in Cleveland"; and

(B) by striking "3.75" and inserting "8.0";

(51) in item 1535 by striking "Stanford" and inserting "Stamford";

(52) in item 1538 by striking "and Winchester" and inserting ", Winchester, and Torrington";

(53) by striking item 1546 and inserting the following:

"1546.	Michigan	Construct Bridge-to-Bay bike path, St. Clair County	0.450";

(54) by striking item 1549 and inserting the following:

"1549.	New York	Center for Advanced Simulation and Technology, at Dowling College	0.6";

(55) in item 1663 by striking "26.5" and inserting "27.5";

(56) in item 1703 by striking "I–80" and inserting "I–180";

(57) in item 1726 by striking "I–179" and inserting "I–79";

(58) by striking item 1770 and inserting the following:

"1770.	Virginia	Operate and conduct research on the 'Smart Road' in Blacksburg	6.025";

(59) in item 1810 by striking "Construct Rio Rancho Highway" and inserting "Northwest Albuquerque/Rio Rancho high priority roads";

(60) in item 1815 by striking "High" and all that follows through "projects" and inserting "Highway and bridge projects that Delaware provides for by law";

(61) in item 1844 by striking "Prepare" and inserting "Repair";

(62) by striking item 1850 and inserting the following:

"1850.	Missouri	Resurface and maintain roads located in Missouri State parks	5";

(63) in item 661 by striking "SR 800" and inserting "SR 78";

(64) in item 1704 by inserting ", Pittsburgh," after "Road";

(65) in item 1710 by inserting ", Bethlehem" after "site"; and

(66) in item 1626 by striking "1" and inserting "2".

SEC. 9009. FEDERAL TRANSIT ADMINISTRATION PROGRAMS.

(a) DEFINITIONS.—Section 3003 of the Federal Transit Act of 1998 is amended—

(1) by inserting "(a) IN GENERAL.—" before "Section 5302"; and

(2) by adding at the end the following:

"(b) CONFORMING AMENDMENTS.—Section 5302 (as amended by subsection (a) of this section) is amended in subsection (a)(1)(G)(i) by striking 'daycare and' and inserting 'daycare or'.".

(b) METROPOLITAN PLANNING.—Section 3004 of the Federal Transit Act of 1998 is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking subparagraph (A) and inserting the following:

"(A) by striking 'general local government representing' and inserting 'general purpose local government that together represent'; and";

(B) in paragraph (3) by striking "and" at the end;

(C) in paragraph (4) by striking subparagraph (A) and inserting the following:

"(A) by striking 'general local government representing' and inserting 'general purpose local government that together represent'; and";

(D) by redesignating paragraph (4) as paragraph (5); and

(E) by inserting after paragraph (3) the following:

"(4) in paragraph (4)(A) by striking '(3)' and inserting '(5)'; and";

(2) in subsection (d) by striking the closing quotation marks and the final period at the end and inserting the following:

'(5) COORDINATION.—If a project is located within the boundaries of more than 1 metropolitan planning organization, the metropolitan planning organizations shall coordinate plans regarding the project.

'(6) LAKE TAHOE REGION.—

'(A) DEFINITION.—In this paragraph, the term "Lake Tahoe region" has the meaning given the term "region" in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

'(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

'(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

'(ii) coordinate the transportation planning process with the planning process required of State and local governments under this chapter and sections 134 and 135 of title 23.

'(C) INTERSTATE COMPACT.—

'(i) IN GENERAL.—Subject to clause (ii) and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

'(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

'(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

'(II) FUNDING.—In addition to funds made available to the metropolitan planning organization under other provisions of this chapter and under title 23, not more than 1 percent of the funds allocated under section 202 of title 23 may be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.

'(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

'(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

'(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of title 23.'.''; and

(3) by adding at the end the following:

''(f) TECHNICAL ADJUSTMENTS.—Section 5303(f) is amended—

''(1) in paragraph (1) (as amended by subsection (e)(1) of this subsection)—

''(A) in subparagraph (C) by striking 'and' at the end;

"(B) in subparagraph (D) by striking the period at the end and inserting '; and';

"(C) by adding at the end the following:

'(E) the financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range plan if reasonable additional resources beyond those identified in the financial plan were available, except that, for the purpose of developing the long-range plan, the metropolitan planning organization and the State shall cooperatively develop estimates of funds that will be available to support plan implementation.'; and

"(2) by adding at the end the following:

'(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (1)(E), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (1)(B).'.".

(c) METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM.—Section 3005 of the Federal Transit Act of 1998 is amended—

*(1) in the section heading by inserting "**metropolitan**" before "**transportation**"; and*

(2) by adding at the end the following:

"(d) TECHNICAL ADJUSTMENTS.—Section 5304 is amended—

"(1) in subsection (a) (as amended by subsection (a) of this section)—

"(A) by striking 'In cooperation with' and inserting the following:

'(1) IN GENERAL.—In cooperation with'; and

"(B) by adding at the end the following:

'(2) FUNDING ESTIMATE.—For the purpose of developing the transportation improvement program, the metropolitan planning organization, public transit agency, and the State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.';

"(2) in subsection (b)(2)—

"(A) in subparagraph (B) by striking 'and' at the end; and

"(B) in subparagraph (C) (as added by subsection (b) of this section) by striking 'strategies which may include' and inserting the following: 'strategies; and

'(D) may include'; and

"(3) in subsection (c) by striking paragraph (4) (as amended by subsection (c) of this section) and inserting the following:

'(4) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

'(A) IN GENERAL.—Notwithstanding subsection (b)(2)(D), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subsection (b)(2)(D).

'(B) ACTION BY SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the plan under subsection

(b)(2) for inclusion in an approved transportation improvement plan.'.".

(d) TRANSPORTATION MANAGEMENT AREAS.—Section 3006(d) of the Federal Transit Act of 1998 is amended to read as follows:

"(d) PROJECT SELECTION.—Section 5305(d)(1) is amended to read as follows: '(1)(A) All federally funded projects carried out within the boundaries of a transportation management area under title 23 (excluding projects carried out on the National Highway System and projects carried out under the bridge and interstate maintenance program) or under this chapter shall be selected from the approved transportation improvement program by the metropolitan planning organization designated for the area in consultation with the State and any affected public transit operator.

'(B) Projects carried out within the boundaries of a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the interstate maintenance program shall be selected from the approved transportation improvement program by the State in cooperation with the metropolitan planning organization designated for the area.'.".

(e) URBANIZED AREA FORMULA GRANTS.—Section 3007 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(h) TECHNICAL ADJUSTMENTS.—

"(1) GENERAL AUTHORITY.—Section 5307(b) (as amended by subsection (c)(1)(B) of this section) is amended by adding at the end the following: 'The Secretary may make grants under this section from funds made available for fiscal year 1998 to finance the operating costs of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000.'.

"(2) REPORT.—Section 5307(k)(3) (as amended by subsection (f) of this section) is amended by inserting 'preceding' before 'fiscal year'.".

(f) CLEAN FUELS FORMULA GRANT PROGRAM.—Section 3008 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(c) TECHNICAL ADJUSTMENTS.—Section 5308(e)(2) (as added by subsection (a) of this section) is amended by striking '$50,000,000' and inserting '35 percent'.".

(g) CAPITAL INVESTMENT GRANTS AND LOANS.—Section 3009 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(k) TECHNICAL ADJUSTMENTS.—

"(1) CRITERIA.—Section 5309(e) (as amended by subsection (e) of this section) is amended—

"(A) in paragraph (3)(C) by striking 'urban' and inserting 'suburban';

"(B) in the second sentence of paragraph (6) by striking 'or not' and all that follows through ', based' and inserting 'or "not recommended", based'; and

"(C) in the last sentence of paragraph (6) by inserting 'of the' before 'criteria established'.

"(2) LETTERS OF INTENT AND FULL FUNDING GRANT AGREEMENTS.—Section 5309(g) (as amended by subsection (f) of this section) is amended in paragraph (4) by striking '5338(a)' and all that follows through '2003' and inserting '5338(b) of this title for new fixed guideway systems and extensions to existing fixed guideway systems and the amount appropriated under section 5338(h)(5) or an amount equivalent to the last 2 fiscal years of funding authorized under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems'.

"(3) ALLOCATING AMOUNTS.—Section 5309(m) (as amended by subsection (g) of this section) is amended—

"(A) in paragraph (1) by inserting '(b)' after '5338';

"(B) by striking paragraph (2) and inserting the following:

'(2) NEW FIXED GUIDEWAY GRANTS.—

'(A) LIMITATION ON AMOUNTS AVAILABLE FOR ACTIVITIES OTHER THAN FINAL DESIGN AND CONSTRUCTION.—Not more than 8 percent of the amounts made available in each fiscal year by paragraph (1)(B) shall be available for activities other than final design and construction.

'(B) FUNDING FOR FERRY BOAT SYSTEMS.—

'(i) AMOUNTS UNDER (1)(B).—Of the amounts made available under paragraph (1)(B), $10,400,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities.

'(ii) AMOUNTS UNDER 5338(H)(5).—Of the amounts appropriated under section 5338(h)(5), $3,600,000 shall be available in each of fiscal years 1999 through 2003 for capital projects in Alaska or Hawaii, for new fixed guideway systems and extensions to existing fixed guideway systems that are ferry boats or ferry terminal facilities, or that are approaches to ferry terminal facilities.';

"(C) by redesignating paragraph (4) as paragraph (3)(C);

"(D) in paragraph (3) by adding at the end the following:

'(D) OTHER THAN URBANIZED AREAS.—Of amounts made available by paragraph (1)(C), not less than 5.5 percent shall be available in each fiscal year for other than urbanized areas.';

"(E) by striking paragraph (5); and

"(F) by inserting after paragraph (3) the following:

'(4) ELIGIBILITY FOR ASSISTANCE FOR MULTIPLE PROJECTS.—A person applying for or receiving assistance for a project described in subparagraph (A), (B), or (C) of paragraph (1) may receive assistance for a project described in any other of such subparagraphs.'."

(h) REFERENCES TO FULL FUNDING GRANT AGREEMENTS.—Section 3009(h)(3) of the Federal Transit Act of 1998 is amended—

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

(2) by striking the period at the end of subparagraph (B) and inserting a semicolon; and

(3) by adding at the end the following:

"(C) in section 5328(a)(4) by striking 'section 5309(m)(2) of this title' and inserting '5309(o)(1)'; and

"(D) in section 5309(n)(2) by striking 'in a way' and inserting 'in a manner'.".

(i) DOLLAR VALUE OF MOBILITY IMPROVEMENTS.—Section 3010(b)(2) of the Federal Transit Act of 1998 is amended by striking "Secretary" and inserting "Comptroller General".

(j) INTELLIGENT TRANSPORTATION SYSTEM APPLICATIONS.—Section 3012 of the Federal Transit Act of 1998 is amended by moving paragraph (3) of subsection (a) to the end of subsection (b) and by redesignating such paragraph (3) as paragraph (4).

(k) ADVANCED TECHNOLOGY PILOT PROJECT.—Section 3015 of the Federal Transit Act of 1998 is amended—

(1) in subsection (c)(2) by adding at the end the following: "Financial assistance made available under this subsection and projects assisted with the assistance shall be subject to section 5333(a) of title 49, United States Code."; and

(2) by adding at the end the following:

"(d) TRAINING AND CURRICULUM DEVELOPMENT.—

"(1) IN GENERAL.—Any funds made available by section 5338(e)(2)(C)(iii) of title 49, United States Code, shall be available in equal amounts for transportation research, training, and curriculum development at institutions identified in subparagraphs (E) and (F) of section 5505(j)(3) of such title.

"(2) SPECIAL RULE.—If the institutions identified in paragraph (1) are selected pursuant to 5505(i)(3)(B) of such title in fiscal year 2002 or 2003, the funds made available to carry out this subsection shall be available to those institutions to carry out the activities required pursuant to section 5505(i)(3)(B) of such title for that fiscal year.".

(l) NATIONAL TRANSIT INSTITUTE.—Section 3017(a) of the Federal Transit Act of 1998 is amended to read as follows:

"(a) IN GENERAL.—Section 5315 is amended—

*"(1) in the section heading by striking '**mass transportation**' and inserting '**transit**';*

"(2) in subsection (a)—

"(A) by striking 'mass transportation' in the first sentence and inserting 'transit';

"(B) in paragraph (5) by inserting 'and architectural design' before the semicolon at the end;

"(C) in paragraph (7) by striking 'carrying out' and inserting 'delivering';

"(D) in paragraph (11) by inserting ', construction management, insurance, and risk management' before the semicolon at the end;

"(E) in paragraph (13) by striking 'and' at the end;

"(F) in paragraph (14) by striking the period at the end and inserting a semicolon; and

"(G) by adding at the end the following:

'(15) innovative finance; and

'(16) workplace safety.'.".

(m) PILOT PROGRAM.—Section 3021(a) of the Federal Transit Act of 1998 is amended by inserting "single-State" before "pilot program".

(n) ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.—Section 3022 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(b) CONFORMING AMENDMENT.—Section 5325(b) (as redesignated by subsection (a)(2) of this section) is amended—

"(1) by inserting 'or requirement' after 'A contract'; and

"(2) by inserting before the last sentence the following: 'When awarding such contracts, recipients of assistance under this chapter shall maximize efficiencies of administration by accepting nondisputed audits conducted by other governmental agencies, as provided in subparagraphs (C) through (F) of section 112(b)(2) of title 23.'.".

(o) CONFORMING AMENDMENT.—Section 3027 of the Federal Transit Act of 1998 is amended—

(1) in subsection (c) by striking "600,000" each place it appears and inserting "900,000"; and

(2) by adding at the end the following:

"(d) CONFORMING AMENDMENT.—The item relating to section 5336 in the table of sections for chapter 53 is amended by striking 'block grants' and inserting 'formula grants'.".

(p) APPORTIONMENT FOR FIXED GUIDEWAY MODERNIZATION.—Section 3028 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(c) CONFORMING AMENDMENTS.—Section 5337(a) (as amended by subsection (a) of this section) is amended—

"(1) in paragraph (2)(B) by striking '(e)' and inserting '(e)(1)';

"(2) in paragraph (3)(D)—

"(A) by striking '(ii)'; and

"(B) by striking '(e)' and inserting '(e)(1)';

"(3) in paragraph (4) by striking '(e)' and inserting '(e)(1)';

"(4) in paragraph (5)(A) by striking '(e)' and inserting '(e)(2)';

"(5) in paragraph (5)(B) by striking '(e)' and inserting '(e)(2)';

"(6) in paragraph (6) by striking '(e)' each place it appears and inserting '(e)(2)'; and

"(7) in paragraph (7) by striking '(e)' each place it appears and inserting '(e)(2)'.".

(q) AUTHORIZATIONS.—Section 3029 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(c) TECHNICAL ADJUSTMENTS.—Section 5338 (as amended by subsection (a) of this section) is amended—

"(1) in subsection (c)(2)(A)(i) by striking '$43,200,000' and inserting '$42,200,000';

"(2) in subsection (c)(2)(A)(ii) by striking '$46,400,000' and inserting '$48,400,000';

"(3) in subsection (c)(2)(A)(iii) by striking '$51,200,000' and inserting '$50,200,000';

"(4) in subsection (c)(2)(A)(iv) by striking '$52,800,000' and inserting '$53,800,000';

"(5) in subsection (c)(2)(A)(v) by striking '$57,600,000' and inserting '$58,600,000';

"(6) in subsection (d)(2)(C)(iii) by inserting before the semicolon ', including not more than $1,000,000 shall be available to carry out section 5315(a)(16)';

"(7) in subsection (e)—

"(A) by striking '5317(b)' each place it appears and inserting '5505';

"(B) in paragraph (1) by striking 'There are' and inserting 'Subject to paragraph (2)(C), there are';

"(C) in paragraph (2)—

"(i) in subparagraph (A) by striking 'There shall' and inserting 'Subject to subparagraph (C), there shall';

"(ii) in subparagraph (B) by striking 'In addition' and inserting 'Subject to subparagraph (C), in addition'; and

"(iii) by adding at the end the following:

'(C) FUNDING OF CENTERS.—

'(i) Of the amounts made available under subparagraph (A) and paragraph (1) for each fiscal year—

'(I) $2,000,000 shall be available for the center identified in section 5505(j)(4)(A); and

'(II) $2,000,000 shall be available for the center identified in section 5505(j)(4)(F).

'(ii) For each of fiscal years 1998 through 2001, of the amounts made available under this paragraph and paragraph (1)—

'(I) $400,000 shall be available from amounts made available under subparagraph (A) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3); and

'(II) $350,000 shall be available from amounts made available under subparagraph (B) of this paragraph and under paragraph (1) for each of the centers identified in subparagraphs (E) and (F) of section 5505(j)(3).

'(iii) Any amounts made available under this paragraph or paragraph (1) for any fiscal year that remain after distribution under clauses (i) and (ii), shall be available for the purposes identified in section 3015(d) of the Federal Transit Act of 1998.'; and

"(D) by adding at the end the following:

'(3) SPECIAL RULE.—Nothing in this subsection shall be construed to limit the transportation research conducted by the centers funded by this section.';

"(8) in subsection (g)(2) by striking '(c)(2)(B),' and all that follows through '(f)(2)(B),' and inserting '(c)(1), (c)(2)(B), (d)(1), (d)(2)(B), (e)(1), (e)(2)(B), (f)(1), (f)(2)(B),';

"(9) in subsection (h) by inserting 'under the Transportation Discretionary Spending Guarantee for the Mass Transit Category' after 'through (f)'; and

"(10) in subsection (h)(5) by striking subparagraphs (A) through (E) and inserting the following:

'(A) for fiscal year 1999 $400,000,000;

'(B) for fiscal year 2000 $410,000,000;

'(C) for fiscal year 2001 $420,000,000;

'(D) for fiscal year 2002 $430,000,000; and

'(E) for fiscal year 2003 $430,000,000;'.".

(r) PROJECTS FOR FIXED GUIDEWAY SYSTEMS.—Section 3030 of the Federal Transit Act of 1998 is amended—

(1) in subsection (a)—

(A) in paragraph (8) by inserting "North-" before "South";

(B) in paragraph (42) by striking "Maryland" and inserting "Baltimore";

(C) in paragraph (103) by striking "busway" and inserting "Boulevard transitway";

(D) in paragraph (106) by inserting "CTA" before "Douglas";

(E) by striking paragraph (108) and inserting the following:

"(108) Greater Albuquerque Mass Transit Project."; and

(F) by adding at the end the following:

"(109) Hartford City Light Rail Connection to Central Business District.

"(110) Providence–Boston Commuter Rail.

"(111) New York–St. George's Ferry Intermodal Terminal.

"(112) New York–Midtown West Ferry Terminal.

"(113) Pinellas County–Mobility Initiative Project.

"(114) Atlanta–MARTA Extension (S. De Kalb-Lindbergh)."; (2) in subsection (b)—

(A) by striking paragraph (2) and inserting the following:

"(2) Sioux City–Light Rail.";

(B) by striking paragraph (40) and inserting the following:

"(40) Santa Fe–El Dorado Rail Link.";

(C) by striking paragraph (44) and inserting the following:

"(44) Albuquerque–High Capacity Corridor.";

(D) by striking paragraph (53) and inserting the following:

"(53) San Jacinto–Branch Line (Riverside County)."; and

(E) by adding at the end the following:

"(69) Chicago–Northwest Rail Transit Corridor.

"(70) Vermont–Burlington-Essex Commuter Rail."; and

(3) in subsection (c)—

(A) in paragraph (1)(A)—

(i) in the matter preceding clause (i) by inserting "(even if the project is not listed in subsection (a) or (b))" before the colon;

(ii) by striking clause (ii) and inserting the following:

"(ii) San Diego Mission Valley and Mid-Coast Corridor, $325,000,000.";

(iii) by striking clause (v) and inserting the following:

"(v) Hartford City Light Rail Connection to Central Business District, $33,000,000.";

(iv) by striking clause (xxiii) and inserting the following:

"(xxiii) Kansas City–I-35 Commuter Rail, $30,000,000.";

(v) in clause (xxxii) by striking "Whitehall Ferry Terminal" and inserting "Staten Island Ferry-Whitehall Intermodal Terminal";

(vi) by striking clause (xxxv) and inserting the following:

"(xxxv) New York–Midtown West Ferry Terminal, $16,300,000.";

(vii) in clause (xxxix) by striking "Allegheny County" and inserting "Pittsburgh";

(viii) by striking clause (xvi) and inserting the following:

"(xvi) Northeast Indianapolis Corridor, $10,000,000.";

(ix) by striking clause (xxix) and inserting the following:

"(xxix) Greater Albuquerque Mass Transit Project, $90,000,000.";

(x) by striking clause (xliii) and inserting the following:

"(xliii) Providence–Boston Commuter Rail, $10,000,000."; and

(xi) by striking clause (li) and inserting the following:

"(li) Dallas-Ft. Worth RAILTRAN (Phase-II), $12,000,000.";

(B) by striking the heading for subsection (c)(2) and inserting "ADDITIONAL AMOUNTS"; and

(C) in paragraph (3) by inserting after the first sentence the following: "The project shall also be exempted from all requirements relating to criteria for grants and loans for fixed guideway systems under section 5309(e) of such title and from regulations required under that section.".

(s) NEW JERSEY URBAN CORE PROJECT.—Section 3030(e) of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(4) TECHNICAL ADJUSTMENT.—Section 3031(d) of the Intermodal Surface Transportation Efficiency Act of 1991 (as amended by paragraph (3)(B) of this subsection) is amended—

"(A) by striking 'of the West Shore Line' and inserting 'or the West Shore Line'; and

"(B) by striking 'directly connected to' and all that follows through 'Newark International Airport' the first place it appears.".

(t) BALTIMORE-WASHINGTON TRANSPORTATION IMPROVEMENTS.—Section 3030 of the Federal Transit Act of 1998 is amended by adding at the end the following:

"(h) TECHNICAL ADJUSTMENT.—Section 3035(nn) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2134) (as amended by subsection (g)(1)(C) of this section) is amended by inserting after 'expenditure of' the following: 'section 5309 funds to the aggregate expenditure of'.".

(u) BUS PROJECTS.—Section 3031 of the Federal Transit Act of 1998 is amended—

(1) in the table contained in subsection (a)—

(A) by striking item 64;

(B) in item 69 by striking "Rensslear" each place it appears and inserting "Rensselaer";

(C) in item 103 by striking "facilities and"; and

(D) by striking item 150;

(2) by striking the heading for subsection (b) and inserting "ADDITIONAL AMOUNTS";

(3) in subsection (b) by inserting after "2000" the first place it appears "with funds made available under section 5338(h)(6) of such title"; and

(4) in item 2 of the table contained in subsection (b) by striking "Rensslear" each place it appears and inserting "Rensselaer".

(v) CONTRACTING OUT STUDY.—Section 3032 of the Federal Transit Act of 1998 is amended—

(1) in subsection (a) by striking "3" and inserting "6";

(2) in subsection (d) by striking "the Mass Transit Account of the Highway Trust Fund" and inserting "funds made available under section 5338(f)(2) of title 49, United States Code,";

(3) in subsection (d) by striking "1998" and inserting "1999"; and

(4) in subsection (e) by striking "subsection (c)" and inserting "subsection (d)".

(w) JOB ACCESS AND REVERSE COMMUTE GRANTS.—Section 3037 of the Federal Transit Act of 1998 is amended—

(1) in subsection (b)(4)(A)—

(A) by inserting "designated recipients under section 5307(a)(2) of title 49, United States Code," after "from among"; and

(B) by inserting a comma after "and agencies";

(2) in subsection (b)(4)(B)—

(A) by striking "at least" and inserting "less than";

(B) by inserting "designated recipients under section 5307(a)(2) of title 49, United States Code," after "from among"; and

(C) by inserting "and agencies," after "authorities";

(3) in subsection (f)(2)—

(A) by striking "(including bicycling)"; and

(B) by inserting "(including bicycling)" after "additional services";

(4) in subsection (h)(2)(B) by striking "403(a)(5)(C)(ii)" and inserting "403(a)(5)(C)(vi)";

(5) in the heading for subsection (l)(1)(C) by striking "FROM THE GENERAL FUND";

(6) in subsection (l)(1)(C) by inserting "under the Transportation Discretionary Spending Guarantee for the Mass Transit Category" after "(B)"; and

(7) in subsection (l)(3)(B) by striking "at least" and inserting "less than".

(x) RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM.—Section 3038 of the Federal Transit Act of 1998 is amended—

(1) in subsection (a)(1)(A) by inserting before the semicolon "or connecting 1 or more rural communities with an urban area not in close proximity";

(2) in subsection (g)(1)—

(A) by inserting "over-the-road buses used substantially or exclusively in" after "operators of"; and

(B) by inserting at the end the following: "Such sums shall remain available until expended."; and

(3) in subsection (g)(2)—

(A) by striking "each of"; and

(B) by adding at the end the following: "Such sums shall remain available until expended.".

(y) STUDY OF TRANSIT NEEDS IN NATIONAL PARKS AND RELATED PUBLIC LANDS.—Section 3039(b) of the Federal Transit Act of 1998 is amended—

(1) in paragraph (1) by striking "in order to carry" and inserting "assist in carrying"; and

(2) by adding at the end the following:

"(3) DEFINITION.—For purposes of this subsection, the term 'Federal land management agencies' means the National Park Service, the United States Fish and Wildlife Service, and the Bureau of Land Management.".

(z) OBLIGATION CEILING.—Section 3040 of the Federal Transit Act of 1998 is amended—

(1) by striking paragraph (2) and inserting the following: "(2) $5,797,000,000 in fiscal year 2000;"; and

(2) in paragraph (4) by striking "$6,746,000,000" and inserting "$6,747,000,000".

SEC. 9010. MOTOR CARRIER SAFETY TECHNICAL CORRECTION.

Section 4011 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(h) TECHNICAL AMENDMENTS.—Section 31314 (as amended by subsection (g) of this section) is amended—

"(1) in subsections (a) and (b) by striking '(3), and (5)' each place it appears and inserting '(3), and (4)'; and

"(2) by striking subsection (d).".

SEC. 9011. RESTORATIONS TO RESEARCH TITLE.

(a) UNIVERSITY TRANSPORTATION RESEARCH FUNDING.—Section 5001(a)(7) of the Transportation Equity Act for the 21st Century is amended—

(1) by striking "$31,150,000" each place it appears and inserting "$25,650,000";

(2) by striking "$32,750,000" each place it appears and inserting "$27,250,000"; and

(3) by striking "$32,000,000" each place it appears and inserting "$26,500,000".

(b) OBLIGATION CEILING.—Section 5002 of such Act is amended by striking "$403,150,000" and all that follows through "$468,000,000" and inserting "$397,650,000 for fiscal year 1998, $403,650,000 for fiscal year 1999, $422,450,000 for fiscal year 2000, $437,250,000 for fiscal year 2001, $447,500,000 for fiscal year 2002, and $462,500,000".

(c) USE OF FUNDS FOR ITS.—Section 5210 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(d) USE OF INNOVATIVE FINANCING.—

"(1) IN GENERAL.—The Secretary may use up to 25 percent of the funds made available to carry out this subtitle to make available loans, lines of credit, and loan guarantees for projects that are eligible for assistance under this subtitle and that have significant intelligent transportation system elements.

"(2) CONSISTENCY WITH OTHER LAW.—Credit assistance described in paragraph (1) shall be made available in a manner consistent with the Transportation Infrastructure Finance and Innovation Act of 1998.".

(d) UNIVERSITY TRANSPORTATION RESEARCH.—Section 5110 of such Act is amended by adding at the end the following:

"(d) TECHNICAL ADJUSTMENTS.—Section 5505 of title 49, United States Code (as added by subsection (a) of this section), is amended—

"(1) in subsection (g)(2) by striking 'section 5506,' and inserting 'section 508 of title 23, United States Code,';

"(2) in subsection (i)—

"(A) by inserting 'Subject to section 5338(e):' after '(i) NUMBER AND AMOUNT OF GRANTS.—'; and

"(B) by striking 'institutions' each place it appears and inserting 'institutions or groups of institutions'; and

"(3) in subsection (j)(4)(B) by striking 'on behalf of' and all that follows before the period and inserting 'on behalf of a consortium which may also include West Virginia University Institute of Technology, the College of West Virginia, and Bluefield State College'.".

(e) TECHNICAL CORRECTIONS.—Section 5115 of such Act is amended—

(1) in subsection (a) by striking "Director" and inserting "Director of the Bureau of Transportation Statistics";

(2) in subsection (b) by striking "Bureau" and inserting "Bureau of Transportation Statistics,"; and

(3) in subsection (c) by striking "paragraph (1)" and inserting "subsection (a)".

(f) CORRECTIONS TO CERTAIN OKLAHOMA PROJECTS.—Section 5116 of such Act is amended—

(1) in subsection (e)(2) by striking "$1,000,000 for fiscal year 1999, $1,000,000 for fiscal year 2000, and $500,000 for fis-

cal year 2001" and inserting "$1,000,000 for fiscal year 1999, $1,000,000 for fiscal year 2000, $1,000,000 for fiscal year 2001, and $500,000 for fiscal year 2002"; and

(2) in subsection (f)(2) by striking "$1,000,000 for fiscal year 1999, $1,000,000 for fiscal year 2000, $1,000,000 for fiscal year 2001, and $500,000 for fiscal year 2002" and inserting "$1,000,000 for fiscal year 1999, $1,000,000 for fiscal year 2000, and $500,000 for fiscal year 2001".

(g) INTELLIGENT TRANSPORTATION INFRASTRUCTURE REFERENCE.—Section 5117(b)(3)(B)(ii) of such Act is amended by striking "local departments of transportation" and inserting "the Department of Transportation".

(h) FUNDAMENTAL PROPERTIES OF ASPHALTS AND MODIFIED ASPHALTS.—Section 5117(b)(5)(B) of such Act is amended—

(1) by striking "1999" and inserting "1998"; and

(2) by striking "$3,000,000 per fiscal year" and inserting "$1,000,000 for fiscal year 1998 and $3,000,000 for each of fiscal years 1999 through 2003".

SEC. 9012. AUTOMOBILE SAFETY AND INFORMATION.

(a) REFERENCE.—Section 7104 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(c) CONFORMING AMENDMENT.—Section 30105(a) of title 49, United States Code (as amended by subsection (a) of this section), is amended by inserting after 'Secretary' the following: 'for the National Highway Traffic Safety Administration'.".

(b) CLEAN VESSEL ACT FUNDING.—Section 7403 of such Act is amended—

(1) by inserting "(a) IN GENERAL.—" before "Section 4(b)"; and

(2) by adding at the end the following:

"(b) TECHNICAL AMENDMENT.—Section 4(b)(3)(B) of the 1950 Act (as amended by subsection (a) of this section) is amended by striking '6404(d)' and inserting '7404(d)'.".

(c) BOATING INFRASTRUCTURE.—Section 7404(b) of such Act is amended by striking "6402" and inserting "7402".

SEC. 9013. TECHNICAL CORRECTIONS REGARDING SUBTITLE A OF TITLE VIII.

(a) AMENDMENT TO OFFSETTING ADJUSTMENT FOR DISCRETIONARY SPENDING LIMIT.—Section 8101(b) of the Transportation Equity Act for the 21st Century is amended—

(1) in paragraph (1) by striking "$25,173,000,000" and inserting "$25,144,000,000"; and

(2) in paragraph (2) by striking "$26,045,000,000" and inserting "$26,009,000,000".

(b) AMENDMENTS FOR HIGHWAY CATEGORY.—Section 8101 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following:

"(f) TECHNICAL AMENDMENTS.—Section 250(c)(4)(C) of the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by subsection (c) of this Act) is amended—

"(1) by striking 'Century and' and inserting 'Century or';

"(2) by striking 'as amended by this section,' and inserting 'as amended by the Transportation Equity Act for the 21st Century,'; and

"(3) by adding at the end the following new flush sentence: 'Such term also refers to the Washington Metropolitan Transit Authority account (69-1128-0-1-401) only for fiscal year 1999 only for appropriations provided pursuant to authorizations contained in section 14 of Public Law 96–184 and Public Law 101–551.'.".

(c) TECHNICAL AMENDMENT.—Section 8102 of the Transportation Equity Act for the 21st Century is amended by inserting before the period at the end the following: "or from section 1102 of this Act".

SEC. 9014. CORRECTIONS TO VETERANS SUBTITLE.

(a) TOBACCO-RELATED ILLNESSES IN VETERANS.—Section 8202 of the Transportation Equity Act for the 21st Century is amended to read as follows (and the amendments made by that section as originally enacted shall be treated for all purposes as not having been made):

"SEC. 8202. TREATMENT OF TOBACCO-RELATED ILLNESSES OF VETERANS.

"(a) IN GENERAL.—(1) Chapter 11 of title 38, United States Code, is amended by inserting after section 1102 the following new section:

'§ 1103. Special provisions relating to claims based upon effects of tobacco products

'(a) Notwithstanding any other provision of law, a veteran's disability or death shall not be considered to have resulted from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service for purposes of this title on the basis that it resulted from injury or disease attributable to the use of tobacco products by the veteran during the veteran's service.

'(b) Nothing in subsection (a) shall be construed as precluding the establishment of service connection for disability or death from a disease or injury which is otherwise shown to have been incurred or aggravated in active military, naval, or air service or which became manifest to the requisite degree of disability during any applicable presumptive period specified in section 1112 or 1116 of this title.'.

"(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1102 the following new item:

'1103. Special provisions relating to claims based upon effects of tobacco products.'.

"(b) EFFECTIVE DATE.—Section 1103 of title 38, United States Code, as added by subsection (a), shall apply with respect to claims received by the Secretary of Veterans Affairs after the date of the enactment of this Act.".

(b) GI BILL EDUCATIONAL ASSISTANCE FOR SURVIVORS AND DEPENDENTS OF VETERANS.—Subtitle B of title VIII of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new section:

"SEC. 8210. TWENTY PERCENT INCREASE IN RATES OF SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.

"(a) SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.—Section 3532 of title 38, United States Code, is amended—

"(1) in subsection (a)(1)—

"(A) by striking out '$404' and inserting in lieu thereof '$485';

"(B) by striking out '$304' and inserting in lieu thereof '$365'; and

"(C) by striking out '$202' and inserting in lieu thereof '$242';

"(2) in subsection (a)(2), by striking out '$404' and inserting in lieu thereof '$485';

"(3) in subsection (b), by striking out '$404' and inserting in lieu thereof '$485'; and

"(4) in subsection (c)(2)—

"(A) by striking out '$327' and inserting in lieu thereof '$392';

"(B) by striking out '$245' and inserting in lieu thereof '$294'; and

"(C) by striking out '$163' and inserting in lieu thereof '$196'.

"(b) CORRESPONDENCE COURSE.—Section 3534(b) of such title is amended by striking out '$404' and inserting in lieu thereof '$485'.

"(c) SPECIAL RESTORATIVE TRAINING.—Section 3542(a) of such title is amended—

"(1) by striking out '$404' and inserting in lieu thereof '$485';

"(2) by striking out '$127' each place it appears and inserting in lieu thereof '$152'; and

"(3) by striking out '$13.46' and inserting in lieu thereof '$16.16'.

"(d) APPRENTICESHIP TRAINING.—Section 3687(b)(2) of such title is amended—

"(1) by striking out '$294' and inserting in lieu thereof '$353';

"(2) by striking out '$220' and inserting in lieu thereof '$264';

"(3) by striking out '$146' and inserting in lieu thereof '$175'; and

"(4) by striking out '$73' and inserting in lieu thereof '$88'.

"(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1998, and shall apply with respect to educational assistance allowances paid for months after September 1998.".

SEC. 9015. TECHNICAL CORRECTIONS REGARDING TITLE IX.

(a) HIGHWAY TRUST FUND.—Subsection (f) of section 9002 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new paragraphs:

"(4) The last sentence of section 9503(c)(1), as amended by subsection (d), is amended by striking 'the date of enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.

"(5) Paragraph (3) of section 9503(e), as amended by subsection (d), is amended by striking 'the date of enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.".

(b) BOAT SAFETY ACCOUNT AND SPORT FISH RESTORATION ACCOUNT.—Section 9005 of the Transportation Equity Act for the 21st Century is amended by adding at the end the following new subsection:

"(f) CLERICAL AMENDMENTS.—

"(1) Subparagraph (A) of section 9504(b)(2), as amended by subsection (b)(1), is amended by striking 'the date of the enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.

"(2) Subparagraph (B) of section 9504(b)(2), as added by subsection (b)(3), is amended by striking 'such Act' and inserting 'the TEA 21 Restoration Act'.

"(3) Subparagraph (C) of section 9504(b)(2), as amended by subsection (b)(2) and redesignated by subsection (b)(3), is amended by striking 'the date of the enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.

"(4) Subsection (c) of section 9504, as amended by subsection (c)(2), is amended by striking 'the date of enactment of the Transportation Equity Act for the 21st Century' and inserting 'the date of the enactment of the TEA 21 Restoration Act'.".

SEC. 9016. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect simultaneously with the enactment of the Transportation Equity Act for the 21st Century. For purposes of all Federal laws, the amendments made by this title shall be treated as being included in the Transportation Equity Act for the 21st Century at the time of the enactment of such Act, and the provisions of such Act (including the amendments made by such Act) (as in effect on the day before the date of enactment of this Act) that are amended by this title shall be treated as not being enacted.

And the Senate agree to the same.

BILL ARCHER,
NANCY L. JOHNSON,
ROB PORTMAN,
CHARLES B. RANGEL,
WILLIAM J. COYNE,
Managers on the Part of the House.

BILL ROTH,
JOHN H. CHAFEE,
CHUCK GRASSLEY,
ORRIN HATCH,
FRANK H. MURKOWSKI,
DON NICKLES,
PHIL GRAMM,
DANIEL P. MOYNIHAN,
MAX BAUCUS,
BOB GRAHAM,

JOHN BREAUX,
BOB KERREY,
From the Committee on Governmental Affairs:
FRED THOMPSON,
SAM BROWNBACK,
THAD COCHRAN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2676) to amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

TITLE I. REORGANIZATION OF STRUCTURE AND MANAGEMENT OF THE IRS

A. IRS Restructuring and Creation of IRS Oversight Board

1. IRS mission and restructuring (secs. 1001 and 1002 of the Senate amendment)

Present Law

IRS mission statement

The IRS mission statement provides that:

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity and fairness.

IRS organizational plan

Under Reorganization Plan No. 1 of 1952, the Internal Revenue Service ("IRS") is organized into a 3-tier geographic structure with a multi-functional National Office, Regional Offices, and District Offices. A number of IRS reorganizations have occurred since then, but no major changes have been made to the basic 3-tier structure. Currently, as a result of a 1995 reorganization, there is a Regional Commissioner, a Regional Counsel and a Regional Director of Appeals for each of the following 4 regions: (1) the Northeast Region (headquartered in New York); (2) the Southeast Region

(Atlanta); (3) the Midstates Region (Dallas); and (4) the Western Region (San Francisco). There are 33 District Offices, 10 service centers, and 3 computing centers.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the IRS is directed to revise its mission statement to provide greater emphasis on serving the public and meeting the needs of taxpayers.

The IRS Commissioner is directed to restructure the IRS by eliminating or substantially modifying the present-law three-tier geographic structure and replacing it with an organizational structure that features operating units serving particular groups of taxpayers with similar needs. The plan is also required to ensure an independent appeals function within the IRS. As part of ensuring an independent appeals function, the reorganization plan is to prohibit ex parte communications between appeals officers and other IRS employees to the extent such communications appear to compromise the independence of the appeals officers. The legality of IRS actions will not be affected pending further appropriate statutory changes relating to such a reorganization (e.g., eliminating statutory references to obsolete positions).

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—The provision is effective on the date of enactment.

2. Establishment and duties of IRS Oversight Board (sec. 101 of the House bill and sec. 1101 of the Senate amendment)

Present Law

Under present law, the administration and enforcement of the internal revenue laws are performed by or under the supervision of the Secretary of the Treasury.[1] The Secretary has delegated the responsibility to administer and enforce the Internal Revenue laws to the Commissioner of Internal Revenue ("Commissioner"). The Commissioner has the final authority of the IRS concerning the substantive interpretation of the tax laws as reflected in legislative and regulatory proposals, revenue rulings, letter rulings, and technical advice memoranda. The duties of the Chief Counsel of the IRS are prescribed by the Secretary. The Secretary has delegated authority over the Chief Counsel to the General Counsel of the Treasury. The General Counsel has delegated authority to serve as the legal adviser to the Commissioner to the Chief Counsel.

[1] Code sec. 7801(a).

Federal employees are subject to rules designed to prevent conflicts of interest or the appearance of conflicts of interest. The rules applicable to any particular employee depend in part on whether the employee is a regular, full-time Federal Government employee or a special government employee, the length of service of the employee, and the pay grade of the employee. A "special government employee" is, in general, an officer or employee of the executive or legislative branch of the U.S. government who is appointed or employed to perform (with or without compensation), for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. Violations of the ethical conduct rules are generally punishable by imprisonment for up to 1 year (5 years in the case of willful misconduct), a civil fine, or both. The amount of the civil fine with respect to each violation cannot exceed the greater of $50,000 or the compensation received by the employee in connection with the prohibited conduct.

Under the ethical conduct rules, all Federal Government employees (including special government employees) are precluded from participating in a matter in which the employee (or a related party) has a financial interest. In addition, special government employees cannot represent a party (whether or not for compensation) or receive compensation for representation of a party[2] in relation to a particular matter involving specific parties (1) in which the employee has at any time participated personally and substantially, or (2) which is pending in the department or agency of the Government in which the special government employee is serving. In the case of a special government employee who has served in a department no more than 60 days during the immediately preceding 365 days, item (2) does not apply. Thus, for example, such an individual can receive compensation for representational services with respect to matters pending in the department in which the employee serves, as long as it is not a matter involving parties in which the employee personally and substantially participated.[3]

The conflict of interest rules also impose restrictions on what a Federal Government employee can do after leaving the Government. In general, senior level officers and employees (including special government employees) who served at least 60 days during the immediately preceding 1-year period cannot represent anyone other than the United States before the individual's former department or agency for 1 year after terminating employment. Whether an employee is a senior level officer or employee is determined by pay grade. The one-year post employment restriction does not apply to special government employees who serve less than 60 days during

[2] The prohibition on receipt of compensation applies regardless of whether the services are performed by the Federal employee or someone else. For example, it would preclude a Federal employee from sharing in the compensation received by a partner of the Federal employee for representations on covered matters.

[3] More stringent rules apply to regular Federal Government employees. Such employees cannot receive compensation for representational services (whether rendered by the individual or another) in matters in which the United States is a party or has a direct and substantial interest before any department, agency or court. In addition, a Federal Government employee cannot act as agent or attorney (whether or not for compensation) for prosecuting any claim against the United States or act as agent or attorney for anyone before any department, agency, or court in which the United States is a party or has a direct and substantial interest.

the immediately preceding 1-year period before termination of employment.[4]

Federal employees with pay grades (or pay rates) above certain levels (and who have at least 60 days of service) are required to file annually public financial disclosures.

House Bill

Duties, responsibilities, and powers of the IRS Oversight Board

General responsibilities of the Board

The House bill provides for the establishment within the Treasury Department of the Internal Revenue Service Oversight Board (the "Board"). The general responsibilities of the Board are to oversee the Internal Revenue Service (the "IRS") in its administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws. The Board has no responsibilities or authority with respect to: (1) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws; (2) law enforcement activities of the IRS, including compliance activities such as criminal investigations, examinations, and collection activities;[5] and (3) specific procurement activities of the IRS (e.g., selecting vendors or awarding contracts). The Board also has the authority to recommend candidates for IRS Commissioner to the President, and to recommend removal of the Commissioner.

Specific responsibilities of the Board

The Board has the following specific responsibilities: (1) to review and approve strategic plans of the IRS, including the establishment of mission and objectives (and standards of performance) and annual and long-range strategic plans; (2) to review the operational functions of the IRS, including plans for modernization of the tax system, outsourcing or managed competition, and training and education; (3) to provide for the review of the Commissioner's selection, evaluation and compensation of senior managers; and (4) to review and approve the Commissioner's plans for major reorganization of the IRS. It is intended that major reorganizations subject to the Board's review and approval are limited to major changes in organizational structure, such as the 1995 IRS reorganization that combined 7 regions into 4 and 63 districts into 33. In addition, the Board will review and approve the budget request of the IRS prepared by the Commissioner, submit such budget re-

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[4] All Executive branch employees are permanently prohibited from representing a party other than the government in connection with a particular matter (1) in which the government is a party or has an interest, (2) in which the individual participated personally and substantially, and (3) which involved a specific party or parties at the time of their participation. In addition, Federal employees cannot, within 2 years after terminating employment, represent any person other than the United States in connection with any matter (1) in which the government is a party or has a direct and substantial interest, (2) which the person knows or reasonably should know was actually pending under his or her official responsibility within one year before termination of employment, and (3) which involved a specific party or parties at the time it was pending.

[5] This provision is not intended to limit the Board's authority with respect to the review and approval of strategic plans and the budget of the Commissioner or to preclude the Board from review of IRS operations generally.

quest to the Secretary, and ensure that the budget request supports the annual and long-range strategic plans of the IRS. The Secretary is required to submit the budget request approved by the Board to the President, who is required to submit such request, without revision, to the Congress together with the President's annual budget request for the IRS. The House bill does not affect the ability of the President to include, in addition, his own budget request relating to the IRS.

It is intended that the Board will reach a formal decision on all matters subject to its review. With respect to those matters over which the Board has approval authority, the Board's decisions are determinative. It is fully expected that, with respect to those matters over which the Board has approval authority (other than as relates to the development of the budget), the Secretary will exert his or her oversight responsibility over the IRS by working through and with the Board.[6]

The Board is required to report each year to the President and the Congress regarding the conduct of its responsibilities.

It is expected that the Treasury Department will no longer utilize the IRS Management Board once the new Board created by the bill is in place, as the functions of the IRS Management Board would be taken over by the new Board.

Composition of the Board

The Board is composed of 11 members. Eight of the members are so-called "private-life" members who are not Federal officers or employees. These private-life members will be appointed by the President, with the advice and consent of the Senate. The remaining members are (1) the Secretary of the Treasury (or, if the Secretary so designates, the Deputy Secretary of the Treasury), (2) a representative from an organization representing a substantial number of IRS employees, who will be appointed by the President with the advice and consent of the Senate, and[7] (3) the Commissioner of the IRS.

Qualifications of Board members

The private-life members of the Board are to be appointed based on their expertise in the following areas: management of large service organizations; customer service; the Federal tax laws, including administration and compliance; information technology; organization development; and the needs and concerns of taxpayers. In the aggregate, the members of the Board should collectively bring to bear expertise in all these enumerated areas.

Ethical standards for private-life members

Representational activities and compensation matters

The private-life members are considered special government employees during the entire period of their appointment. That is,

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[6] The budget is excepted from this expectation because the bill provides a separate mechanism through which the Secretary may act. The procedures relating to the Board permit the President to submit his own budget in addition to that approved by the Board.

[7] In appointing the employee organization representative, the President is not constrained to choose an individual recommended by an organization covering IRS employees, but may choose whoever the President determines to be an appropriate representative of the organization.

they will be considered to be performing services as a special government employee on each day during their appointment, not just on those days on which they actually perform services. Thus, they will be subject to the ethical conduct rules applicable to special government employees who serve more than 60 days during any 365-day period. Thus, for example, private-life Board members would not be able to represent clients before the IRS on matters involving specific parties during their terms as Board members.

Post-employment restrictions

Private-life Board members are to be subject to the one-year post-employment restriction applicable to senior-level employees.

Financial disclosure reports

Private-life members are to be subject to the public financial disclosure rules generally applicable to special government employees above certain pay grades.

Administrative matters

Term of appointments

The 8 private-life Board members and the employee organization representative generally will be appointed for 5-year terms. The private-life members may serve no more than two 5-year terms. Each 5-year term begins upon appointment. Board member terms are staggered, as a result of a special rule providing that some private-life members first appointed to the Board will serve initial terms of less than 5 years. The members of the Board are to elect a chairperson from among the private-life Board members for a 2-year term. Any member of the Board can be removed at the will of the President. In addition, the Secretary of the Treasury (or, if so delegated, the Deputy Secretary) and the IRS Commissioner are removed from the Board upon termination of employment in such positions and the representative of IRS employees is removed from the Board upon termination of their employment, membership, or other affiliation with the organization representing IRS employees.

Meetings and quorum

The Board is required to meet at least once a month, and can meet at such other times as the Board determines appropriate. A quorum of 6 members is required in order for the Board to conduct business. Actions of the Board are taken by a majority vote of those members present and voting.

Staffing

The Board will not have its own permanent staff, but will have such staff as detailed by the Commissioner at the request of the Chair of the Board. The Chair can procure temporary and intermittent services under section 3109(b) of title 5 of the U.S. Code.

Compensation and travel expenses

The private-life members of the Board will be compensated at a rate not to exceed $30,000 per year, except that the Chair will

be compensated at a rate not to exceed $50,000 a year. Other members of the Board will receive no compensation for their services as Board members. The members of the Board will be entitled to travel expenses for purposes of attending meetings of the Board.

Reports

The Board is required to report each year regarding the conduct of its responsibilities. The annual report shall be provided to the President and Congress.

Effective date

The House bill provisions are effective on the date of enactment. The President is directed to submit nominations for Board members to the Senate within 6 months of the date of enactment.

Senate Amendment

Duties, responsibilities, and powers of the IRS Oversight Board

General responsibilities of the Board

The Senate amendment generally follows the House bill, except that under the Senate amendment, the Board has no authority (1) to intervene in specific taxpayer cases, including compliance activities involving specific taxpayers such as criminal investigations, examinations, and collection activities, and (2) to intervene in specific individual personnel matters. The Board does have authority with respect to general law enforcement matters, and it has the responsibility to ensure that the organization and operation of the IRS allows it to carry out its mission.

Specific responsibilities of the Board

Under the Senate amendment, the Board's specific responsibilities and budget responsibilities are the same as in the House bill, except that: (1) the Board's review and approval authority for the Commissioner's plans for major reorganization does not apply to the reorganization provided in the Senate amendment; (2) the Board, after taking into account the recommendations, if any, of the Commissioner, shall recommend to the Secretary 3 candidates for appointment as the National Taxpayer Advocate from individuals who have a background in customer service and tax law, and experience representing individual taxpayers (and to recommend the removal of the National Taxpayer Advocate); (3) the Board shall review procedures of the IRS relating to financial audits; (4) the Board is to review operations of the IRS in order to ensure the proper treatment of taxpayers; and (5) in exercising its duties, the members of the Board shall maintain appropriate confidentiality (e.g., regarding enforcement matters).

Composition of the Board

Under the Senate amendment, the Board is composed of 9 members. Six of the members are so-called "private-life" members who are not otherwise Federal officers or employees. These private-life members are appointed by the President, with the advice and consent of the Senate. The other members are: (1) the Secretary

(or, if the Secretary so designates, the Deputy Secretary); (2) the Commissioner; and (3) a representative from an employee organization that represents a substantial number of IRS employees and who is appointed by the President, with the advice and consent of the Senate. In appointing the representative of an employee organization, the President is not required to choose an individual recommended by the employee organization, but may choose whoever the President determines to be an appropriate representative of the employee organization.

Section 6103 authority

Under the Senate amendment, Board members would have limited access to confidential tax return and return information under section 6103. This limited access would permit the Board to receive such information (i.e., information that has not been redacted to remove confidential tax return and return information) from the Treasury IG for Tax Administration or the Commissioner in connection with reports to the Board. This access to section 6103 information does not include the taxpayer's name, address, or taxpayer or employer identification number. The Board members are subject to the anti-browsing rules applicable to IRS employees under present law.[8]

Qualifications of Board members

Under the Senate amendment, the private-life members of the Board will be appointed without regard to political affiliation, and based solely on their expertise in the same areas as the House bill, except that the Senate amendment adds the further qualification that a private-life member have experience and expertise in the needs and concerns of small business.

Ethical standards for private-life members

Representational activities and compensation matters

Under the Senate amendment, the ethical conduct rules applicable to private-life Board members depend on whether or not such members are determined to be "special government employees" under current law. It is expected that they generally will be.[9] In that case, they will be subject, at a minimum, to the ethical conduct rules applicable to special government employees. In addition, during their term as a Board member, a private-life Board member cannot represent any party (whether or not for compensation) with respect to (1) any matter before the Board or the IRS, (2) any tax-related matter before the Treasury Department, or (3) any court proceeding with respect to a matter described in (1) or (2). Thus, for example, the day after appointment to the Board, a private-life Board member could not meet with representatives of the IRS or Treasury on behalf of a client or the Board member's corporate employer with respect to proposed tax regulations. On the other hand,

[8] The provision does not affect the Secretary's (or Deputy Secretary's) or the Commissioner's access to section 6103 information or the application of the anti-browsing rules to the Secretary (or Deputy Secretary) or the Commissioner.

[9] If the Board members are determined not to be special government employees under the present-law rules, then they will be subject to the ethical conduct rules relating to regular Federal Government employees.

the Board member could, for example, represent clients before the U.S. Customs Service. The special rules applicable to private-life Board members generally do not preclude the Board member from sharing in compensation from representation of clients by another person (e.g., a partner of the Board member) before the IRS or Treasury.[10]

Post-employment restrictions

Under the Senate amendment, private-life Board members are subject to the 1-year post employment restriction applicable to individuals above certain pay grades and who have served at least 60 days (whether or not the members are special government employees under the present-law rules).

Financial disclosure reports

Under the Senate amendment, the private-life Board members are subject to the public financial disclosure rules applicable to Federal Government employees above certain pay grades and who have at least 60 days of service. Thus, the private-life Board members are required to file a public financial disclosure report for purposes of confirmation, annually during their tenure on the Board, and upon termination of appointment.

Ethical standards for IRS employee organization representative

Waiver of conflict-of-interest laws

The Senate amendment provides that the IRS employee organization representative is subject to the same ethical conduct rules as the private-life Board members. However, the Senate amendment modifies the otherwise applicable ethical conduct rules so that they do not preclude the employee representative from carrying out his or her duties as a Board member and his or her duties with respect to the employee organization. In particular, the employee representative is not prohibited from (1) representing the interests of the employee organization before the Federal Government on any matter, or (2) acting on a Board matter because the employee organization has a financial interest in the matter. In addition, the employee representative can continue to receive his or her compensation from the employee organization.[11]

Post-employment restrictions

The employee representative is subject to the same 1-year post employment restriction applicable to the private-life Board members, except to the extent the representative is acting in his capacity as a representative of the employee organization.

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[10] Certain limitations to this exception to the otherwise applicable ethical rules would apply. For example, this exception would not apply if the matter was one in which the Board member personally and substantially participated. Similarly, the Board member could not act with respect to a matter in which he or she has a personal financial interest, including the potential to receive a share in compensation as a result of another's representation.

[11] Certain limitations on this exception would apply. For example, the rules relating to bribery would continue to apply. In addition, the employee representative would be precluded from acting on a matter in which he or she has a financial interest.

Financial disclosure reports

The employee representative is subject to the same public financial disclosure rules as the private-life Board members. In addition, the employee organization is required to provide an annual financial report with the House Ways and Means Committee and the Senate Finance Committee. Such report is required to include the compensation paid to the individual serving on the Board, the compensation of individuals employed by the employee organization, and membership dues collected by the organization.

Administrative matters

Term of appointments

The 6 private-life Board members will be appointed for 5-year terms. The private-life members may serve no more than two 5-year terms. Board member terms will be staggered, as a result of a special rule providing that some private-life members first appointed to the Board would serve terms of less than 5 years. Under this rule, 2 members first appointed will have a term of 2 years, 2 for a term of 4 years, and 2 for a term of 5 years. The terms of the initial Board members will run from the date of appointment. Subsequent terms will run from expiration of the previous term. A Board member appointed to fill a vacancy before the expiration of a term will be appointed to the remainder of the term. Such a member could be appointed to a subsequent 5-year term.

A private-life Board member and the IRS employee representative Board member may be removed at the will of the President. In addition, the Secretary (or Deputy Secretary) and the IRS Commissioner are automatically removed from the Board upon his or her termination of employment as such.

Chair of the Board

The members of the Board are to elect a Chair from the private-life members for a 2-year term. Except as otherwise provided by a majority of the Board, the authority of the Chair includes the authority to hire appropriate staff, call meetings, establish committees, establish the agenda for meetings, and develop rules for the conduct of business.

Meetings and quorum

Under the Senate amendment, the Board is required to meet on a regular basis (as determined necessary by the Chair), but no less frequently than quarterly. The Board can meet privately, and is not subject to public disclosure laws. A quorum of 5 members is required in order for the Board to conduct business. Actions of the Board can be taken by a majority vote of those members present and voting.

Staffing

Under the Senate amendment, the Chair is authorized to hire (and terminate) such personnel as the Chair finds necessary to enable the Board to carry out its duties. In addition, the Board will have such staff as detailed by the Commissioner or from another Federal agency at the request of the Chair of the Board. The Chair

can procure temporary and intermittent services under section 3109(b) of title 5 of the U.S. Code.

Compensation and travel expenses

Under the Senate amendment, the private-life members of the Board will be compensated at a rate of $30,000 per year, except that the Chair will be compensated at a rate of $50,000 a year. The other Board members will receive no compensation for their services as a Board member. In addition, members of the Board are entitled to travel expenses for purposes of attending Board meetings or other duties as a member of the Board.

Reports

Under the Senate amendment, the Board is required to report each year regarding the conduct of its responsibilities. The annual report shall be provided to the President and the House Committees on Ways and Means, Government Reform and Oversight, and Appropriations and the Senate Committees on Finance, Governmental Affairs, and Appropriations. In addition, the Board is required to report to the Ways and Means and Finance Committees if the IRS does not address problems identified by the Board.

Effective date

The provision is effective on the date of enactment. The President is directed to submit nominations for Board members to the Senate within 6 months of the date of enactment. The legality of the actions of the IRS are not affected pending appointment of the Board. Under the Senate amendment, the Board will sunset September 30, 2008.

Conference Agreement

Duties, responsibilities, and powers of the IRS Oversight Board

General responsibilities of the Board

The conference agreement follows the Senate amendment.

Specific responsibilities of the Board

Under the conference agreement, the specific responsibilities of the Board are the same as under the Senate amendment, except that they do not include the responsibility (1) to recommend to the Secretary (taking into account the recommendations, if any, of the Commissioner) 3 candidates for appointment as the National Taxpayer Advocate; or (2) to review procedures of the IRS relating to financial audits. However, the conferees intend that the Chairman of the Board will consider establishing a financial management subcommittee.

Consistent with the Board's responsibility to review and approve plans for major reorganizations, the conferees intend for the Board to have the authority to review and approve the reorganization plan that is contained in Title I of this legislation. However, to the extent that the Commissioner has already taken measures to develop and implement such a plan, the conferees do not want to impede such efforts. Thus, the conferees do not intend in any

way that the Commissioner should be precluded from moving ahead with such planning and implementation prior to the appointment of the Board.

Composition of the Board

The conference agreement follows the Senate amendment, except that in lieu of a Board member who is a representative of an organization that represents a substantial number of IRS employees, the conference agreement provides for an individual who is a full-time Federal employee or a representative of employees ("employee representative").

Section 6103 authority

The conference agreement follows the Senate amendment.

Qualifications of Board members

The conference agreement follows the Senate amendment.

Ethical standards for private-life members

The conference agreement follows the Senate amendment with respect to the application of the ethics rules to the private-life Board members regarding representational activities and compensation matters, post-employment restrictions, and financial disclosure requirements.

Ethical standards for employee representative

Under the conference agreement, the same ethics rules applicable to the private-life members regarding the representational activities and compensation matters apply to the employee representative if the individual is a special Government employee (i.e., the individual is not already an officer or employee of the Federal Government). In addition, the same post-employment restrictions and the financial disclosure requirements applicable to the private-life members apply to the employee representative. The conference agreement does not include the Senate amendment requirement for filing annual financial reports that applies to the organization representing a substantial number of IRS employees, a representative of which is a Board member.

The conference agreement does not include the Senate amendment provision for waiver of the conflict-of-interest laws. Instead, the conference agreement grants the President the authority to waive, at the time the President nominates the employee representative to the Board, for the term of the member, any appropriate provisions of chapter 11 of title 18 of the United States Code, to the extent such waiver is necessary to allow such member to participate in the decisions of the Board while continuing to serve as an employee representative. Any such waiver is not effective unless a written intent of waiver to exempt the member (and the actual waiver language) is submitted to the Senate with the nomination of the member. It is not intended that waiver of the restrictions on post-employment provided under the conference agreement be necessary to allow such member to participate in the decisions of the Board while continuing to serve as an employee representative.

Administrative matters

Term of appointments

The conference agreement follows the Senate amendment, with modifications. First, the staggered term of the initial Board shall be as follows: 2 members first appointed will have a term of 3 years, 2 members shall have a term of 4 years, and 2 members shall have a term of 5 years. In addition, the limitation of the Senate amendment that private-life members may serve no more than two five-year terms also applies to the employee representative under the conference agreement.

Chair of the Board

The conference agreement follows the Senate amendment.

Meetings and quorum

The conference agreement follows the Senate amendment.

Staffing

The conference agreement follows the Senate amendment. However, the conferees intend that the size of the staff be limited to a small number, and the Board is encouraged to use outside consultants whenever necessary.

Compensation and travel expenses

The conference agreement follows the Senate amendment with respect to compensation of Board members, with a modification. The employee representative member of the Board will be compensated at a rate of $30,000 per year unless the individual is already an officer or employee of the Federal Government.

The conference agreement follows the House bill provision on travel expenses, with a modification. Travel expenses other than those incurred to attend Board meetings are allowed if approved in advance by the Chair, and the Board shall report annually to Congress the amount of travel expenditures incurred by the Board.

Reports

The conference agreement follows the Senate amendment, with a modification providing that the Board is to include in its annual report information on travel expenses allowed.

Effective date

The conference agreement follows the House bill. The conference agreement does not include the Senate amendment provision for termination of the Board on September 30, 2008. The conference agreement provides that the provisions relating to the Board are not to be construed to invalidate the actions and authority of the IRS prior to the appointment of members of the Board.

B. Appointment and Duties of IRS Commissioner and Chief Counsel and Other Personnel

1. IRS Commissioner and other personnel (secs. 102 and 103 of the House bill and secs. 1102(a) and 1104 of the Senate amendment)

Present Law

Within the Department of the Treasury is a Commissioner of Internal Revenue ("Commissioner"), who is appointed by the President, with the advice and consent of the Senate. The Commissioner has such duties and powers as may be prescribed by the Secretary.[12] The Secretary has delegated to the Commissioner the administration and enforcement of the internal revenue laws.[13] The Commissioner generally does not have authority with respect to tax policy matters.[14]

The Secretary is authorized to employ such persons as the Secretary deems appropriate for the administration and enforcement of the internal revenue laws and to assign posts of duty.

House Bill

As under present law, the House bill provides that Commissioner will be appointed by the President, with the advice and consent of the Senate, and can be removed at will by the President. The Commissioner will be appointed to a 5-year term, beginning with the date of appointment. The Board has the power to recommend candidates to the President for Commissioner. The Board has the authority to recommend the removal of the Commissioner. Although the President is not required to nominate for Commissioner a candidate recommended by the Board (or to remove a Commissioner when the Board so recommends), it is expected that the President will generally give deference to the Board's expertise and familiarly with the needs and functions of the IRS and will act in accordance with the Board's recommendations.

The Commissioner has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party and to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel). It is intended that the listed duties codify present delegations. However, if the Secretary changes such orders, they may be subject to the notice requirement of the bill, described below.

If the Secretary determines not to delegate the specified duties to the Commissioner, such determination will not take effect until 30 days after the Secretary notifies the House Committees on Ways

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[12] Code sec. 7802(a).

[13] Treasury Order 150–10 (April 22, 1982).

[14] See, e.g., Treasury Order 111–2 (March 16, 1981), which delegates to the Assistant Secretary (Tax Policy) the exclusive authority to make the final determination of the Treasury Department's position with respect to issues of tax policy arising in connection with regulations, published Revenue Rulings and Revenue Procedures, and tax return forms and to determine the time, form and manner for the public communication of such position.

and Means, Government Reform and Oversight, and Appropriations, the Senate Committees on Finance, Government Operations, and Appropriations, and the Joint Committee on Taxation.

This provision is not intended to alter the Secretary's existing authority to delegate to agencies other than the IRS the authority to administer and enforce certain portions of the internal revenue laws. For example, the Secretary currently has delegated to the Bureau of Alcohol, Tobacco and Firearms the authority to administer and enforce the taxes under section 4181 and chapters 51, 52, and 53 of the Internal Revenue Code (regarding excise and other taxes on alcohol, tobacco, firearms, and destructive devices).

The Commissioner is to consult with the Board on all matters within the Board's authority (other than the recommendation of candidates for Commissioner and the recommendation to remove the Commissioner). With respect to those matters within the Board's approval authority (other than with respect to the development of the budget), it is fully expected that the Secretary will exert his or her oversight responsibility over the IRS by working through and with the Board.[15]

Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and would be required to issue all necessary directions, instructions, orders, and rules applicable to such persons. Unless otherwise provided by the Secretary, the Commissioner will determine and designate the posts of duty.

The Commissioner is compensated as under present law.

Effective date.—The provisions of the House bill relating to the Commissioner generally are effective on the date of enactment. The provision relating to the 5-year term of office applies to the Commissioner in office on the date of enactment. This 5-year term runs from the date of appointment.

Senate Amendment

As under present law, the Senate amendment provides that the Commissioner is appointed by the President, with the advice and consent of the Senate, and may be removed at will by the President. Under the provision, one of the qualifications of the Commissioner is demonstrated ability in management. The Commissioner is appointed to a 5-year term, beginning with the date of appointment. The Commissioner may be reappointed for more than one 5-year term. The Board recommends candidates to the President for the position of Commissioner; however, the President is not required to nominate for Commissioner a candidate recommended by the Board. The Board has the authority to recommend the removal of the Commissioner.

The Commissioner has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, such duties and powers include the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to

[15] The budget is excepted from this expectation because the House bill provides a separate mechanism through which the Secretary may act.

which the United States is a party, to exercise the IRS' final authority concerning the substantive interpretation of the tax laws, to recommend to the President a candidate for Chief Counsel (and recommend the removal of the Chief Counsel), and to recommend candidates for the position of National Taxpayer Advocate to the IRS Board. If the Secretary determines not to delegate such specified duties to the Commissioner, such determination will not take effect until 30 days after the Secretary notifies the House Committees on Ways and Means, Government Reform and Oversight, and Appropriations, and the Senate Committees on Finance, Governmental Affairs, and Appropriations. The Commissioner is to consult with the Board on all matters within the Board's authority (other than the recommendation of candidates for Commissioner and the recommendation to remove the Commissioner).

Unless otherwise specified by the Secretary, the Commissioner is authorized to employ such persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws and is required to issue all necessary directions, instructions, orders, and rules applicable to such persons. Unless otherwise provided by the Secretary, the Commissioner will determine and designate the posts of duty.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, with a modification. Instead of the Senate amendment provision relating to the duty of the Commissioner to recommend candidates for the position of National Taxpayer Advocate to the IRS Board, the conference agreement provides that the Treasury Secretary is to consult with the Commissioner and the Board before selecting the National Taxpayer Advocate.

Effective date.—The conference agreement follows the Senate amendment and the House bill.

2. IRS Chief Counsel (sec. 1102(a) of the Senate amendment)

Present Law

The President is authorized to appoint, by and with the consent of the Senate, an Assistant General Counsel of the Treasury, who is the Chief Counsel of the IRS. The Chief Counsel is the chief law officer for the IRS and has such duties as may be prescribed by the Secretary. The Secretary has delegated authority over the Chief Counsel to the Treasury General Counsel. The Chief Counsel does not report to the Commissioner, but to the Treasury General Counsel. As delegated by the Treasury General Counsel, the duties of the Chief Counsel include: (1) to be the legal advisor to the Commissioner and his or her officers and employees; (2) to furnish such legal opinions as may be required in the preparation and review of rulings and memoranda of technical advice and the performance of other duties delegated to the Chief Counsel; (3) to prepare, review, or assist in the preparation of proposed legislation, treaties, regulations and Executive Orders relating to laws affecting the IRS; (4) to represent the Commissioner in cases before the Tax Court; (5) to determine what civil actions should be brought in the courts

under the laws affecting the IRS and to prepare recommendations to the Department of Justice for the commencement of such actions and to authorize or sanction commencement of such actions.

House Bill

No provision.

Senate Amendment

As under present law, the Senate amendment provides that the Chief Counsel is appointed by the President, with the advice and consent of the Senate. Under the Senate amendment, the Chief Counsel is not an Assistant General Counsel of the Treasury and reports directly to the Commissioner.

The Chief Counsel has such duties and powers as prescribed by the Secretary. Unless otherwise specified by the Secretary, these duties include the duties currently delegated to the Chief Counsel as described above. If the Secretary determined not to delegate such specified duties to the Chief Counsel, such determination is subject to the same notice requirement applicable to changes in the delegation of authority with respect to the Commissioner.

Effective date.—The provision is generally effective on the date of enactment. The provision providing that the Chief Counsel reports directly to the Commissioner is effective 90 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications. Under the conference agreement, the Chief Counsel is to report directly to the Commissioner, with two exceptions.

First, the Chief Counsel is to report to both the Commissioner and the General Counsel of the Treasury Department with respect to (1) legal advice or interpretation of the tax law not relating solely to tax policy, and (2) tax litigation. Under this rule, the conferees intend that the Chief Counsel's dual reporting to the Commissioner and to the General Counsel include reporting with respect to legal advice or interpretation of the tax law set forth in regulations, revenue rulings and revenue procedures, technical advice and other similar memoranda, private letter rulings, and published guidance not described in the foregoing.

Second, the Chief Counsel is to report to the General Counsel with respect to legal advice or interpretation of the tax law relating solely to tax policy. Under this rule, the conferees intend that the Chief Counsel's reporting to the General Counsel include proposed legislation and international tax treaties.

The conference agreement provides that if there is any disagreement between the Commissioner and the General Counsel with respect to any matter on which the Chief Counsel has dual reporting to both the Commissioner and the General Counsel, the matter is to be submitted to the Secretary or the Deputy Secretary of the Treasury for resolution.

The conferees intend that under the general rule, the Chief Counsel's reporting directly to the Commissioner include reporting with respect to budget, organizational structure and reorganiza-

tions, mission and strategic plans. In addition, the conferees intend that the Chief Counsel's reporting directly to the Commissioner include reporting with respect to all matters relating to the day-to-day operations of the IRS, such as management of the IRS and procurement.

The conference agreement provides that all personnel in the Office of the Chief Counsel are to report to the Chief Counsel (and not to any person at the IRS or elsewhere within the Treasury Department).

C. Structure and Funding of the Employee Plans and Exempt Organizations Division ("EP/EO") (sec. 1102 of the House bill and sec. 1101 of the Senate amendment)

Present Law

Prior to 1974, no one specific office in the IRS had primary responsibility for employee plans and tax-exempt organizations. As part of the reforms contained in the Employee Retirement Income Security Act of 1974 ("ERISA"), Congress statutorily created the Office of Employee Plans and Exempt Organizations ("EP/EO") under the direction of an Assistant Commissioner.[16] EP/EO was created to oversee deferred compensation plans governed by sections 401–414 of the Code and organizations exempt from tax under Code section 501(a).

In general, EP/EO was established in response to concern about the level of IRS resources devoted to oversight of employee plans and exempt organizations. The legislative history of Code section 7802(b) states that, with respect to administration of laws relating to employee plans and exempt organizations, "the natural tendency is for the Service to emphasize those areas that produce revenue rather than those areas primarily concerned with maintaining the integrity and carrying out the purposes of exemption provisions."[17]

To provide funding for the new EP/EO office, ERISA authorized the appropriation of an amount equal to the sum of the section 4940 excise tax on investment income of private foundations (assuming a rate of 2 percent) as would have been collected during the second preceding year plus the greater of the same amount or $30 million.[18] However, amounts raised by the section 4940 excise tax have never been dedicated to the administration of EP/EO, but are transferred instead to general revenues. Thus, the level of EP/EO funding, like that of the rest of the IRS, is dependent on annual Congressional appropriations to the Treasury Department.

House Bill

The House bill retains the Office of Employee Plans and Exempt Organizations under the supervision and direction of an Assistant Commissioner of the Internal Revenue. As under present law, EP/EO is responsible for carrying out functions and duties associated with organizations designed to be exempt from tax under

[16] Code section 7802(b).
[17] S. Rept. 93–383, 108 (1973). See also H. Rept. 93–807, 104 (1974).
[18] Code section 7802(b)(2).

section 501(a) of the Code and with respect to plans designed to be qualified under section 401(a). In addition, however, EP/EO's responsibilities are expanded to include nonqualified deferred compensation arrangements. The House bill also provides that the Assistant Commissioner shall report annually to the Commissioner on EP/EO operations.

In addition, the House bill repeals the funding mechanism for EP/EO set forth in section 7802(b). Thus, the appropriate level of funding for EP/EO is, consistent with current practice, subject to annual Congressional appropriations, as are other functions within the IRS.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment eliminates the statutory requirement contained in section 7802(b) that there be an "Office of Employee Plans and Exempt Organizations" under the supervision and direction of an Assistant Commissioner. The legislative history expresses the Committee's intent that a comparable structure be created administratively to ensure that adequate resources within the IRS are devoted to oversight of the tax-exempt sector.

In addition, like the House bill, the Senate amendment repeals the funding mechanism for EP/EO set forth in section 7802(b).[19]

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

D. Taxpayer Advocate and Taxpayer Assistance Orders (secs. 102 and 342 of the House bill and secs. 1102(a), (c), and (d) of the Senate amendment)

Present Law

Taxpayer Advocate

In 1996, the Taxpayer Bill of Rights 2 ("TBOR 2") established the position of Taxpayer Advocate, which replaced the position of Taxpayer Ombudsman, created in 1979 by the IRS. The Taxpayer Advocate is appointed by and reports directly to the IRS Commissioner.

TBOR 2 also created the Office of the Taxpayer Advocate. The functions of the office are (1) to assist taxpayers in resolving problems with the IRS, (2) to identify areas in which taxpayers have problems in dealings with the IRS, (3) to propose changes (to the extent possible) in the administrative practices of the IRS that will

[19] The legislative history of the provision states that it is not intended that the elimination of the statutory requirement contained in section 7802(b)(1) of the self-funding mechanism described in section 7802(b)(2) impede the implementation of certain self-correction programs and EP/EO's other programs and activities. Rather, the legislative history indicates that, given the magnitude of the sector EP/EO is charged with regulating, as well as the unique nature of its mandate, an adequately funded EP/EO is extremely important to the fair and efficient administration of the Federal tax system.

mitigate those problems, and (4) to identify potential legislative changes that may mitigate those problems.

Taxpayer assistance orders

Taxpayers can request that the Taxpayer Advocate issue a taxpayer assistance order ("TAO") if 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. A TAO may require the IRS to release property of the taxpayer that has been levied upon, or to cease any action, take any action as permitted by law, or refrain from taking any action with respect to the taxpayer.

Under present law, the direct point of contact for taxpayers seeking taxpayer assistance orders is a problem resolution officer appointed by a District Director or a Regional Director of Appeals. The Taxpayer Advocate has designated the authority to issue taxpayer assistance orders to the local and regional problem resolution officers.

Reports of the Taxpayer Advocate

The Taxpayer Advocate is required to report annually to the House Committee on Ways and Means and the Senate Finance Committee on the objectives of the Taxpayer Advocate for the upcoming fiscal year. This report is required to be provided no later than June 30 of each calendar year and is to contain full and substantive analysis, in addition to statistical information.

The Taxpayer Advocate is also required to report annually to the House Committee on Ways and Means and the Senate Finance Committee on the activities of the Taxpayer Advocate during the most recently ended fiscal year. This report is required to be provided no later than December 31 of each calendar year, and is to contain full and substantive analysis, in addition to statistical information. This report is also required to: (1) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and IRS responsiveness; (2) contain recommendations received from individuals with the authority to issue TAOs; (3) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems; (4) contain an inventory of the items described in (1), (2), and (3) for which action has been taken and the result of such action; (5) contain an inventory of the items described in (1), (2), and (3) for which action remains to be completed and the period during which each item has remained on such inventory; (6) contain an inventory of the items described in (1), (2) and (3) for which no action has been taken, the period during which the item has remained on the inventory, the reasons for the inaction, and identify any IRS official who is responsible for the inaction; (7) identify any TAO that was not honored by the IRS in a timely manner; (8) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers; (9) describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and (10) include such other information as the Taxpayer Advocate deems advisable.

The reports of the Taxpayer Advocate are to be submitted directly to the Congressional Committees without prior review or comment from the Commissioner, Secretary, any other officer or employee of the Treasury, or the Office of Management and Budget.

House Bill

The House bill requires the Commissioner to obtain the approval of the IRS Oversight Board on the selection of the Taxpayer Advocate. A candidate for the Taxpayer Advocate must have either substantial experience representing taxpayers before the IRS or have substantial experience within the IRS. If the prospective Taxpayer Advocate was an officer or an employee of the IRS before being appointed as the Taxpayer Advocate, the individual is required to agree not to accept any employment with the IRS for at least 5 years after ceasing to be the Taxpayer Advocate.

The House bill modifies the information to be included in the December 31 report to the tax-writing committees. The report no longer needs to include information about the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers. The report identifies areas of the tax law that impose significant compliance burdens on taxpayers or the IRS, including specific recommendations for solving these problems. The Taxpayer Advocate also is required to work in conjunction with the National Director of Appeals to identify the 10 most litigated issues for each category of taxpayers, and include the list of issues and recommendations for mitigating such disputes in the report. Categories of taxpayers include, for example, individuals, self-employed individuals, small businesses, etc.

As under present law, the reports are submitted directly to the tax-writing committees, without review by the IRS Oversight Board, the Secretary of the Treasury, or any other officer or employee of the Department of the Treasury or the Office of Management and Budget.

In addition, the House bill imposes new responsibilities on the Taxpayer Advocate. The Taxpayer Advocate is requested to monitor the coverage and geographical allocation of problem resolution officers and develop guidance that outlines criteria to be used by IRS employees in referring taxpayer inquiries to problem resolution officers. In connection with these responsibilities, it is anticipated that the Taxpayer Advocate will work with the IRS District Offices to ensure convenient taxpayer access to the local problem resolution officer. For example, the local telephone number for the problem resolution officer in each district should be published and available to taxpayers.

It is intended that the Taxpayer Advocate will work with the Commissioner in developing career paths for local problem resolution officers, so that individuals can progress through the General Schedule in the same manner as examination employees, without having to leave the problem resolution system. In that regard, it is contemplated that the compensation levels of local and regional problem resolution officers should be the same as those of IRS personnel operating in other functional units. Under the current system, local problem resolution officers generally must return to an

audit or collection function to achieve promotion. This lack of a career path within the problem resolution system reduces the independence of the system. It is contemplated that, to the extent feasible, regional problem resolution officers should be selected from the available pool of local problem resolution officers.

Effective date.—The House bill provision is effective on the date of enactment, except that the post-employment restrictions on the Taxpayer Advocate do not apply to an individual holding that position on the date of enactment.

Senate Amendment

National Taxpayer Advocate

The Senate amendment renames the Taxpayer Advocate the "National Taxpayer Advocate." The Senate amendment provides that the IRS Oversight Board is to recommend to the Secretary 3 candidates for National Taxpayer Advocate from among individuals with a background in customer service as well as tax law and with experience representing individual taxpayers. The Secretary is required to choose a National Taxpayer Advocate from among the individuals recommended by the Oversight Board. An individual may be appointed as the National Taxpayer Advocate only if the individual was not an officer or employee of the IRS during the 2-year period ending with such appointment and the individual agrees not to accept employment with the IRS for at least 5 years after ceasing to be the National Taxpayer Advocate.

The Senate amendment replaces the present-law problem resolution system with a system of local Taxpayer Advocates who report directly to the National Taxpayer Advocate and who will be employees of the Taxpayer Advocate's Office, independent from the IRS examination, collection, and appeals functions. The National Taxpayer Advocate has the responsibility to evaluate and take personnel actions (including dismissal) with respect to any local Taxpayer Advocate or any employee in the Office of the National Taxpayer Advocate. In conjunction with the Commissioner, the National Taxpayer Advocate is required to develop career paths for local Taxpayer Advocates.

The National Taxpayer Advocate is required to monitor the coverage and geographical allocation of the local Taxpayer Advocates, develop guidance to be distributed to all IRS officers and employees outlining the criteria for referral of taxpayer inquires to local taxpayer advocates, ensure that the local telephone number for the local taxpayer advocate is published and available to taxpayers.

Each local Taxpayer Advocate may consult with the appropriate supervisory personnel of the IRS regarding the daily operation of the Office of the Taxpayer Advocate. At the initial meeting with any taxpayer seeking the assistance of the Office of the Taxpayer Advocate, the local taxpayer advocate is required to notify the taxpayer that the Office operated independently of any other IRS office and reports directly to Congress through the National Taxpayer Advocate. At the discretion of the local taxpayer advocate, the advocate shall not disclose to the IRS any contact with or information provided by the taxpayer. Each local Office of the Tax-

payer Advocate is to maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.

The IRS would be required to publish the taxpayer's right to contact the local Taxpayer Advocate on the statutory notice of deficiency.

Under the Senate amendment, the National Taxpayer Advocate is to appoint a counsel in the Office of the Taxpayer Advocate to report directly to the National Taxpayer Advocate.

Taxpayer assistance orders

The provision expands the circumstances under which a TAO may be issued. The Senate amendment provides that a "significant hardship" is deemed to occur if one of the following four factors exists: (1) there is an immediate threat of adverse action; (2) there has been a delay of more than 30 days in resolving the taxpayer's account problems; (3) the taxpayer will have to pay significant costs (including fees for professional services) if relief is not granted; or (4) the taxpayer will suffer irreparable injury, or a long-term adverse impact, if relief is not granted. These factors are not an exclusive list of what constitutes a significant hardship; a TAO may also be issued in other circumstances in which it is determined that the taxpayer is or will suffer a significant hardship. The Taxpayer Advocate is also authorized to issue a TAO in any circumstances that the Taxpayer Advocate considers appropriate for the issuance of a TAO.

In determining whether to issue a TAO in cases in which the IRS failed to follow applicable published guidance (including procedures set forth in the Internal Revenue Manual), the Taxpayer Advocate is to construe the matter in a manner most favorable to the taxpayer.

Reports of the National Taxpayer Advocate

The provision requires the annual report regarding the activities of the National Taxpayer Advocate for the most recently ended fiscal year to (in addition to the information required under present law): (1) identify areas of the tax law that impose significant compliance burdens on taxpayers or the IRS, including specific recommendations for remedying such problems; and (2) identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes.

Effective date

The Senate amendment provision is generally effective on the date of enactment. During the period before the appointment of the IRS Oversight Board, the National Taxpayer Advocate shall be appointed by the Secretary (taking into consideration individuals nominated by the Commissioner) from among individuals who have a background in customer service as well as tax law and experience in representing individual taxpayers. The provision providing that the Taxpayer Advocate reports directly to the Commissioner, the provision providing that the Taxpayer Advocate is appointed by the Secretary, and the restrictions on previous and subsequent employ-

ment of the Taxpayer Advocate do not apply to the individual serving as the Taxpayer Advocate on the date of enactment.

Conference Agreement

National Taxpayer Advocate

The conference agreement follows the Senate amendment, with modifications. The conference agreement does not include the Senate amendment provision that the IRS Oversight Board is to recommend to the Secretary 3 candidates for National Taxpayer Advocate; instead, the conference agreement provides that the National Taxpayer Advocate is appointed by the Secretary after consultation with the Commissioner and the Board (without regard to the provisions of Title 5 of the U.S. Code, relating to appointments in the competitive service or the Senior Executive Service). The conference agreement modifies the Senate amendment provision that an individual may be appointed as the National Taxpayer Advocate only if the individual was not an officer or employee of the IRS during the 2-year period ending with such appointment and the individual agrees not to accept employment with the IRS for at least 5 years after ceasing to be the National Taxpayer Advocate. The conference agreement provides that service as an officer or employee of the Office of the Taxpayer Advocate is not taken into account, for purposes of these 2-year and 5-year rules. The conference agreement also clarifies that the National Taxpayer Advocate's compensation is to be at the highest rate of basic pay established for the Senior Executive Service, or, if the Treasury Secretary so determines, at a rate fixed under 5 U.S. Code section 9503.

The conferees intend that the National Taxpayer Advocate's responsibility to appoint local taxpayer advocates and make available at least one local taxpayer advocate for each State means that a local taxpayer advocate will be available to taxpayers in each State.

The conference agreement does not include the Senate amendment provision that the National Taxpayer Advocate has the responsibility and authority to appoint a counsel in the Office of the Taxpayer Advocate to report directly to the National Taxpayer Advocate. The conferees intend that the National Taxpayer Advocate be able to hire and consult counsel as appropriate.

The conference agreement provides that each local taxpayer advocate reports to the National Taxpayer Advocate or his delegate. The committees intend that a delegate mean the taxpayer advocate for the appropriate organizational unit. It is not intended that a local taxpayer advocate report to a District Director of the IRS, for example. Providing reporting to a delegate of the National Taxpayer Advocate under the conference agreement is intended to provide reporting flexibility sufficient to take into account the necessities of any reorganization of the IRS.

Taxpayer assistance orders

The conference agreement follows the Senate amendment, except that the conference agreement does not include the Senate amendment provision that the Taxpayer Advocate is authorized to issue a TAO in any circumstances that the Taxpayer Advocate considers appropriate for the issuance of a TAO. Instead, the con-

ference agreement provides that the National Taxpayer Advocate may issue a TAO if the taxpayer meets requirements set forth in regulations. It is intended that the circumstances set forth in regulations be based on considerations of equity.

Effective date

The conference agreement follows the Senate amendment, with modifications. Under the conference agreement, the provisions are effective on date of enactment, except that in appointing the first National Taxpayer Advocate after date of enactment, the Treasury Secretary may not appoint anyone who was an officer or employee of the IRS at any time during the 2-year period ending on the date of appointment, and the Treasury Secretary need not consult with the Board if the Board has not been appointed.

E. Treasury Office of Inspector General; IRS Office of the Chief Inspector (secs. 1102 and 1103 of the Senate amendment)

Present Law

Treasury Inspector General

The Treasury Office of Inspector General ("Treasury IG") was established in 1988 and charged with conducting independent audits, investigations and review to help the Department of Treasury accomplish its mission, improve its programs and operations, promote economy, efficiency and effectiveness, and prevent and detect fraud and abuse. The Treasury IG derives its statutory authority under the Inspector General Act of 1978, as amended ("IG Act of 1978").

Appointment and qualifications

The IG Act of 1978 provides that the Treasury IG is selected by the President, with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Treasury IG can be removed from office by the President. The President must communicate the reasons for such removal to both Houses of Congress.

Duties and responsibilities

The Treasury IG generally is authorized to conduct, supervise and coordinate internal audits and investigations relating to the programs and operations of the Treasury, including all of its bureaus and offices.[20] Special rules apply, however, with respect to the Treasury IG's jurisdiction over ATF, Customs, the Secret Service and the IRS—the four so-called "law enforcement bureaus." Upon its establishment, the Treasury IG assumed the internal

[20] The Treasury Department organization includes the Departmental offices as well as the Bureau of Alcohol, Tobacco and Firearms ("ATF"), the Office of the Comptroller of the Currency ("OCC"), the U.S. Customs Service ("Customs"), the Bureau of Engraving and Printing, the Federal Law Enforcement Training Center, the Financial Management Service, the U.S. Mint, the Bureau of the Public Debt, the U.S. Secret Service ("Secret Service"), the Office of Thrift Supervision, and the IRS.

audit functions previously performed by the offices of internal affairs of ATF, Customs and the Secret Service. Although the Treasury IG was granted oversight responsibility for the internal investigations performed by the Office of Internal Affairs of ATF, the Office of Internal Affairs of Customs, and the Office of Inspections of the Secret Service, the internal investigation or inspection functions of these offices remained with the respective bureaus. The Treasury IG did not assume responsibility for either the internal audit or inspection functions of the IRS Office of the Chief Inspector. However, it was directed to oversee the internal audits and internal investigations performed by the IRS Office of the Chief Inspector.

The Commissioner and the Treasury IG have entered into two Memorandums of Understanding ("MOUs")[21] to clarify the respective roles of the IRS Office of the Chief Inspector and the Treasury IG in two primary areas: (1) the investigation of allegations of wrongdoing by IRS executives and employees in situations where the independence of the Office of the Chief Inspector could be questioned, and (2) oversight by the Treasury IG of the IRS Office of the Chief Inspector.[22] Pursuant to the 1990 MOU, the Commissioner agreed to transfer 21 FTEs and $1.9 million from the IRS appropriation to the Treasury IG appropriation to be used for the following purposes: (1) oversight of the operations of the Office of the Chief Inspector; (2) conduct of special reviews of IRS operations; (3) investigation of allegations of misconduct concerning the Commissioner, the Senior Deputy Commissioner, and employees of the IRS Office of the Chief Inspector; and (4) investigation of allegations of misconduct where the independence of the IRS Office of the Chief Inspector might be questioned. With respect to item (4), the Commissioner and Treasury IG agreed that all allegations of misconduct involving IRS executives and managers (Grade 15 and above), as well as any other allegation involving "significant or notorious" matters were to be referred to the Treasury IG, and that investigations arising out of such referrals generally would be conducted by the Treasury IG.

In general, under the IG Act of 1978, Inspectors General are instructed to report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. However, in matters involving criminal violations of the Internal Revenue Code, the Treasury IG may report to the Attorney General only those offenses under section 7214 of the Code (unlawful acts of revenue officers or agents, including extortion, bribery and fraud) without the consent of the Commissioner.

Authority

The Treasury IG reports to and is under the general supervision of the Secretary of Treasury, acting through the Deputy Sec-

[21] The first MOU was entered into in 1990 and the second in 1994.

[22] Treasury Directive 40–01 (September 21, 1992) reiterates that the Treasury IG is responsible for investigating alleged misconduct on the part of IRS employees at the grade 15 level and above, all employees of the Office of the Chief Inspector. In addition, Treasury Directive 40–01 states that the Treasury IG is responsible for investigating alleged misconduct on the part of Office of Chief Counsel employees (excluding employees of the National Director, Office of Appeals).

retary. In general, the Secretary cannot prevent or prohibit the Treasury IG from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena during the course of any audit or investigation.

However, section 8D of the IG Act of 1978 grants the Secretary authority to prohibit audits or investigations by the Treasury IG under certain circumstances. In particular, the Treasury IG is under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning: (1) ongoing criminal investigations or proceedings; (2) undercover operations; (3) the identity of confidential sources, including protected witnesses; (4) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior; (5) intelligence or counterintelligence matters; (6) other matters the disclosure of which would constitute a serious threat to national security or to the protection of certain persons. With respect to audits, investigations or subpoenas that require access to the above-listed information, the Secretary may prohibit the Treasury IG from carrying out such audit, investigation or subpoena if the Secretary determines that such prohibition is necessary to prevent the disclosure of such information or to prevent significant impairment to the national interests of the United States. The Secretary must provide written notice of such a prohibition to the Treasury IG, who must, in turn, transmit a copy of such notice to the Committees on Government Reform and Oversight and Ways and Means of the House and the Committees on Governmental Affairs and Finance of the Senate.

Access to taxpayer returns and return information

The Treasury IG has access to taxpayer returns and return information under section 6103(h)(1) of the Code. However, such access is subject to certain special requirements, including the requirement that the Treasury IG notify the IRS Office of the Chief Inspector (or the Deputy Commissioner in certain circumstances) of its intent to access returns and return information.

Reporting requirements

Under the IG Act of 1978, the Treasury IG reports to the Congress semiannually on its activities. Reports from the Treasury IG are transmitted to the Committees on Government Reform and Oversight and Ways and Means of the House and the Committees on Governmental Affairs and Finance of the Senate.

Resources

For fiscal year 1997, the Treasury IG had 296 FTEs and total funding of $29.7 million. 174 FTEs were assigned to the Treasury IG's audit function and 61 were assigned to the investigative function. The remaining FTEs were divided among the following functions: evaluations, legal, program, technology and administrative support. Of the total Treasury IG FTEs, approximately 23 were used for IRS oversight activities in fiscal year 1997.

IRS Office of Chief Inspector

The IRS Office of the Chief Inspector (also known as the "Inspection Service") was established on October 1, 1951, in response to publicity revealing widespread corruption in the IRS. At the time of its creation, President Harry S. Truman stated, "A strong, vigorous inspection service will be established and will be made completely independent of the rest of the Internal Revenue Service."

Appointment of the Chief Inspector

In 1952, the Office of the Assistant Commissioner (Inspection) was established. The office was redesignated as the Office of the Chief Inspector on March 25, 1990. The Chief Inspector is appointed by the Commissioner. In this regard, pursuant to Treasury Director 40-01, the Commissioner must consult with the Treasury IG before selecting candidates for the position of Chief Inspector (and all other senior executive service ("SES") positions in the Office of the Chief Inspector). The Commissioner must also consult with the Treasury IG regarding annual performance appraisals for the Chief Inspector and other SES officials.

The Office of the Chief Inspector consists of a National Office and the offices of the Regional Inspectors. The offices of the Regional Inspectors are located in the same cities and have the same geographic boundaries as the offices of the four IRS Regional Commissioners. The Regional Inspectors report directly to the Chief Inspector.

Duties and responsibilities

The Office of the Chief Inspector generally is responsible for carrying out internal audits and investigations that: (1) promote the economic, efficient, and effective administration of the nation's tax laws; (2) detect and deter fraud and abuse in IRS programs and operations; and (3) protect the IRS against external attempts to corrupt or threaten its employees. The Chief Inspector reports directly to the Commissioner and Deputy Commissioner of the IRS.

The IRS Inspection Service is divided into three functions: Internal Security, Internal Audit, and Integrity Investigations and Activities. Internal Security's responsibilities include criminal investigations (employee conduct, bribery, assault and threat and investigations of non-IRS employees for acts such as impersonation, theft, enrolled agent misconduct, disclosure, and anti-domestic terrorism) investigative support activities (including forensic lab, computer investigative support, and maintenance of law enforcement equipment), protection, and background investigations.

Internal Audit is responsible for providing IRS management with independent reviews and appraisals of all IRS activities and operations. In addition, Internal Audit makes recommendations to improve the efficiency and effectiveness of programs and to assist IRS officials in carrying out their program and operational responsibilities. In this regard, Internal Audit generally conducts performance reviews (program audits, system development audits, internal control audits) and financial reviews (financial statement audits and financial related reviews).

Integrity Investigations and Activities are joint internal audit and internal security operations undertaken as a proactive effort to detect and deter fraud and abuse within the IRS. Integrity Investigations and Activities also includes the UNAX Central Case Development Center. The Center was developed in October, 1997, in response to the Taxpayer Browsing Protection Act of 1997. Its purpose is to detect unauthorized accesses to IRS computer systems by IRS employees and to refer such instances to Internal Security investigators for further investigation.

Authority

The Chief Inspector derives specific and general authority from delegation by the Commissioner and Deputy Commissioner. In addition, under section 7608(b) of the Code, the Chief Inspector is authorized to perform certain functions in connection with the duty of enforcing any of the criminal provisions of the Code, including executing and serving search and arrest warrants, serving subpoenas and summonses, making arrests without warrant, carrying firearms, and seizing property subject to forfeiture under the Code.

Access to taxpayer returns and return information

The Office of the Chief Inspector has full access to taxpayer returns and return information.

Reporting requirements

The Office of the Chief Inspector reports facts developed through its internal audit and internal security activities to IRS management officials, who are charged with the responsibility of reviewing IRS activities. The results of the Chief Inspector's internal audit and internal security activities also are reported to the Treasury IG and are included in the Treasury IG's semiannual reports to Congress.

Internal audit reports prepared by the Office of the Chief Inspector are provided monthly to the Government Accounting Office, as well as to the House and Senate Appropriations Committees. In addition, a monthly list of Internal Audit reports is provided to Treasury and the Office of Management and Budget. Reports of Investigation regarding criminal conduct are referred to the Department of Justice for prosecution.

Resources

The IRS Office of the Chief Inspector had 1,202 FTEs for 1997 and total funding of $100.1 million. Of these FTEs, approximately 442 performed Internal Audit functions, 511 performed Internal Security functions, and 94 performed Integrity Investigations and Activities. Of the remaining FTEs, approximately 95 were dedicated to information technology functions and 60 staffed the offices of the Chief Inspector and the Regional Inspectors.

House Bill

No provision.

Senate Amendment

In general

The Senate amendment establishes a new, independent, Treasury Inspector General for Tax Administration ("Treasury IG for Tax Administration") within the Department of Treasury. The IRS Office of the Chief Inspector is eliminated, and all of its powers and responsibilities are transferred to the Treasury IG for Tax Administration. The Treasury IG for Tax Administration has the powers and responsibilities generally granted to Inspectors General under the IG Act of 1978, without the limitations that currently apply to the Treasury IG under section D of the Act. The role of the existing Treasury IG is redefined to exclude responsibility for the IRS. The Treasury IG for Tax Administration is under the supervision of the Secretary of Treasury, with certain additional reporting to the Board and the Congress.

Appointment and qualifications of Treasury IG for Tax Administration

The Treasury IG for Tax Administration is selected by the President, with the advice and consent of the Senate. The Treasury IG for Tax Administration can be removed from office by the President. The President must communicate the reasons for such removal to both Houses of Congress.

The Treasury IG for Tax Administration must be selected without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. In addition, however, the Treasury IG for Tax Administration should have experience in tax administration and demonstrated ability to lead a large and complex organization. The Treasury IG for Tax Administration may not be employed by the IRS within the two years preceding and the five years following his or her appointment.

The Treasury IG for Tax Administration is required to appoint an Assistant Inspector General for Auditing and an Assistant Inspector for Inspections. Under the Senate amendment, such appointees, as well as any Deputy Inspector General(s) appointed by the Treasury IG for Tax Administration, may not be employed by the IRS within the two years preceding and the five years following their appointments.

Duties and responsibilities of Treasury IG for Tax Administration

The Treasury IG for Tax Administration has the present-law duties and responsibilities currently delegated to the Treasury IG with respect to the IRS. In addition, the Treasury IG for Tax Administration assumes all of the duties and responsibilities currently delegated to the IRS Office of the Chief Inspector. The Treasury IG for Tax Administration has jurisdiction over IRS matters, as well as matters involving the Board.

Accordingly, the Treasury IG for Tax Administration is charged with conducting audits, investigations, and evaluations of IRS programs and operations (including the Board) to promote the

economic, efficient and effective administration of the nation's tax laws and to detect and deter fraud and abuse in IRS programs and operations. In this regard, the Treasury IG for Tax Administration specifically is directed to evaluate the adequacy and security of IRS technology on an ongoing basis. In addition, the Treasury IG for Tax Administration is responsible for protecting the IRS against external attempts to corrupt or threaten its employees. The Treasury IG for Tax Administration is charged with investigating allegations of criminal misconduct (e.g., Code sections 7212, 7213, 7214, 7216 and new section 7217), as well as administrative misconduct (e.g., violations of the Taxpayer Bill of Rights and the Taxpayer Bill of Rights 2, the Office of Government Ethics Standards of Ethical Conduct and the IRS Supplemental Standards of Ethical Conduct).

In addition, the Senate amendment directs the Treasury IG for Tax Administration to implement a program periodically to audit at least one percent of all determinations (identified through a random selection process) where the IRS has asserted either section 6103 (directly or in connection with the Freedom of Information Act or the Privacy Act) or law enforcement considerations (i.e., executive privilege) as a rationale for refusing to disclose requested information. The program must be implemented within 6 months after establishment of the Treasury IG for Tax Administration. The Treasury IG for Tax Administration is directed to report any findings of improper assertion of section 6103 or law enforcement considerations to the Board.

Further, the Treasury IG for Tax Administration is directed to establish a toll-free confidential telephone number for taxpayers to register complaints of misconduct by IRS employees and to publish the telephone number in IRS Publication 1.

There are no restrictions on the Treasury IG for Tax Administration's ability to refer matters to the Department of Justice. Thus, the Treasury IG for Tax Administration is required to report to the Attorney General whenever the Treasury IG for Tax Administration has reasonable grounds to believe that there has been a violation of Federal criminal law.

Authority of Treasury IG for Tax Administration

The Treasury IG for Tax Administration reports to and is under the general supervision of the Secretary of Treasury. Under the Senate amendment, the Secretary cannot prevent or prohibit the Treasury IG for Tax Administration from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena during the course of any audit or investigation.

Under the Senate amendment, the Treasury IG for Tax Administration must provide to the Board all reports regarding IRS matters on a timely basis and conduct audits or investigations requested by the Board. The Treasury IG for Tax Administration also must, in a timely manner, conduct such audits or investigations and provide such reports as may be requested by the Commissioner.

In carrying out the duties and responsibilities described above, the Treasury IG for Tax Administration has the present-law authority generally granted to Inspectors General under the IG Act

of 1978. The limitations on the authority of the Treasury IG under such Act do not apply to the Treasury IG for Tax Administration. In addition, the Treasury IG for Tax Administration has the authority granted to the IRS Office of the Chief Inspector under present-law Code section 7608, including the right to execute and serve search and arrest warrants, to serve subpoenas and summonses, to make arrests without warrant, to carry firearms, and to seize property subject to forfeiture under the Code.

Resources

To ensure that the Treasury IG for Tax Administration has sufficient resources to carry out his or her duties and responsibilities under the Senate amendment, all but 300 FTEs from the IRS Office of the Chief Inspector are transferred to the Treasury IG for Tax Administration. Such FTEs include all of the FTEs performing investigative functions in the Office of the Chief Inspector Internal Security and Integrity Investigations and Activities. In addition, the 21 FTEs previously transferred from Inspection to Treasury IG pursuant to the 1990 MOU to perform oversight of the IRS are transferred to the Treasury IG for Tax Administration.

The Commissioner will retain approximately 300 FTEs from the IRS Office of the Chief Inspector to staff an audit function (including support staff) for internal IRS management purposes. Like other IRS functions, however, this audit function is subject to oversight and review by the Treasury IG for Tax Administration.

Access to taxpayer returns and return information

Taxpayer returns and return information are available for inspection by the Treasury IG for Tax Administration pursuant to section 6103(h)(1). Thus, the Treasury IG for Tax Administration has the same access to taxpayer returns and return information as does the Chief Inspector under present law.

Reporting requirements

The Treasury IG for Tax Administration is subject to the semiannual reporting requirements set forth in section 5 of the IG Act of 1978. As under present law, reports are made to the Committees on Government Reform and Oversight and Ways and Means of the House and the Committees on Governmental Affairs and Finance of the Senate. The reports must contain the information that is required to be reported by the Treasury IG with respect to the IRS under present law, as well as information regarding the source, nature and status of taxpayer complaints and allegations of serious misconduct by IRS employees received by the IRS or by the Treasury IG for Tax Administration. In addition, the Treasury IG for Tax Administration is required to report annually on certain additional information (e.g., regarding the use of enforcement statistics in evaluating IRS employees, the implementation of various taxpayer rights protections, and IRS employee terminations and mitigations) required by the Senate amendment.

Treasury IG

The Treasury IG generally continues to have its present-law responsibilities and authority with respect to all Treasury functions

other than the IRS and the Board. However, the Treasury IG generally does not have access to taxpayer returns and return information under section 6103 (unless the Secretary specifically authorizes such access).

The Treasury IG for Tax Administration operates independently of the Treasury IG. The Secretary of Treasury is directed to establish procedures pursuant to which the Treasury IG for Tax Administration and the Treasury IG shall coordinate audits and investigations in cases involving overlapping jurisdiction.

The Treasury IG continues to have responsibility for providing an opinion on the Department of Treasury's consolidated financial statement as required under the Chief Financial Officer Act. The Treasury IG for Tax Administration is responsible for rendering an opinion on the IRS custodial and administrative accounts (to the extent the Government Accounting Office does not exercise its option to preempt under the CFO Act).

Effective date.—The provision is effective 180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except as follows. The conference agreement provides that experience in tax administration is not among the qualifications applicable to the Treasury IG for Tax Administration. With respect to the authority of the Treasury IG for Tax Administration, the conference agreement provides that the Commissioner or the Oversight Board may request the Treasury IG for Tax Administration to conduct an audit or investigation relating to the IRS. If the Treasury IG for Tax Administration determines not to conduct an audit or investigation requested by the Commissioner or the Oversight Board, the Treasury IG for Tax Administration shall timely provide the requesting party with a written explanation of its determination. In this regard, the conferees intend that the Treasury IG for Tax Administration shall make all reasonable efforts to be responsive to the requests of the Commissioner and the Oversight Board. In addition, the conference agreement modifies the duties and responsibilities of the Treasury IG for Tax Administration by providing that the responsibility for (1) protecting IRS employees and (2) investigating the backgrounds of prospective IRS employees shall not be transferred to the Treasury IG for Tax Administration, but rather shall remain with the IRS.

F. Prohibition on Executive Branch Influence Over Taxpayer Audits (sec. 104 of the House bill and sec. 1105 of the Senate amendment)

Present Law

There is no explicit prohibition in the Code on high-level Executive Branch influence over taxpayer audits and collection activity.

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprison-

ment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

House Bill

The House bill makes it unlawful for a specified person to request that any officer or employee of the IRS conduct or terminate an audit or otherwise investigate or terminate the investigation of any particular taxpayer with respect to the tax liability of that taxpayer. The prohibition applies to the President, the Vice President, and employees of the executive offices of either the President or Vice President, as well as any individual (except the Attorney General) serving in a position specified in section 5312 of Title 5 of the United States Code (these are generally Cabinet-level positions). The prohibition applies to both direct requests and requests made through an intermediary.

Any request made in violation of this rule must be reported by the IRS employee to whom the request was made to the Chief Inspector of the IRS, who has the authority to investigate such violations and to refer any violations to the Department of Justice for possible prosecution, as appropriate. Anyone convicted of violating this provision will be punished by imprisonment of not more than 5 years or a fine not exceeding $5,000 (or both).

The general prohibition does not apply (1) to a request made to a specified person by a taxpayer or a taxpayer's representative that is forwarded by the specified person to the IRS; (2) to requests for disclosure of returns or return information under section 6103 if the request is made in accordance with the requirements of section 6103; and (3) to requests made by the Secretary of the Treasury as a consequence of the implementation of a change in tax policy.

Effective date.—The provision applies to violations occurring after the date of enactment.

Senate Amendment

Same as the House bill; in addition, the Senate amendment clarifies that the prohibition applies to direct or indirect requests.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

G. Review of Milwaukee and Waukesha IRS Offices (sec. 1106 of the Senate amendment)

Present Law

A task force was initiated in January, 1998, to conduct an investigation of the equal employment opportunity process in the IRS' Milwaukee and Waukesha, Wisconsin offices.

House Bill

No provision.

Senate Amendment

The Senate amendment directs the IRS Commissioner to appoint an independent expert in employment and personnel matters to review the investigation conducted by the task force and report to Congress with recommendations for action not later than July 1, 1999. The review should include a determination of the accuracy and validity of such investigation; and if determined necessary by the expert, a further investigation of such offices relating to: (1) the equal employment opportunity process; and (2) any alleged discriminatory employment-related actions, including any alleged violation of Federal law.

Effective date.—The Senate amendment provisions is effective on date of enactment.

Conference Agreement

The conference agreement follows the House bill. However, the conferees intend that the task force continue to its conclusion. The conferees intend that the General Accounting Office review the report of the task force and report to the House Committee on Ways and Means and the Senate Committee on Finance.

H. IRS Personnel Flexibilities (sec. 111 of the House bill and secs. 1201–1205 of the Senate amendment)

Present Law

The IRS is subject to the personnel rules and procedures set forth in title 5, United States Code, which regulate hiring, evaluating, promoting, and firing employees. Under these rules, IRS employees generally are classified under the General Schedule or the Senior Executive Service.

House Bill

In general

The House bill provides that the IRS exercise the personnel flexibilities consistently with existing rules relating to merit system principles, prohibited personnel practices, and preference eligibles. In those cases where the exercise of personnel flexibilities would affect members of the employees' union, such employees would not be subject to the exercise of any flexibility unless there is a written agreement between the IRS and the employees' union. The written agreement would not be a contract that could be appealed to the Federal Services Impasse Panel, or otherwise create additional appeal rights.

Performance management system

The House bill requires the IRS to establish a new performance management system within one year from the date of enactment. The performance management system would maintain individual accountability by: (1) establishing at least 2 standards of performance, the lowest of which would be the retention standard and would be equivalent to fully successful performance; (2) providing for periodic performance evaluations to determine whether em-

ployees are meeting all applicable retention standards; and (3) using the results of such employee's performance evaluation as a basis for adjustments in pay and other appropriate personnel actions. In addition, the performance management system would provide for: (1) establishing goals or objectives for individual, group or organizational performance and taxpayer service surveys; (2) communicating such goals or objectives to employees; and (3) using such goals or objectives to make performance distinctions among employees or groups of employees. It is intended that in no event would performance measures be used which rank employees or groups of employees based solely on enforcement results, establish dollar goals for assessments or collections, or otherwise undermine fair treatment of taxpayers.

Awards

The House bill addresses three types of awards. First, certain awards for superior accomplishments would continue to require certification to the Office of Personnel Management (OPM), but absent objection from OPM within 60 days, the Commissioner's recommendations for such awards would take effect. As with all awards, these awards would be made based on performance under the new performance management system, and in no case would awards be made (or performance measured) based solely or principally on tax enforcement results.

The second category of awards relates to the most senior managers in the IRS. The Commissioner has discretion, upon consultation with the IRS Oversight Board established under section 101 of the House bill, to make awards of up to 50 percent of salary to such manager, so long as the total compensation for an employee as a result of such award does not equal or exceed the annual rate of compensation for the Vice President for such calendar year. As with awards for superior accomplishments, OPM would have 60 days to object. The Commissioner would be required to prescribe regulations defining how determinations would be made as to whether an employee is eligible for such awards. In no case, however, would more than 8 employees be eligible to receive such awards in any calendar year.

The third category of awards would be based on savings and would encourage the practice of rewarding employees for developing more efficient methods of administration. A cash award under this category would not be based solely on tax enforcement results.

Streamlined procedures

The House bill streamlines the process of taking certain adverse actions for poor performance by (1) reducing the notice period for taking adverse actions from 30 days to 15 days, and (2) prohibiting appeals of the denial of a step increase to the Merit Systems Protections Board. Aggrieved employees could appeal such actions pursuant to internal agency procedures, including any procedures agreed to pursuant to collective bargaining agreements or pursuant to the written agreement authorizing the use of this flexibility.

Staffing flexibilities

The House bill provides the IRS with flexibility in filling certain permanent appointments in the competitive service by authorizing the IRS to fill such vacancies with either qualified veterans or qualified temporary employees. For purpose of this provision, a qualified veteran is an individual who is either a preference eligible or has been separated from the armed forces under honorable conditions after at least three years of active service, and who meets the minimum qualifications for the vacant position. A qualified temporary employee is defined under the bill as a temporary employee of the IRS with at least two years of continuous service, who has met all applicable retention standards and who meets the minimum qualifications for the vacant position.

The House bill authorizes the IRS to establish category rating systems for evaluating job applicants, under which qualified candidates are divided into two or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings. Managers would be authorized to select any candidate from the highest quality category, and would not be limited to the three highest ranked candidates. In administering these category rating systems, the IRS generally would be required to list preference eligibles ahead of other individuals within each quality category. The appointing authority, however, could select any candidate from the highest quality category, as long as existing requirements relating to passing over preference eligibles were satisfied.

The House bill authorizes the Commissioner to reassign or remove career appointees in the Senior Executive Service immediately upon taking office.

The House bill authorizes the Commissioner to establish probation periods for IRS employees of up to 3 years, when the Commissioner determines that a shorter period is not sufficient for an employee to demonstrate proficiency in a position.

Demonstration projects

The House bill authorizes the Commissioner to conduct 1 or more demonstration projects to (1) improve personnel management, (2) provide increased individual accountability, (3) eliminate obstacles to the removal or imposing any disciplinary action with respect to poor performers, subject to the requirements of due process, (4) expedite appeals from adverse actions or performance-based actions, and (5) promote pay based on performance.

The House bill maintains a number of the existing prohibitions on demonstration projects, including the prohibition on using demonstration projects to waive any requirement of title 5 relating to family and medical leave. The House bill requires the IRS to negotiate a written agreement with the employees' union to the extent that the implementation of a demonstration project affects such employees.

The House bill establishes a general time limitation of 5 years on the duration of any demonstration project. However, if the Commissioner and the Director of OPM concur, a demonstration project could be extended for an additional 2 years if necessary to validate the results of the project. Not later than 6 months prior to the ter-

mination of a project, the House bill would require the Commissioner to submit a legislative proposal to the Congress if the Commissioner determines that such project should be made permanent.

Effective date

The provision is effective on the date of enactment.

Senate Amendment

In general

The Senate amendment is the same as the House bill except that negotiation impasses between the IRS and the employees' union may be appealed to the Federal Services Impasse Panel.

Senior management and technical positions

Streamlined critical pay authority

The Senate amendment provides a streamlined process for the Secretary of the Treasury, or his delegate, to fix the compensation of, and appoint up to 40 individuals to, designated critical technical and professional positions, provided that: (1) the positions require expertise of an extremely high level in a technical, administrative or professional field and are critical to the IRS; (2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position; (3) designation of such positions is approved by the Secretary; (4) the terms of such appointments are limited to no more than four years; (5) appointees to such positions are not IRS employees immediately prior to such appointment; and (6) the total annual compensation for any position (including performance bonuses) does not exceed the rate of pay of the Vice President (currently, $175,400).

These appointments are not subject to the otherwise applicable requirements under title 5. All such appointments will be excluded from the collective bargaining unit and the appointments will not be subject to approval of the Office of Management and Budget ("OMB") or the Office of Personnel Management ("OPM").

The streamlined authority will be limited to a period of 10 years.

Critical pay authority

The Senate amendment provides OMB with authority to set the pay for certain critical pay positions requested by the Secretary under section 5377 of title 5 of the United States Code at levels higher than authorized under current law. These critical pay positions would be critical technical, administrative and professional positions other than those designated under the streamlined authority. The Senate amendment authorizes OMB to approve requests for critical position pay up to the rate of pay of the Vice President (currently, $175,400).

Recruitment, retention and relocation incentives

The Senate amendment authorizes the Secretary to vary from the existing provisions governing recruitment, retention and relocation incentives. The authority will be for a period of 10 years and will be subject to OPM approval.

Career-reserve Senior Executive Service ("SES") positions

The Senate amendment broadens the definition of a "career reserved position" in the SES to include a limited emergency appointee or a limited term appointee who, immediately upon entering the career-reserved position, was serving under a career or a career-conditional appointment outside the SES or whose limited emergency or limited term appointment is approved in advance by OPM. The number of appointments to these SES positions will be limited to up to 10 percent of the total number of SES positions available to the IRS. These positions will be limited to a 3-year term, with the option of extending the term for 2 more 3-year terms.

Performance management system

The Senate amendment is the same as the House bill except that (1) the Senate amendment does not require that the IRS establish the performance management system within one year from the date of enactment, and (2) the Senate amendment does not provide for the establishment of at least 2 standards of performance. The Senate amendment permits the IRS to establish one or more retention standards for each employee related to the work of the employee and expressed in terms of performance.

Awards

The Senate amendment is the same as the House bill except that the Senate amendment (1) provides that awards for superior accomplishments between $10,000 and $25,000 would not be subject to OPM approval, and (2) provides the Secretary with the authority to provide performance bonus awards to IRS senior executives of up to one-third of the individual's annual compensation. The bonus award would be based on meeting preset performance goals established by the IRS. An individual's total annual compensation, including the bonus, cannot exceed the rate of pay of the Vice President. The authority will not be subject to OPM approval. It is anticipated that the bonuses will not be available to more than 25 IRS senior executives annually.

Staffing flexibilities

The Senate amendment is the same as the House bill, except that the Senate amendment (1) does not include the requirement that the IRS fill vacancies with qualified veterans, and (2) does not authorize the Commissioner to reassign or remove career appointees in the Senior Executive Service immediately upon taking office. The current law rule which provides that career appointees may not be involuntarily removed within 120 days after the appointment of the head of the agency continues to apply.

The Senate amendment authorizes the Secretary to establish one or more broad band pay systems covering all or any portion of the IRS workforce, subject to OPM criteria.

The Senate amendment authorizes the IRS to use Voluntary Separation Incentive Pay ("buyouts") through December 31, 2002. The use of voluntary separation incentive is not intended to reduce the total number of Full-Time Equivalent ("FTE") positions in the IRS.

Demonstration projects

The Senate amendment is the same as the House bill except that the Senate amendment (1) does not include the prohibitions on demonstration projects, and (2) provides authority to the Secretary and OPM to waive the termination of a demonstration project, thereby making it permanent. At least 90 days prior to waiving the termination date OPM will be required to publish a notice of such intent in the Federal Register and inform the appropriate Committees (including the House Ways and Means Committee, the House Government Reform and Oversight Committee, the Senate Finance Committee and the Senate Governmental Affairs Committee) of both Houses of Congress in writing.

Mandatory employee terminations

The Senate amendment requires the IRS to terminate an employee for certain proven violations committed by the employee in connection with the performance of official duties. The violations include: (1) failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) providing a false statement under oath material to a matter involving a taxpayer; (3) falsifying or destroying documents to avoid uncovering mistakes made by the employee with respect to a matter involving a taxpayer; (4) assault or battery on a taxpayer or other IRS employee; (5) violation of the civil rights of a taxpayer or other IRS employee; (6) violations of the Internal Revenue Code, Treasury Regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating or harassing a taxpayer or other IRS employee; (7) willful misuse of section 6103 for the purpose of concealing data from a Congressional inquiry; (8) willful failure to file any tax return required under the Code on or before the due date (including extensions) unless failure is due to reasonable cause; (9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause; and (10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

The Senate amendment provides non-delegable authority to the Commissioner to determine that mitigating factors exist, that, in the Commissioner's sole discretion, mitigate against terminating the employee. The Senate amendment also provides that the Commissioner, in his sole discretion, may establish a procedure which will be used to determine whether an individual should be referred for such a determination by the Commissioner. The Treasury IG is required to track employee terminations and terminations that would have occurred had the Commissioner not determined that there were mitigation factors and include such information in the IG's annual report.

IRS employee training program

The Senate amendment requires the IRS to place a high priority on employee training and to adequately fund employee training programs. The bill also requires the IRS to provide to the Congressional tax writing committees a comprehensive multi-year plan to: (1) ensure adequate customer service training; (2) review the organizational design of customer service; (3) implement a performance

development system; and (4) provide for at least sixteen hours of conflict management training during 1999 for collection employees.

Effective date

The provision is effective on the date of enactment except that the IRS employee training program would be effective 90 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with modifications. The conference agreement includes the House bill provision requiring the IRS to establish a new performance management system within one year from the date of enactment.

The conferees intend to give the IRS flexibility to establish a new performance management system. The conferees expect that this will refocus the IRS' personnel system on the overall mission of the IRS and how each employee's performance relates to that mission. Although the new performance standards are premised on the notion of retention, such standards should go beyond simply establishing a retention/non-retention or pass-fail performance system. At a minimum, the conferees believe that there should be at least one standard above the retention standard. This will enable managers to make meaningful distinctions among employees based on performance, to encourage employees to perform at a higher level and to reward superior performance.

The conference agreement permits the Secretary to appoint an individual, who was appointed an IRS employee on or after June 1, 1998, to a critical pay position under the streamlined critical pay authority.

The conference agreement also authorizes the IRS to pay certain relocation expenses for individuals appointed to critical pay positions after June 1, 1998. This authority is for a period of 10 years after the date of enactment.

The provision (in particular the written agreement requirement) is not intended to expand the jurisdiction of the Federal Service Impasses Panel.

With respect to mandatory terminations of employees for certain proven violations committed by the employee in connection with the performance of official duties, the conference agreement modifies the definitions of some of the violations. The definitions of the other violations are the same as the Senate amendment. The modified definitions are: (1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets; (2) assault or battery on a taxpayer or other IRS employee, but only if there is a criminal conviction or a final judgment by a court in a civil case, with respect to the assault or battery; (3) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative; and (4) with respect to a taxpayer, taxpayer representative, or other IRS employee, the violation of any right under the U.S. Constitution, or any civil right established under titles VI or VII of the Civil Rights Act of 1964, title IX of the Educational Amendments of 1972, the Age Discrimination in Employment Act

of 1967, the Age Discrimination Act of 1975, sections 501 or 504 of the Rehabilitation Act of 1973 and title I of the Americans with Disabilities Act of 1990.

The conference agreement also provides that the Commissioner is to implement an employee training program no later than 180 days after enactment.

TITLE II. ELECTRONIC FILING

A. Electronic Filing of Tax and Information Returns (sec. 201 of the House bill and sec. 2001 of the Senate amendment)

Present Law

Treasury Regulations section 1.6012-5 provides that the Commissioner may authorize a taxpayer to elect to file a composite return in lieu of a paper return. An electronically filed return is a composite return consisting of electronically transmitted data and certain paper documents that cannot be electronically transmitted.

The IRS periodically publishes a list of the forms and schedules that may be electronically transmitted, as well as a list of forms, schedules, and other information that cannot be electronically filed.

During the 1997 tax filing season, the IRS received approximately 20 million individual income tax returns electronically.

House Bill

The House bill states that the policy of Congress is to promote paperless filing, with a long-range goal of providing for the filing of at least 80 percent of all tax returns in electronic form by the year 2007. The provision requires the Secretary of the Treasury to establish a strategic plan to eliminate barriers, provide incentives, and use competitive market forces to increase taxpayer use of electronic filing. The provision requires all returns prepared in electronic form but filed in paper form to be filed electronically, to the extent feasible, by the year 2002.

The provision requires the Secretary to promote electronic filing and to create an electronic commerce advisory group and to report annually to the Congress on electronic filing implementation issues.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill, except as follows. The Senate amendment also states that it is the policy of Congress that electronic filing should be a voluntary option for taxpayers. The Senate amendment also requires that the annual report discuss the effects on small businesses and the self-employed of electronically filing tax and information returns.

In addition, the Senate amendment states that the policy of Congress is that the IRS should cooperate with the private sector by encouraging competition to increase electronic filing.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement generally follows the Senate amendment, except that the provision in the Senate amendment that states that it is the policy of Congress that electronic filing should be a voluntary option for taxpayers is deleted.[1] The provision on private sector cooperation is clarified to provide that the IRS should cooperate with and encourage the private sector by encouraging competition to increase electronic filing of returns. The intent of the conferees with respect to this provision is for the IRS and Treasury to press for robust private sector competition. When disputes arise between the IRS and the private sector on the question of whether services offered by the IRS inhibit competition or are appropriate services not reasonably available to taxpayers or tax preparers, the Electronic Commerce Advisory Group shall recommend to the IRS Commissioner an appropriate course of action. Those recommendations shall also be made available to the Congress. Notwithstanding the previous sentence, the conferees also intend that the IRS should continue to offer and improve its Telefile program and make available a comparable program on the Internet.

B. Due Date for Certain Information Returns (sec. 202 of the House bill and sec. 2002 of the Senate amendment)

Present Law

Information such as the amount of dividends, partnership distributions, and interest paid during the calendar year must be supplied to taxpayers by the payors by January 31 of the following calendar year. The payors must file an information return with the IRS with the information by February 28 of the year following the calendar year for which the return must be filed. Under present law, the due date for filing information returns with the IRS is the same whether such returns are filed on paper, on magnetic media, or electronically. Most information returns are filed on magnetic media (such as computer tapes), which are physically shipped to the IRS.

House Bill

The House bill provides an incentive to filers of information returns to use electronic filing by extending the due date for filing such returns with the IRS from February 28 (under present law) to March 31 of the year following the calendar year to which the return relates.

Effective date.—Information returns required to be filed after December 31, 1999.

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[1] No inference is intended by this deletion. Present law (section 6011(e)(1) of the Code) already states that returns of any tax imposed by subtitle A (income taxes and self-employment taxes) on individuals, estates and trusts may not be required to be filed in any format (such as by electronic means) other than on paper forms supplied by the IRS.

Senate Amendment

Same as the House bill except that the Senate amendment also requires the Treasury to issue a study evaluating the merits and disadvantages, if any, of extending the deadline for providing taxpayers with copies of information returns (other than Forms W-2) from January 31 to February 15.

Effective date.—Same as the House bill, except that the Treasury study is due by December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, except that the Treasury study is due by June 30, 1999.

C. Paperless Electronic Filing (sec. 203 of the House bill and sec. 2003 of the Senate amendment)

Present Law

Code section 6061 requires that tax forms be signed as required by the Secretary. The IRS will not accept an electronically filed return unless it has also received a Form 8453, which is a paper form that contains signature information of the filer.

A return generally is considered timely filed when it is received by the IRS on or before the due date of the return. If the requirements of Code section 7502 are met, timely mailing is treated as timely filing. If the return is mailed by registered mail, the dated registration statement is prima facie evidence of delivery.

The IRS periodically publishes a list of the forms and schedules that may be electronically transmitted, as well as a list of forms, schedules, and other information that cannot be electronically filed.

House Bill

The House bill requires the Secretary to develop procedures that would eliminate the need to file a paper form relating to signature information. Until the procedures are in place, the provision authorizes the Secretary to provide for alternative methods of signing all returns, declarations, statements, or other documents or to waive the signature requirement. An alternative method of signature would be treated identically, for both civil and criminal purposes, as a signature on a paper form.

The provision also provides rules for determining when electronic returns are deemed filed and for authorization for return preparers to communicate with the IRS on matters included on electronically filed returns.

The provision requires the Secretary to establish procedures, to the extent practicable, to receive all forms electronically for taxable periods beginning after December 31, 1998.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill, with the following exceptions. (1) The Senate amendment deletes the provision permitting the Secretary

to waive the signature requirement. (2) The Secretary of the Treasury must establish procedures for all tax forms, instructions, and publications created in the most recent 5-year period to be made available electronically on the Internet in a searchable database not later than the date such records are available to the public in printed form. (3) The Secretary of the Treasury must, to the extent practicable, establish procedures for other taxpayer guidance to be made available electronically on the Internet in a searchable database not later than the date such guidance is available to the public in printed form.

Effective date.—Generally effective on the date of enactment. The provision which relates to Internet access to IRS forms, instructions, publications, and guidance is effective for taxable periods beginning after December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, except as follows. The Secretary is permitted to waive the signature requirement, but only returns signed or subscribed under alternative methods prescribed by the Secretary (not including waiver) are entitled to be treated as though signed or subscribed. The provision that requires the Secretary, to the extent practicable, to receive all forms electronically applies to taxable periods after December 31, 1999. The provision relating to authorizing return preparers to communicate with the IRS on matters included on electronically filed returns is clarified.

D. Return-Free Tax System (sec. 204 of the House bill and sec. 2004 of the Senate amendment)

Present Law

Under present law, taxpayers generally are required to calculate their own tax liabilities and submit returns showing their calculations.

House Bill

The provision requires the Secretary or his delegate to study the feasibility of, and develop procedures for, the implementation of a return-free tax system for appropriate individuals for taxable years beginning after 2007. The Secretary is required annually to report to the tax-writing committees on the progress of the development of such system. The Secretary is required to make the first report on the development of the return-free tax system to the tax-writing committees by June 30, 2000.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

E. Access to Account Information (sec. 205 of the House bill and sec. 2005 of the Senate amendment)

Present Law

Taxpayers who file their returns electronically cannot review their accounts electronically.

House Bill

The House bill requires the Secretary to develop procedures not later than December 31, 2006, under which a taxpayer filing returns electronically (or the taxpayer's designee under section 6103(c)) could review the taxpayer's own account electronically, but only if all necessary privacy safeguards are in place by that date.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill, except that the Secretary is also required to issue an interim progress report to the tax-writing committees by December 31, 2003.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

TITLE III. TAXPAYER PROTECTION AND RIGHTS

A. Burden of Proof (sec. 301 of the House bill and sec. 3001 of the Senate amendment)

Present Law

Under present law, a rebuttable presumption exists that the Commissioner's determination of tax liability is correct. "This presumption in favor of the Commissioner is a procedural device that requires the plaintiff to go forward with prima facie evidence to support a finding contrary to the Commissioner's determination. Once this procedural burden is satisfied, the taxpayer must still carry the ultimate burden of proof or persuasion on the merits. Thus, the plaintiff not only has the burden of proof of establishing that the Commissioner's determination was incorrect, but also of establishing the merit of its claims by a preponderance of the evidence" (*Danville Plywood Corp.* v. *U.S.*, U.S. Cl. Ct., 63 AFTR 2d 89–1036, 1043 (1989)).

The general rebuttable presumption that the Commissioner's determination of tax liability is correct is a fundamental element of the structure of the Internal Revenue Code. Although this presumption is judicially based, rather than legislatively based, there is considerable evidence that the presumption has been repeatedly considered and approved by the Congress. This is the case because the Internal Revenue Code contains a number of civil provisions that explicitly place the burden of proof on the Commissioner in specifically designated circumstances.

House Bill

The House bill provides that the Secretary shall have the burden of proof in any court proceeding with respect to a factual issue if the taxpayer asserts a reasonable dispute with respect to any such issue relevant to ascertaining the taxpayer's income tax liability. Two conditions apply. First, the taxpayer must fully cooperate at all times with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer, as reasonably requested by the Secretary).[2] Full cooperation also includes providing reasonable assistance to the Secretary in obtaining access to and inspection of witnesses, information, or documents not within the control of the taxpayer (including any witnesses, information, or documents located in foreign countries).[3] A necessary element of fully cooperating with the Secretary is that the taxpayer must exhaust his or her administrative remedies (including any appeal rights provided by the IRS). The taxpayer is not required to agree to extend the statute of limitations to be considered to have fully cooperated with the Secretary. Second, certain taxpayers must meet the net worth limitations that apply for awarding attorney's fees. In general, corporations, trusts, and partnerships whose net worth exceeds $7 million are not eligible for the benefits of the provision. The taxpayer has the burden of proving that it meets each of these conditions, because they are necessary prerequisites to establishing that the burden of proof is on the Secretary.

The provision explicitly states that nothing in the provision shall be construed to override any requirement under the Code or regulations to substantiate any item. Accordingly, taxpayers must meet all applicable substantiation requirements, whether generally imposed or imposed[4] with respect to specific items, such as charitable contributions[5] or meals, entertainment, travel, and certain other expenses.[6] Substantiation requirements include any requirement of the Code or regulations that the taxpayer establish an item to the satisfaction of the Secretary.[7] Taxpayers who fail to substantiate any item in accordance with the legal requirement of substantiation will not have satisfied all of the legal conditions that are prerequisite to claiming the item on the taxpayer's tax return and will accordingly be unable to avail themselves of this provision regarding the burden of proof. Thus, if a taxpayer required to sub-

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[2] This requirement parallels the present-law provision relating to reasonable verification of information returns (sec. 6201(d)).

[3] Full cooperation also includes providing English translations, as reasonably requested by the Secretary.

[4] See e.g., Sec. 6001 and Treas. Reg. sec. 1.6001–1 requiring every person liable for any tax imposed by this Title to keep such records as the Secretary may from time to time prescribe, and secs. 6038 and 6038A requiring United States persons to furnish certain information the Secretary may prescribe with respect to foreign businesses controlled by the U.S. person.

[5] Sec. 170(a)(1) and (f)(8) and Treas. Reg. sec. 1.170A–13.

[6] Sec. 274(d) and Treas. Reg. sec. 1.274(d)–1, 1.274–5T, and 1.274–5A.

[7] For example, sec. 905(b) of the Code provides that foreign tax credits shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary all information necessary for the verification and computation of the credit. Instructions for meeting that requirement are set forth in Treas. Reg. sec. 1.905–2.

stantiate an item fails to do so in the manner required (or destroys the substantiation), this burden of proof provision is inapplicable.[8]

Effective date.—The provision applies to court proceedings arising in connection with examinations commencing after the date of enactment.

Senate Amendment

The Senate amendment provides that the Secretary shall have the burden of proof in any court proceeding with respect to a factual issue if the taxpayer introduces credible evidence with respect to the factual issue relevant to ascertaining the taxpayer's income tax liability. Four conditions apply. First, the taxpayer must comply with the requirements of the Internal Revenue Code and the regulations issued thereunder to substantiate any item (as under present law). Second, the taxpayer must maintain records required by the Code and regulations (as under present law). Third, the taxpayer must cooperate with reasonable requests by the Secretary for meetings, interviews, witnesses, information, and documents (including providing, within a reasonable period of time, access to and inspection of witnesses, information, and documents within the control of the taxpayer, as reasonably requested by the Secretary). Cooperation also includes providing reasonable assistance to the Secretary in obtaining access to and inspection of witnesses, information, or documents not within the control of the taxpayer (including any witnesses, information, or documents located in foreign countries).[9] A necessary element of cooperating with the Secretary is that the taxpayer must exhaust his or her administrative remedies (including any appeal rights provided by the IRS). The taxpayer is not required to agree to extend the statute of limitations to be considered to have cooperated with the Secretary. Cooperating also means that the taxpayer must establish the applicability of any privilege. Fourth, taxpayers other than individuals must meet the net worth limitations that apply for awarding attorney's fees (accordingly, no net worth limitation would be applicable to individuals). Corporations, trusts, and partnerships whose net worth exceeds $7 million are not eligible for the benefits of the provision. The taxpayer has the burden of proving that it meets each of these conditions, because they are necessary prerequisites to establishing that the burden of proof is on the Secretary.

In the case of court proceedings arising in connection with examinations commencing six months after the date of enactment and before June 1, 2001, the provision applies to any tax liability of the taxpayer.

The burden will shift to the Secretary under this provision only if the taxpayer first introduces credible evidence with respect to a factual issue relevant to ascertaining the taxpayer's income tax liability. Credible evidence is the quality of evidence which, after critical analysis, the court would find sufficient upon which to base a decision on the issue if no contrary evidence were submitted

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[8] If, however, the taxpayer can demonstrate that he had maintained the required substantiation but that it was destroyed or lost through no fault of the taxpayer, such as by fire or flood, existing tax rules regarding reconstruction of those records would continue to apply.

[9] Cooperation also includes providing English translations, as reasonably requested by the Secretary.

(without regard to the judicial presumption of IRS correctness). A taxpayer has not produced credible evidence for these purposes if the taxpayer merely makes implausible factual assertions, frivolous claims, or tax protestor-type arguments. The introduction of evidence will not meet this standard if the court is not convinced that it is worthy of belief. If after evidence from both sides, the court believes that the evidence is equally balanced, the court shall find that the Secretary has not sustained his burden of proof.

Nothing in the provision shall be construed to override any requirement under the Code or regulations to substantiate any item. Accordingly, taxpayers must meet applicable substantiation requirements, whether generally imposed[10] or imposed with respect to specific items, such as charitable contributions[11] or meals, entertainment, travel, and certain other expenses.[12] Substantiation requirements include any requirement of the Code or regulations that the taxpayer establish an item to the satisfaction of the Secretary.[13] Taxpayers who fail to substantiate any item in accordance with the legal requirement of substantiation will not have satisfied the legal conditions that are prerequisite to claiming the item on the taxpayer's tax return and will accordingly be unable to avail themselves of this provision regarding the burden of proof. Thus, if a taxpayer required to substantiate an item fails to do so in the manner required (or destroys the substantiation), this burden of proof provision is inapplicable.[14]

In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

Further, the provision provides that, in any court proceeding, the Secretary must initially come forward with evidence that it is appropriate to apply a particular penalty to the taxpayer before the court can impose the penalty. This provision is not intended to require the Secretary to introduce evidence of elements such as reasonable cause or substantial authority. Rather, the Secretary must come forward initially with evidence regarding the appropriateness of applying a particular penalty to the taxpayer; if the taxpayer believes that, because of reasonable cause, substantial authority, or a similar provision, it is inappropriate to impose the penalty, it is the taxpayer's responsibility (and not the Secretary's obligation) to raise those issues.

Effective date.—The provision applies to court proceedings arising in connection with examinations commencing after the date of enactment.

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[10] See e.g., Sec. 6001 and Treas. Reg. sec. 1.6001–1 requiring every person liable for any tax imposed by this Title to keep such records as the Secretary may from time to time prescribe, and secs. 6038 and 6038A requiring United States persons to furnish certain information the Secretary may prescribe with respect to foreign businesses controlled by the U.S. person.

[11] Sec. 170(a)(1) and (f)(8) and Treas. Reg. sec. 1.170A–13.

[12] See e.g. Sec. 274(d) and Treas. Reg. sec. 1.274(d)–1, 1.274–5T, and 1.274–5A.

[13] For example, sec. 905(b) of the Code provides that foreign tax credits shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary all information necessary for the verification and computation of the credit. Instructions for meeting that requirement are set forth in Treas. Reg. sec. 1.905–2.

[14] If, however, the taxpayer can demonstrate that he had maintained the required substantiation but that it was destroyed or lost through no fault of the taxpayer, such as by fire or flood, existing tax rules regarding reconstruction of those records would continue to apply.

Conference Agreement

The conference agreement follows the Senate amendment, except as follows. The provision applies to income,[15] estate, gift, and generation-skipping transfer taxes, permanently (i.e., without the June 1, 2001 termination of some taxes as under the Senate amendment). The effective date is clarified by adding that in any case in which there is no examination, the provision applies to court proceedings arising in connection with taxable periods or events beginning or occurring after the date of enactment. An audit is not the only event that would be considered an examination for purposes of this provision. For example, the matching of an information return against amounts reported on a tax return is intended to be an examination for purposes of this provision. Similarly, the review of a claim for refund prior to issuing that refund is also intended to be an examination for purposes of this provision.

B. Proceedings by Taxpayers

1. Expansion of authority to award costs and certain fees (sec. 311 of the House bill and sec. 3101 of the Senate amendment)

Present Law

Any person who substantially prevails in any action by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding. Reasonable administrative costs are defined as (1) any administrative fees or similar charges imposed by the IRS and (2) expenses, costs and fees related to attorneys, expert witnesses, and studies or analyses necessary for preparation of the case, to the extent that such costs are incurred before the earlier of the date of the notice of decision by IRS Appeals or the notice of deficiency. Net worth limitations apply.

Reasonable litigation costs include reasonable fees paid or incurred for the services of attorneys, except that the attorney's fees will not be reimbursed at a rate in excess of $110 per hour (indexed for inflation) unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

Rule 68 of the Federal Rules of Civil Procedure (FRCP) provides a procedure under which a party may recover costs if the party's offer for judgment was rejected and the subsequent court judgment was less favorable to the opposing party than the offer. The offering party's costs are limited to the costs (excluding attorney's fees) incurred after the offer was made. The FRCP generally apply to tax litigation in the district courts and the United States Court of Federal Claims.

Code section 7431 permits the award of civil damages for unauthorized inspection or disclosure of return information. The Federal appellate courts are split over whether a party who substan-

[15] For this purpose, self-employment taxes are treated as income taxes.

tially prevails over the United States in an action under Code section 7431 is eligible for an award of fees and reasonable costs.

House Bill

The House bill:

(1) Moves the point in time after which reasonable administrative costs can be awarded to the date on which the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals is sent;

(2) Provides that the difficulty of the issues presented on the unavailability of local tax expertise can be used to justify an award of attorney's fees of more than the statutory limit of $110 per hour;

(3) Permits the award of reasonable attorney's fees to specified persons who represent for no more than a nominal fee a taxpayer who is a prevailing party; and

(4) Provides that in determining whether the position of the United States was substantially justified, the court shall take into account whether the United States has lost in other courts of appeal on substantially similar issues.

Effective date.—Costs incurred and services performed more than 180 days after the date of enactment.

Senate Amendment

The Senate amendment:

(1) Is the same as the House bill;

(2) Permits awards of reasonable attorney's fees by deleting the hourly rate caps (and the exceptions to those caps);

(3) Is the same as the House bill; and

(4) Is the same as the House bill.

In addition, the Senate amendment:

(5) Provides that if a taxpayer makes an offer after the taxpayer has a right to administrative review in the IRS Office of Appeals, the IRS rejects the offer, and later the IRS obtains a judgment against the taxpayer in an amount that is equal to or less than the taxpayer's offer for the amount of the tax liability (excluding interest), reasonable costs and attorney's fees from the date of the offer would be awarded; and

(6) Clarifies that the award of attorney's fees is permitted in actions for civil damages for unauthorized inspection or disclosure of taxpayer returns and return information.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, except that the conference agreement follows the House bill with respect to the hourly rate caps, with the following modification. The hourly rate is raised to $125 per hour, which parallels the rate utilized under the Equal Access to Justice Act (the statute that authorizes the awarding of attorney's fees in non-tax Federal cases). This new cap will continue to be indexed for inflation (as under present law). With respect to the award of attorney's fees in unau-

thorized inspection and disclosure cases, the conferees wish to clarify that fees are payable by the United States only when the United States is the defendant and the plaintiff is a prevailing party. Also, individual defendants (such as State employees or contractors) may be liable for attorneys' fees and costs in cases where the United States is not a party, whenever they are found to have made a wrongful disclosure.

2. Civil damages for collection actions (sec. 312 of the House bill and sec. 3102 of the Senate amendment)

Present Law

A taxpayer may sue the United States for up to $1 million of civil damages caused by an officer or employee of the IRS who recklessly or intentionally disregards provisions of the Internal Revenue Code or Treasury regulations in connection with the collection of Federal tax with respect to the taxpayer.

House Bill

The House bill permits up to $100,000 in civil damages caused by an officer or employee of the IRS who negligently disregards provisions of the Internal Revenue Code or Treasury regulations in connection with the collection of Federal tax with respect to the taxpayer.

Effective date.—Actions of officers or employees of the IRS occurring after the date of enactment.

Senate Amendment

Same as the House bill, except that the provision also permits up to $1 million in civil damages caused by an officer or employee of the IRS who willfully violates provisions of the Bankruptcy Code relating to automatic stays or discharges. The provision also provides that persons other than the taxpayer may sue for civil damages for unauthorized collection actions.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Increase in size of cases permitted on small case calendar (sec. 313 of the House bill and sec. 3103 of the Senate amendment)

Present Law

Taxpayers may choose to contest many tax disputes in the Tax Court. Special small case procedures apply to disputes involving $10,000 or less, if the taxpayer chooses to utilize these procedures (and the Tax Court concurs). The IRS cannot require the taxpayer to use the small case procedures. The Tax Court generally concurs with the taxpayer's request to use the small case procedures, unless it decides that the case involves an issue that should be heard under the normal procedures. After the case has commenced, the

Tax Court may order that the small case procedures should be discontinued only if (1) there is reason to believe that the amount in controversy will exceed $10,000 or (2) justice would require the change in procedure.

House Bill

The House bill increases the cap for small case treatment from $10,000 to $25,000.

Effective date.—Proceedings commenced after the date of enactment.

Senate Amendment

The Senate amendment increases the cap for small case treatment from $10,000 to $50,000.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees recognize that an increase of this size may encompass a small number of cases of significant precedential value. Accordingly, the conferees anticipate that the Tax Court will carefully consider (1) IRS objections to small case treatment, such as objections based upon the potential precedential value of the case, as well as (2) the financial impact on the taxpayer, including additional legal fees and costs, of not utilizing small case treatment.

4. Expansion of Tax Court jurisdiction to responsible person penalties (sec. 3104 of the Senate amendment)

Present Law

In general, employers are required to withhold income taxes and social security taxes from their employee's wages. These withheld taxes constitute a trust in favor of the United States from the time that the employer deducts them from the employee's wages, and the employer is liable to the government for the payment of such taxes. All persons considered responsible for the withholding and payment of taxes are subject to a penalty equal to the amount of taxes due where the employer fails to turn over such funds to the government (the "responsible person" penalty, also known as the "100 percent" penalty). Generally, the determination of whether a person is a "responsible person" is a question of the person's status, duty, and authority in the context of the business which has failed to collect and pay over taxes required to be withheld. A responsible person penalty may also be imposed on a payroll lender.

The Tax Court has no jurisdiction over the determination of the correctness of the assessment of the responsible person penalty. Accordingly, as the Tax Court is the only pre-payment forum for the determination of tax liability, the imposition of the responsible person penalty can only be challenged in a refund suit in the appropriate district court or the U.S. Court of Federal Claims after payment of such penalty. The responsible person penalty is a divisible tax. Thus, unlike a refund suit for income taxes, a responsible person need not pay the full amount of the assessment to invoke

the jurisdiction of the district court or the U.S. Court of Federal Claims. Instead, the alleged responsible person may commence a refund suit after payment of the portion of the penalty attributable to one employee for one quarter.

House Bill

No provision.

Senate Amendment

The Senate amendment provides Tax Court jurisdiction over the "responsible person" penalty. Accordingly, the responsible person does not have to make a payment before challenging the imposition of the penalty.

Effective date.—Penalties imposed after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

5. Actions for refund with respect to certain estates which have elected the installment method of payment (sec. 371 of the House bill and 3105 of the Senate amendment)

Present Law

In general, the U.S. Court of Federal Claims and the U.S. district courts have jurisdiction over suits for the refund of taxes, as long as full payment of the assessed tax liability has been made. Under Code section 6166, if certain conditions are met, the executor of a decedent's estate may elect to pay the estate tax attributable to certain closely-held businesses over a 14-year period. Courts have held that U.S. district courts and the U.S. Court of Federal Claims do not have jurisdiction over claims for refunds by taxpayers deferring estate tax payments pursuant to section 6166 unless the entire estate tax liability has been paid. Under section 7479, the U.S. Tax Court has limited authority to provide declaratory judgments regarding initial or continuing eligibility for deferral under section 6166.

House Bill

The House bill grants the U.S. Court of Federal Claims and the U.S. district courts jurisdiction to determine the correct amount of estate tax liability (or refund) in actions brought by taxpayers deferring estate tax payments under section 6166, as long as certain conditions are met. In order to qualify for the provision: (1) the estate must have made an election pursuant to section 6166; (2) the estate must have fully paid each installment of principal and/or interest due (and all non-6166-related estate taxes due) before the date the suit is filed; (3) no portion of the payments due may have been accelerated; (4) there must be no suits for declaratory judgment pursuant to section 7479 pending; and (5) there must be no outstanding deficiency notices against the estate. In general, to the extent that a taxpayer has previously litigated its estate tax li-

ability, the taxpayer would not be able to take advantage of this procedure under principles of res judicata. Taxpayers are not relieved of the liability to make any installment payments that become due during the pendency of the suit (i.e., failure to make such payments would subject the taxpayer to the existing provisions of section 6166(g)(3)).

The House bill further provides that once a final judgment has been entered by a district court or the U.S. Court of Federal Claims, the IRS is not permitted to collect any amount disallowed by the court, and any amounts paid by the taxpayer in excess of the amount the court finds to be currently due and payable are refunded to the taxpayer, with interest. Lastly, the provision provides that the two-year statute of limitations for filing a refund action is suspended during the pendency of any action brought by a taxpayer pursuant to section 7479 for a declaratory judgment as to an estate's eligibility for section 6166.

Effective date.—Claims for refunds filed after the date of enactment.

Senate Amendment

Generally same as the House bill, with technical modifications.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Tax Court jurisdiction to review an adverse IRS determination of a bond issue's tax-exempt status (sec. 3106 of the Senate amendment)

Present Law

Interest on debt incurred by States or local governments generally is excluded from gross income if the proceeds of the borrowing are used to carry out governmental functions of those entities and the debt is repaid with governmental funds.

A State or local government that seeks to issue bonds, the interest on which is intended to be excludable from gross income, can request a ruling from the IRS regarding the eligibility of such bonds for tax-exemption. The prospective issuer can challenge the IRS's determination (or failure to make a timely determination) in a declaratory judgment proceeding in the Tax Court. Because bondholders, not issuers, are the parties whose tax liability is affected, issuers are not allowed to litigate the tax-exempt status of the bonds directly after the bonds are issued.

House Bill

No provision.

Senate Amendment

The Senate amendment expands the declaratory judgment procedures currently applicable to prospective bond issuers to allow issuers to litigate in the Tax Court issues related to the tax-exempt

status of outstanding bonds. In such cases, the issuer must provide adequate notice to outstanding bondholders, and the bondholders are authorized to intervene in court proceedings brought under this provision. The statute of limitations on assessment and collection of the tax liability of the bondholders is suspended during the pendency of the proceeding.

Effective date.—Determinations of tax-exempt status made after the date of enactment. In the case of a determination under a technical advice memorandum the public release of which occurred within one year of the date of enactment, a pleading may be filed not later than 90 days after the date of enactment.

Conference Agreement

In lieu of the Senate amendment provision, the conference agreement directs the Internal Revenue Service to modify its administrative procedures to allow tax-exempt bond issuers examined by the IRS to appeal adverse examination determinations to the Appeals Division of the IRS as a matter of right. Because of the complexity of the issues involved, the IRS is directed to provide that these appeals will be heard by senior appeals officers having experience in resolving complex cases.

The conferees further express their intent that Congress will evaluate judicial remedies in future legislation once the IRS's tax-exempt bond examination program has developed more fully and the Congress is better able to ensure that any such future measure protects all parties in interest to these determinations (i.e., issuers, bondholders, conduit borrowers, and the Federal Government).

Effective date.—The direction to the IRS is effective on the date of enactment.

7. Civil action for release of erroneous lien (sec. 3107 of the Senate amendment)

Present Law

Prior to 1995, the provisions governing jurisdiction over refund suits had generally been interpreted to apply only if an action was brought by the taxpayer against whom tax was assessed. Remedies for third parties from whom tax was collected (rather than assessed) were found in other provisions of the Internal Revenue Code. The Supreme Court has held that a third party who paid another person's tax under protest to remove a lien on the third party's property could bring a refund suit, because she had no other adequate administrative or judicial remedy. The Supreme Court held that parties who are forced to pay another's tax under duress could bring a refund suit, because no other judicial remedy was adequate.

House Bill

No provision.

Senate Amendment

The Senate amendment creates an administrative procedure permitting a record owner of property against which a Federal tax

lien has been filed to obtain a certificate of discharge of property from the lien as a matter of right. The third party is required to apply to the Secretary of the Treasury for such a certificate and either to deposit cash or to furnish a bond sufficient to protect the lien interest of the United States.

The Senate amendment also establishes a judicial cause of action for third parties challenging a lien. The period within which such an action must be commenced is 120 days after the date the certificate of discharge is issued to ensure an early resolution of the parties' interests.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

C. Relief for Innocent Spouses and for Taxpayers Unable to Manage Their Financial Affairs Due to Disabilities

1. Relief for innocent spouses (sec. 321 of the House bill and sec. 3201 of the Senate amendment)

Present Law

Under present law, relief from liability for tax, interest and penalties is available for "innocent spouses" in certain circumstances. To qualify for such relief, the innocent spouse must establish: (1) that a joint return was made; (2) that an understatement of tax, which exceeds the greater of $500 or a specified percentage of the innocent spouse's adjusted gross income for the preadjustment (most recent) year, is attributable to a grossly erroneous item of the other spouse; (3) that in signing the return, the innocent spouse did not know, and had no reason to know, that there was an understatement of tax; and (4) that taking into account all the facts and circumstances, it is inequitable to hold the innocent spouse liable for the deficiency in tax. The specified percentage of adjusted gross income is 10 percent if adjusted gross income is $20,000 or less. Otherwise, the specified percentage is 25 percent.

The proper forum for contesting the Secretary's denial of innocent spouse relief is determined by whether an underpayment is asserted or the taxpayer is seeking a refund of overpaid taxes. Accordingly, the Tax Court may not have jurisdiction to review all denials of innocent spouse relief.

House Bill

The House bill generally makes innocent spouse status easier to obtain. The bill eliminates all of the understatement thresholds and requires only that the understatement of tax be attributable to an erroneous (and not just a grossly erroneous) item of the other spouse.

The House bill provides that innocent spouse relief may be provided on an apportioned basis. A spouse may be relieved of liability for the portion of an understatement of tax even if the spouse knew

or had reason to know of other understatements of tax on the same return.

The House bill specifically provides that the Tax Court has jurisdiction to review any denial of innocent spouse relief. Except for termination and jeopardy assessments, the Secretary may not levy or proceed in court to collect any tax from a taxpayer claiming innocent spouse status with regard to such tax until the expiration of the 90-day period in which such taxpayer may petition the Tax Court or, if the Tax Court considers such petition, before the decision of the Tax Court has become final. The running of the statute of limitations is suspended in such situations with respect to the spouse claiming innocent spouse status.

The House bill requires the Secretary of the Treasury to develop a separate form with instructions for taxpayers to use in applying for innocent spouse relief within 180 days from the date of enactment. An innocent spouse seeking relief under this provision must claim innocent spouse status with regard to any assessment not later than two years after the date of such assessment.

Effective date.—Understatements with respect to taxable years beginning after the date of enactment.

Senate Amendment

In general

The Senate amendment modifies the innocent spouse provisions to permit a spouse to elect to limit his or her liability for unpaid taxes on a joint return to the spouse's separate liability amount. In the case of a deficiency arising from a joint return, a spouse could elect to be liable only to the extent that items giving rise to the deficiency are allocable to the spouse. The separate liability election also applies in situations where the tax shown on a joint return is not paid with the return. In this case, the amount determined under the separate liability election equals the amount that would have been reported by the electing spouse on a separate return. However, if any item of credit or deduction would be disallowed solely because a separate return is filed, the item of credit or deduction will be computed without regard to such prohibition. Special rules apply to prevent the inappropriate use of the election. The separate liability election may not be used to create a refund, or to direct a refund to a particular spouse.

Items are generally allocated between spouses in the same manner as they would have been allocated had the spouses filed separate returns. The Secretary may prescribe other methods of allocation by regulation. The allocation of items is to be accomplished without regard to community property laws.

The election applies to all unpaid taxes under subtitle A of the Internal Revenue Code, including the income tax and the self-employment tax. The election may be made at any time not later than 2 years after collection activities begin with respect to the electing spouse. It is intended that the 2 year period not begin until collection activities have been undertaken against the electing spouse that have the effect of giving the spouse notice of the IRS' intention to collect the joint liability from such spouse. For example, garnishment of wages or a notice of intent to levy against the property of

the electing spouse would constitute collection activity against the electing spouse. The mailing of a notice of deficiency and demand for payment to the last known address of the electing spouse, addressed to both spouses, would not.

The Tax Court has jurisdiction of disputes arising from the separate liability election. For example, a spouse who makes the separate liability election may petition the Tax Court to determine the limits on liability applicable under this provision. The Tax Court is authorized to establish rules that would allow the Secretary of the Treasury and the electing spouse to require, with adequate notice, the other spouse to become a party to any proceeding before the Tax Court. The Secretary of the Treasury is required to develop a separate form with instructions for taxpayers to use in electing to limit liability.

The Internal Revenue Service is required to notify all taxpayers who have filed joint returns of their rights to elect to limit their joint and several liability under this provision. It is expected that notice will appear in appropriate IRS publications, including IRS Publication 1, and in collection related notices sent to taxpayers. In addition, the Internal Revenue Service should, whenever practicable, send appropriate notifications separately to each spouses.

Effective date

The Senate amendment applies to any liability for tax arising after the date of enactment and any liability for tax arising on or before such date, but remaining unpaid as of such date.

The period in which an election may be made under the provision will not expire before the later of the date that is 2 years after the date of enactment or 2 years after the date of the first collection action that has the effect of giving the spouse notice of the IRS' intention to collect the joint liability from the spouse is undertaken after the date of enactment. This rule does not extend the statute of limitations.

An individual may elect under the provision without regard to whether such individual has previously been denied innocent spouse relief under present law.

Conference Agreement

In general

The conference agreement follows the Senate amendment with respect to deficiencies of a taxpayer who is no longer married to, is legally separated from, or has been living apart for at least 12 months from the person with whom the taxpayer originally filed the joint return. The conference agreement also includes the provision in the House bill expanding the circumstances in which innocent spouse relief is available. Taxpayers, whether or not eligible to make the separate liability election, may be granted innocent spouse relief where appropriate. In addition, the conference agreement authorizes the Secretary to provide equitable relief in appropriate situations. The conference agreement follows the House bill and the Senate amendment in establishing jurisdiction in the Tax Court over disputes arising in this area.

Deficiencies of certain taxpayers

The conference agreement follows the Senate amendment with respect to deficiencies of a taxpayer who, at the time of election, is no longer married[16] to, is legally separated from, or has been living apart for at least 12 months from the person with whom the taxpayer originally filed the joint return. Such taxpayers may elect to limit their liability for any deficiency limited to the portion of the deficiency that is attributable to items allocable to the taxpayer.

For example, a deficiency is assessed after IRS audit of a joint return. The deficiency relates to income earned by the husband that was not reported on the return. If the spouses who joined in the return are no longer married, are legally separated, or have lived apart for at least 12 months, either may elect limited liability under this provision. If the wife elects, she would owe none of the deficiency. The deficiency would be the sole responsibility of the husband whose income gave rise to the deficiency.

If the deficiency relates to the items of both spouses, the separate liability for the deficiency is allocated between the spouses in the same proportion as the net items taken into account in determining the deficiency. For example, a deficiency is assessed that is attributable to $70,000 of unreported income allocable to the husband and the disallowance of a $30,000 miscellaneous itemized deduction allocable to the wife. If the spouses who joined in the return are no longer married, are legally separated, or have lived apart for at least 12 months, either may elect limited liability under this provision. If either the husband and wife elect, the husband's liability would be limited to 70 percent of the deficiency (if he elects) and the wife's liability limited to 30 percent (if she elects). This would be the case even if a portion of the miscellaneous itemized deductions had been disallowed under section 67(a). The election is required in order to limit liability. If either spouse fails to elect, that spouse would be liable for the full amount of the deficiency, unless reduced by innocent spouse relief or pursuant to the grant of authority to the Secretary to provide equitable relief.

If the deficiency arises as a result of the denial of an item of deduction or credit, the amount of the deficiency allocated to the spouse to whom the item of deduction or credit is allocated is limited to the amount of income or tax allocated to such spouse that was offset by the deduction or credit. The remainder of the liability is allocated to the other spouse to reflect the fact that income or tax allocated to that spouse was originally offset by a portion of the disallowed deduction or credit.

For example, a married couple files a joint return with wage income of $100,000 allocable to the wife and $30,000 of self employment income allocable to the husband. On examination, a $20,000 deduction allocated to the husband is disallowed, resulting in a deficiency of $5,600. Under the provision, the liability is allocated in proportion to the items giving rise to the deficiency. Since the only item giving rise to the deficiency is allocable to the husband, and because he reported sufficient income to offset the item of deduction, the entire deficiency is allocated to the husband and the wife

[16] For the purpose of this rule, a taxpayer is no longer married if he or she is widowed.

has no liability with regard to the deficiency, regardless of the ability of the IRS to collect the deficiency from the husband.

If the joint return had shown only $15,000 (instead of $30,000) of self employment income for the husband, the income offset limitation rule discussed above would apply. In this case, the disallowed $20,000 deduction entirely offsets the $15,000 of income of the husband, and $5,000 remains. This remaining $5,000 of the disallowed deduction offsets income of the wife. The liability for the deficiency is therefore divided in proportion to the amount of income offset for each spouse. In this example, the husband is liable for ¾ of the deficiency ($4,200), and the wife is liable for the remaining ¼ ($1,400).

Where a deficiency is attributable to the disallowance of a credit, or to any tax other than regular or alternative minimum income tax, the portion of the deficiency attributable to such credit or other tax is considered first. For example, on examination a deficiency of $10,000 ($2,800 of self-employment tax and $7,200 of income tax) is determined to be attributable to $20,000 of unreported self-employment income of the husband and a disallowed itemized deduction of $5,000 allocable to the wife. The $2,800 of deficient self-employment taxes is first allocated to the husband, and the remaining $7,200 of income tax deficiency is allocated 80 percent to the husband and 20 percent to the wife.

The special rules included in the Senate bill to prevent the inappropriate use of the election are included in the conference agreement.

First, if the IRS demonstrates that assets were transferred between the spouses in a fraudulent scheme joined in by both spouses, neither spouse is eligible to make the election under the provision (and consequently joint and several liability applies to both spouses).

Second, if the IRS proves that the electing spouse had actual knowledge that an item on a return is incorrect, the election will not apply to the extent any deficiency is attributable to such item. Such actual knowledge must be established by the evidence and shall not be inferred based on indications that the electing spouse had a reason to know.

The rule that the election will not apply to the extent any deficiency is attributable to an item the electing spouse had actual knowledge of is expected to be applied by treating the item as fully allocable to both spouses. For example a married couple files a joint return with wage income of $150,000 allocable to the wife and $30,000 of self employment income allocable to the husband. On examination, an additional $20,000 of the husband's self-employment income is discovered, resulting in a deficiency of $9,000. The IRS proves that the wife had actual knowledge that $5,000 of this additional self-employment income, but had no knowledge of the remaining $15,000. In this case, the husband would be liable for the full amount of the deficiency, since the item giving rise to the deficiency is fully allocable to him. In addition, the wife would be liable for the amount that would have been calculated as the deficiency based on the $5,000 of unreported income of which she had actual knowledge. The IRS would be allowed to collect that amount from

either spouse, while the remainder of the deficiency could be collected from only the husband.

Third, the portion of the deficiency for which the electing spouse is liable is increased by the value of any disqualified assets received from the other spouse. Disqualified assets include any property or right to property that was transferred to an electing spouse if the principle purpose of the transfer is the avoidance of tax (including the avoidance of payment of tax). A rebuttable presumption exists that a transfer is made for tax avoidance purposes if the transfer was made less than one year before the earlier of the payment due date or the date of the notice of proposed deficiency. The rebuttable presumption does not apply to transfers pursuant to a decree of divorce or separate maintenance. The presumption may be rebutted by a showing that the principal purpose of the transfer was not the avoidance of tax or the payment of tax.

Other deficiencies

The conference agreement also includes the provision in the House bill modifying innocent spouse relief. Taxpayers who do not make the separate liability election may be eligible for innocent spouse relief. For example, a taxpayer may be ineligible to make the separate liability election for a deficiency because he or she is not widowed, divorced, legally separated, or living apart (for at least 12 months) from the person with whom the taxpayer originally joined in filing the joint return. Such a taxpayer may apply for relief of any deficiency that is attributable to an erroneous item of the other spouse, provided he or she did not know or have reason to know of the understatement of tax and it would be inequitable to hold the taxpayer responsible for the deficiency. The election is required to be made no later than the date that is two years after the Secretary has begun collection actions with respect to the individual. The rule in the House bill allowing innocent spouse relief to be provided on an apportioned basis is included in the conference agreement.

Other circumstances, including tax shown on a return but not paid

The conference agreement does not include the portion of the Senate amendment that could provide relief in situations where tax was shown on a joint return, but not paid with the return. The conferees intend that the Secretary will consider using the grant of authority to provide equitable relief in appropriate situations to avoid the inequitable treatment of spouses in such situations. For example, the conferees intend that equitable relief be available to a spouse that does not know, and had no reason to know, that funds intended for the payment of tax were instead taken by the other spouse for such other spouse's benefit.

The conferees do not intend to limit the use of the Secretary's authority to provide equitable relief to situations where tax is shown on a return but not paid. The conferees intend that such authority be used where, taking into account all the facts and circumstances, it is inequitable to hold an individual liable for all or part of any unpaid tax or deficiency arising from a joint return.

The conferees intend that relief be available where there is both an understatement and an underpayment of tax.

Procedural rules

The conference agreement follows the House bill and the Senate amendment with respect to procedural rules, including the jurisdiction of the Tax Court to review matters relating to this provision. The conference agreement also follows the Senate amendment in requiring the IRS to notify taxpayers of their rights under this provision, and, whenever practicable, to send notifications separately to each spouse.

Effective date

The conference agreement follows the Senate amendment. The separate liability election, expanded innocent spouse relief and authority to provide equitable relief all apply to liabilities for tax arising after the date of enactment, as well as any liability for tax arising on or before the date of enactment that remains unpaid on the date of enactment. The applicable 2-year election periods do not expire before the date that is two years after the first collection activity taken by the IRS after the date of enactment. The Secretary is required to develop a separate form for electing innocent spouse relief within 180 days after the date of enactment.

2. Suspension of statute of limitations on filing refund claims during periods of disability (sec. 322 of the House bill and sec. 3202 of the Senate amendment)

Present Law

In general, a taxpayer must file a refund claim within three years of the filing of the return or within two years of the payment of the tax, whichever period expires later (if no return is filed, the two-year limit applies) (sec. 6511(a)). A refund claim that is not filed within these time periods is rejected as untimely.

There is no explicit statutory rule providing for equitable tolling of the statute of limitations. The U.S. Supreme Court has held that Congress did not intend the equitable tolling doctrine to apply to the statutory limitations of section 6511 on the filing of tax refund claims.

House Bill

The House bill permits equitable tolling of the statute of limitations for refund claims of an individual taxpayer during any period of the individual's life in which he or she is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than 12 months. Tolling does not apply during periods in which the taxpayer's spouse or another person is authorized to act on the taxpayer's behalf in financial matters.

Effective date.—The provision applies to periods of disability before, on, or after the date of enactment but does not apply to any claim for refund or credit that (without regard to the provision) is

barred by the operation of any law, including the statute of limitations, as of January 1, 1998.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

Effective date.—The provision applies to periods of disability before, on, or after the date of enactment but does not apply to any claim for refund or credit that (without regard to the provision) is barred by the operation of any law, including the statute of limitations, as of the date of enactment.

D. Provisions Relating to Interest and Penalties

1. Elimination of interest differential on overlapping periods of interest on income tax overpayments and underpayments (sec. 331 of the House bill and sec. 3301 of the Senate amendment)

Present Law

A taxpayer that underpays its taxes is required to pay interest on the underpayment at a rate equal to the Federal short term interest rate plus three percentage points. A special "hot interest" rate equal to the Federal short term interest rate plus five percentage points applies in the case of certain large corporate underpayments.

A taxpayer that overpays its taxes receives interest on the overpayment at a rate equal to the Federal short term interest rate plus two percentage points. In the case of corporate overpayments in excess of $10,000, this is reduced to the Federal short term interest rate plus one-half of a percentage point.

If a taxpayer has an underpayment of tax from one year and an overpayment of tax from a different year that are outstanding at the same time, the IRS will typically offset the overpayment against the underpayment and apply the appropriate interest to the resulting net underpayment or overpayment. However, if either the underpayment or overpayment has been satisfied, the IRS will not typically offset the two amounts, but rather will assess or credit interest on the full underpayment or overpayment at the underpayment or overpayment rate. This has the effect of assessing the underpayment at the higher underpayment rate and crediting the overpayment at the lower overpayment rate. This results in the taxpayer being assessed a net interest charge, even if the amounts of the overpayment and underpayment are the same.

The Secretary has the authority to credit the amount of any overpayment against any liability under the Code. Congress has previously directed the Internal Revenue Service to implement procedures for "netting" overpayments and underpayments to the extent a portion of tax due is satisfied by a credit of an overpayment.

House Bill

The House bill establishes a net interest rate of zero where interest is payable and allowable on equivalent amounts of overpayment and underpayment of income tax that exist for any period. Each overpayment and underpayment is considered only once in determining whether equivalent amounts of overpayment and underpayment exist. The special rules that increase the interest rate paid on large corporate underpayments and decrease the interest rate received on corporate underpayments in excess of $10,000 do not prevent the application of the net zero rate. The provision applies to income taxes and self-employment taxes.

Effective date.—Interest for calendar quarters beginning after the date of enactment.

Senate Amendment

Generally same as the House bill, except that the Senate amendment applies where interest is payable and allowable on equivalent amounts of overpayment and underpayment of any taxes imposed by Title 26 (the Internal Revenue Code), and not only income taxes.

Effective date.—Same as the House bill. In addition, the provision applies to interest for periods beginning before the date of enactment if: (1) the statute of limitations has not expired with respect to either the underpayment or overpayment; (2) the taxpayer identifies the periods of underpayment and overpayment for which the zero rate applies; and (3) on or before December 31, 1999, the taxpayer asks the Secretary to apply the zero rate.

Conference Agreement

The conference agreement follows the Senate amendment. It is anticipated that the Secretary will take into account interest paid on previously determined deficiencies or refunds for the purpose of determining the rate of interest under this provision without regard to whether the underpayments or overpayments are currently outstanding. It is also anticipated that where interest is both payable from and allowable to an individual taxpayer for the same period, the Secretary will take all reasonable efforts to offset the liabilities, rather than process them separately using the net interest rate of zero. Where interest is payable and allowable on an equivalent amount of underpayment and overpayment that is attributable to a taxpayer's interest in a pass-thru entity (e.g., a partnership), the conferees intend that the benefits of the provision apply.

2. Increase in overpayment rate payable to taxpayers other than corporations (sec. 332 of the House bill and sec. 3302 of the Senate amendment)

Present Law

A taxpayer that underpays its taxes is required to pay interest on the underpayment at a rate equal to the Federal short-term interest rate (AFR) plus three percentage points. A taxpayer that overpays its taxes receives interest on the overpayment at a rate

equal to the Federal short-term interest rate (AFR) plus two percentage points.

House Bill

The House bill provides that the overpayment interest rate will be AFR plus three percentage points, except that for corporations, the rate remains at AFR plus two percentage points.

Effective date.—Interest for calendar quarters beginning after the date of enactment.

Senate Amendment

Same as the House bill, except for the effective date.

Effective date.—Interest for the second and succeeding calendar quarters beginning after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Mitigation of penalty for individual's failure to pay during period of installment agreement (sec. 376 of the House bill and sec. 3303 of the Senate amendment)

Present Law

Taxpayers who fail to pay their taxes are subject to a penalty of one-half percent per month on the unpaid amount, up to a maximum of 25 percent. If the liability is shown on the return, the penalty begins to accrue on the date prescribed for payment of the tax (with regard to extensions). If the liability should have been shown on the return but was not, the penalty generally begins to accrue after the date that is 21 days from the date of the IRS notice and demand for payment with respect to such liability. Taxpayers who make installment payments pursuant to an agreement with the IRS are also subject to this penalty.

House Bill

The House bill provides that the penalty for failure to pay taxes is not imposed with respect to the tax liability of an individual with respect to any month in which an installment payment agreement with the IRS is in effect to the extent that doing so would result in the cumulative penalty percentage exceeding 9.5 percent (instead of 25 percent).

Effective date.—Installment agreement payments made after the date of enactment.

Senate Amendment

The Senate amendment provides that the penalty for failure to pay taxes is not imposed with respect to the tax liability of an individual for any month in which an installment payment agreement with the IRS is in effect, provided that the individual filed the tax return in a timely manner (including extensions).

Effective date.—Installment agreement payments made after December 31, 1999.

Conference Agreement

The conference agreement follows the Senate amendment, except that the rate of the penalty is half the usual rate (0.25 percent instead of 0.5 percent) for any month in which an installment payment agreement with the IRS is in effect.

4. Mitigation of failure to deposit penalty (sec. 3304 of the Senate amendment)

Present Law

Deposits of payroll taxes are allocated to the earliest period for which such a deposit is due. If a taxpayer misses or makes an insufficient deposit, later deposits will first be applied to satisfy the shortfall for the earlier period; the remainder is then applied to satisfy the obligation for the current period. Cascading penalties may result as payments that would otherwise be sufficient to satisfy current liabilities are applied to satisfy earlier shortfalls. The Secretary may waive the failure to make deposit penalty for inadvertent failures by first-time depositors of employment taxes.

House Bill

No provision.

Senate Amendment

The Senate amendment allows the taxpayer to designate the period to which each deposit is applied. The designation must be made no later than 90 days after the related IRS penalty notice. The provision also extends the authorization to waive the failure to deposit penalty to the first deposit a taxpayer is required to make after the taxpayer is required to change the frequency of the taxpayer's deposits.

Effective date.—Deposits made more than 180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with technical modifications. Also, the designation must be made during the 90 days immediately following the sending of the related IRS penalty notice. The conference agreement also provides that, for deposits required to be made after December 31, 2001, any deposit is to be applied to the most recent period to which the deposit relates, unless the taxpayer explicitly designates otherwise.

5. Suspension of interest and certain penalties if Secretary fails to contact individual taxpayer (sec. 3305 of the Senate amendment)

Present Law

In general, interest and penalties accrue during periods for which taxes are unpaid without regard to whether the taxpayer is aware that there is tax due.

House Bill

No provision.

Senate Amendment

The Senate amendment suspends the accrual of penalties and interest after 1 year if the IRS has not sent the taxpayer a notice of deficiency within 1 year following the date which is the later of (1) the original due date of the return or (2) the date on which the individual taxpayer timely filed the return. The suspension only applies to taxpayers who file a timely tax return. The Senate amendment applies only to individuals and does not apply to the failure to pay penalty, in the case of fraud, or with respect to criminal penalties. Interest and penalties resume 21 days after the IRS sends a notice and demand for payment to the taxpayer.

Effective date.—Taxable years ending after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications. With respect to taxable years beginning before January 1, 2004, the 1-year period is increased to 18 months. Interest and penalties are suspended if the IRS fails to send a notice specifically stating the taxpayer's liability and the basis for the liability within the specified period. Interest and penalties resume 21 days after the IRS sends that notice to the taxpayer. The provision is applied separately with respect to each item or adjustment. The provision does not apply where a taxpayer has self-assessed the tax.

For example, if the IRS sends a math error notice to a taxpayer 2 months after the return is filed and also sends a notice of deficiency related to a different item 2 years later, the provision applies to the item reflected on the second notice (notwithstanding that the first notice was sent within the applicable time period).

6. Procedural requirements for imposition of penalties and additions to tax (sec. 3306 of the Senate amendment)

Present Law

Present law does not require the IRS to show how penalties are computed on the notice of penalty. In some cases, penalties may be imposed without supervisory approval.

House Bill

No provision.

Senate Amendment

The Senate amendment requires that each notice imposing a penalty include the name of the penalty, the code section imposing the penalty, and a computation of the penalty.

The Senate amendment also requires the specific approval of IRS management to assess all non-computer generated penalties unless excepted. This provision does not apply to failure to file pen-

alties, failure to pay penalties, or to penalties for failure to pay estimated tax.

Effective date.—Notices issued, and penalties assessed, more than 180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—Notices issued, and penalties assessed after December 31, 2000.

7. Personal delivery of notice of penalty under section 6672 (sec. 3307 of the Senate amendment)

Present Law

Any person who is required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to do so is liable for a penalty equal to the amount of the tax. Before the IRS may assess any such "100-percent penalty," it must mail a written preliminary notice informing the person of the proposed penalty to that person's last known address. The mailing of such notice must precede any notice and demand for payment of the penalty by at least 60 days. The statute of limitations on assessments shall not expire before the date 90 days after the date on which the notice was mailed. These restrictions do not apply if the Secretary finds the collection of the penalty is in jeopardy.

House Bill

No provision.

Senate Amendment

The Senate amendment permits in person delivery, as an alternative to delivery by mail, of a preliminary notice that the IRS intends to assess a 100-percent penalty.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

8. Notice of interest charges (sec. 3308 of the Senate amendment)

Present Law

Taxpayer generally must pay interest on amounts due to the IRS.

House Bill

No provision.

Senate Amendment

The Senate amendment requires every IRS notice that includes an amount of interest required to be paid by the taxpayer that is

sent to an individual taxpayer to include a detailed computation of the interest charged and a citation to the Code section under which such interest is imposed.

Effective date.—Notices issued after June 30, 2000.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—Notices issued after December 31, 2000.

9. Abatement of interest on underpayments by taxpayers in Presidentially declared disaster areas (sec. 3309 of the Senate amendment)

Present Law

In the case of a Presidentially declared disaster, the Secretary of the Treasury has the authority to postpone some tax-related deadlines, but there is no authority to abate interest.

Under a provision of the Taxpayer Relief Act of 1997, if the Secretary of the Treasury extends the filing date of an individual tax return for individuals living in an area that has been declared a disaster area by the President during 1997, no interest is charged as a result of the failure of the individual taxpayer to file an individual tax return, or to pay the taxes shown on such return, during the extension.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that taxpayers located in a Presidentially declared disaster area do not have to pay interest on taxes due for the length of any extension for filing their tax returns granted by the Secretary of the Treasury.

Effective date.—Disasters declared after December 31, 1996, with respect to taxable years beginning after December 31, 1996.

Conference Agreement

The conference agreement follows the Senate amendment.

This provision is designated as emergency legislation under section 252(e) of the Balanced Budget and Emergency Deficit Control Act.

Effective date.—Disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997. The conferees have modified the effective date because section 915 of The Taxpayer Relief Act of 1997 already applies to 1997 disasters. The conferees intend that no gap between the two provisions exists.

E. Protections for Taxpayers Subject to Audit or Collection Activities

1. Due process in IRS collection actions (sec. 3401 of the Senate amendment)

Present Law

Levy is the IRS's administrative authority to seize a taxpayer's property to pay the taxpayer's tax liability. The IRS is entitled to seize a taxpayer's property by levy if the Federal tax lien has attached to such property. The Federal tax lien arises automatically where (1) a tax assessment has been made, (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment, and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.

The IRS may collect taxes by levy upon a taxpayer's property or rights to property (including accrued salary and wages) if the taxpayer neglects or refuses to pay the tax within 10 days after notice and demand that the tax be paid. Notice of the IRS's intent to collect taxes by levy must be given no less than 30 days (90 days in the case of a life insurance contract) before the day of the levy. The notice of levy must describe the procedures that will be used, the administrative appeals available to the taxpayer and the procedures relating to such appeals, the alternatives available to the taxpayer that could prevent levy, and the procedures for redemption of property and release of liens.

The effect of a levy on salary or wages payable to or received by a taxpayer is continuous from the date the levy is first made until it is released.

If the IRS district director finds that the collection of any tax is in jeopardy, collection by levy may be made without regard to either notice period. A similar rule applies in the case of termination assessments.

House Bill

No provision.

Senate Amendment

The Senate amendment establishes formal procedures designed to insure due process where the IRS seeks to collect taxes by levy (including by seizure). The due process procedures also apply after the Federal tax lien attaches, but before the notice of the Federal tax lien has been given to the taxpayer.

As under present law, notice of the intent to levy must be given at least 30 days (90 days in the case of a life insurance contract) before property can be seized or salary and wages garnished. During the 30-day (90-day) notice period, the taxpayer may demand a hearing to take place before an appeals officer who has had no prior involvement in the taxpayer's case. If, within that period, the taxpayer demands a hearing, the proposed collection action may not proceed until the hearing has concluded and the appeals officer has issued his or her determination.

During the hearing, the IRS is required to verify that all statutory, regulatory, and administrative requirements for the proposed collection action have been met. IRS verifications are expected to include (but not be limited to) showings that:

(1) the revenue officer recommending the collection action has verified the taxpayer's liability;

(2) the estimated expenses of levy and sale will not exceed the value of the property to be seized;

(3) the revenue officer has determined that there is sufficient equity in the property to be seized to yield net proceeds from sale to apply to the unpaid tax liabilities; and

(4) with respect to the seizure of the assets of a going business, the revenue officer recommending the collection action has thoroughly considered the facts of the case, including the availability of alternative collection methods, before recommending the collection action.

The taxpayer (or affected third party) is allowed to raise any relevant issue at the hearing. Issues eligible to be raised include (but are not limited to):

(1) challenges to the underlying liability as to existence or amount;

(2) appropriate spousal defenses;

(3) challenges to the appropriateness of collection actions; and

(4) collection alternatives, which could include the posting of a bond, substitution of other assets, an installment agreement or an offer-in-compromise.

Once the taxpayer has had a hearing with respect to an issue, the taxpayer would not be permitted to raise the same issue in another hearing.

The determination of the appeals officer is to address whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that the collection action be no more intrusive than necessary.

The taxpayer may contest the determination of the appellate officer in Tax Court by filing a petition within 30 days of the date of the determination. The IRS may not take any collection action pursuant to the determination during such 30-day period or while the taxpayer's contest is pending in Tax Court.

IRS Appeals would retain jurisdiction over its determinations. IRS Appeals could enter an order requiring the IRS collection division to adhere to the original determination. In addition, the taxpayer would be allowed to return to IRS Appeals to seek a modification of the original determination based on any change of circumstances.

In the case of a continuous levy, the due process procedures would apply to the original imposition of the levy.

This provision does not apply in the case of jeopardy and termination assessments. Jeopardy and termination assessments would be subject to post-seizure review as part of the Appeals determination hearing as well as through any existing judicial procedure. A jeopardy or termination assessment must be approved by the IRS District Counsel responsible for the case. Failure to obtain

District Counsel approval would render the jeopardy or termination assessment void.

Effective date.—The due process procedures apply to collection actions initiated more than six months after the date of enactment.

Conference Agreement

Liens

The conference agreement generally follows the Senate amendment, except that taxpayers would have a right to a hearing after the Notice of Lien is filed. The IRS would be required to notify the taxpayer that a Notice of Lien had been filed within 5 days after filing. During the 30-day period beginning with the mailing or delivery of such notification, the taxpayer may demand a hearing before an appeals officer who has had no prior involvement with the taxpayer's case. In general, any issue relevant to the appropriateness of the proposed collection against the taxpayer can be raised at this hearing. For example, the taxpayer can request innocent spouse status, make an offer-in-compromise, request an installment agreement or suggest which assets should be used to satisfy the tax liability. However, the validity of the tax liability can be challenged only if the taxpayer did not actually receive the statutory notice of deficiency or has not otherwise had an opportunity to dispute the liability. This hearing right applies only after the first Notice of Lien with regard to each tax liability is filed.

Levies

The conference agreement includes a modified form of the Senate amendment. The IRS would be required to provide the taxpayer with a "Notice of Intent to Levy," formally stating its intention to collect a tax liability by levy against the taxpayer's property or rights to property. The conferees intend that the Secretary have the discretion to provide the Notice of Intent to Levy in combination with the notice required by present law under section 6331(d). Service by registered or certified mail, return receipt requested would be required. The Notice of Intent to Levy would not be required to itemize the property the Secretary seeks to levy on.

Subject to the exceptions noted below, no levy could occur within the 30-day period beginning with the mailing of the "Notice of Intent to Levy." During that 30-day period, the taxpayer may demand a hearing before an appeals officer who has had no prior involvement with the taxpayer's case, other than in connection with a hearing after the filing of a notice of tax lien. If a hearing is requested within the 30-day period, no levy could occur until a determination by the appeals officer is rendered. In general, any issue that is relevant to the appropriateness of the proposed collection against the taxpayer can be raised at the pre-levy hearing. For example, the taxpayer can request innocent spouse status, make an offer-in-compromise, request an installment agreement or suggest which assets should be used to satisfy the tax liability. However, the validity of the tax liability can be challenged only if the taxpayer did not actually receive the statutory notice of deficiency or has not otherwise had an opportunity to dispute the liability.

If a return receipt is not returned, the Secretary may proceed to levy on the taxpayer's property or rights to property 30 days after the Notice of Intent to Levy was mailed. The Secretary must provide a hearing equivalent to the pre-levy hearing if later requested by the taxpayer. However, the Secretary is not required to suspend the levy process pending the completion of a hearing that is not requested within 30 days of the mailing of the Notice. If the taxpayer did not receive the required notice and requests a hearing after collection activity has begun, then collection shall be suspended and a hearing provided to the taxpayer.

The conferees anticipate that the IRS will combine Notice of Intent to Levy and Notice of Lien hearings whenever possible. If multiple hearings are held, it is expected that, to the extent practicable, the same appellate officer will hear the taxpayer with regard to both lien and levy issues. If the taxpayer requests a hearing following receipt of a Notice of Lien or Notice of Intent to Levy and, prior to the date of the hearing, receives the other notice, the scheduled hearing will serve for both purposes and the taxpayer is obligated to raise all relevant issues at such hearing.

Judicial review

The conferees expect the appeals officer will prepare a written determination addressing the issues presented by the taxpayer and considered at the hearing. The determination of the appeals officer may be appealed to Tax Court or, where appropriate, the Federal district court. Where the validity of the tax liability was properly at issue in the hearing, and where the determination with regard to the tax liability is a part of the appeal, no levy may take place during the pendency of the appeal. The amount of the tax liability will in such cases be reviewed by the appropriate court on a de novo basis. Where the validity of the tax liability is not properly part of the appeal, the taxpayer may challenge the determination of the appeals officer for abuse of discretion. In such cases, the appeals officer's determination as to the appropriateness of collection activity will be reviewed using an abuse of discretion standard of review. Levies will not be suspended during the appeal if the Secretary shows good cause why the levy should be allowed to proceed.

No further hearings are provided under this provision as a matter of right. It is the responsibility of the taxpayer to raise all relevant issues at the time of the pre-levy hearing. A taxpayer could apply for consideration of new information, make an offer-in-compromise, request an installment agreement, or raise other considerations at any time before, during, or after the Notice of Intent to Levy hearing. However, after the 30 day period had expired, the IRS is not required to provide a hearing or delay any levy or sale of levied property. Nothing in this provision is intended to limit any remedy that is otherwise available under present law.

An exception to the general rule prohibiting levies during the 30-day period would apply in the case of state tax offset procedures, and in the case of jeopardy or termination assessments.

Prior judicial approval required for seizures of principal residences

No seizure of a dwelling that is the principal residence of the taxpayer or the taxpayer's spouse, former spouse, or minor child would be allowed without prior judicial approval. Notice of the judicial hearing must be provided to the taxpayer and family members residing in the property. At the judicial hearing, the Secretary would be required to demonstrate (1) that the requirements of any applicable law or administrative procedure relevant to the levy have been met, (2) that the liability is owed, and (3) that no reasonable alternative for the collection of the taxpayer's debt exists.

Effective date

The provision is effective for collection actions initiated more than 180 days after the date of enactment.

2. Examination activities

a. Uniform application of confidentiality privilege to taxpayer communications with federally authorized practitioners (sec. 341 of the House bill and sec. 3411 of the Senate amendment)

Present Law

A common law privilege of confidentiality exists for communications between an attorney and client with respect to the legal advice the attorney gives the client. Communications protected by the attorney-client privilege must be based on facts of which the attorney is informed by the taxpayer, for the purpose of securing the professional advice of the attorney. The privilege may not be claimed where the purpose of the communication is the commission of a crime or tort. The taxpayer must either be a client of the attorney or be seeking to become a client of the attorney.

The privilege of confidentiality applies only where the attorney is advising the client on legal matters. It does not apply in situations where the attorney is acting in other capacities. Thus, a taxpayer may not claim the benefits of the attorney-client privilege simply by hiring an attorney to perform some other function. For example, if an attorney is retained to prepare a tax return, the attorney-client privilege will not automatically apply to communications and documents generated in the course of preparing the return.

The privilege of confidentiality also does not apply where the communication is made for further communication to third parties. For example, information that is communicated to an attorney for inclusion in a tax return is not privileged because it is communicated for the purpose of disclosure. The privilege of confidentiality does not apply where an attorney is acting in another capacity, or where an attorney who is licensed to practice another profession is performing such other profession.

The attorney-client privilege is considered waived if the communication is voluntarily disclosed to anyone other than the attorney, the client or the agents of the client or the attorney.

The attorney-client privilege is limited to communications between taxpayers and attorneys. No equivalent privilege is provided for communications between taxpayers and other professionals authorized to practice before the Internal Revenue Service, such as accountants or enrolled agents.

House Bill

The House bill extends the present law attorney-client privilege of confidentiality to tax advice that is furnished by any individual who is authorized to practice before the Internal Revenue Service, acting in a manner consistent with State law for such individual's profession, to a client-taxpayer (or potential client-taxpayer) in any noncriminal proceeding before the Internal Revenue Service.

The House bill does not modify the attorney-client privilege. Accordingly, except for criminal proceedings, the privilege of confidentiality under this provision applies in the same manner and with the same limitations as the attorney-client privilege of present law.

Effective date.—The provision is effective with regard to communications made on or after the date of enactment.

Senate Amendment

The Senate amendment extends the present law attorney-client privilege of confidentiality to tax advice that is furnished to a client-taxpayer (or potential client-taxpayer) by any individual who is authorized under Federal law to practice before the IRS if such practice is subject to regulation under section 330 of Title 31, United States Code. Individuals subject to regulation under section 330 of Title 31, United States Code include attorneys, certified public accountants, enrolled agents and enrolled actuaries. Tax advice means advice that is within the scope of authority for such individual's practice with respect to matters under Title 26 (the Internal Revenue Code). The privilege of confidentiality may be asserted in any noncriminal tax proceeding before the IRS, as well as in noncriminal tax proceedings in the Federal Courts where the IRS is a party to the proceeding.

The provision allows taxpayers to consult with other qualified tax advisors in the same manner they currently may consult with tax advisors that are licensed to practice law. The provision does not modify the attorney-client privilege of confidentiality, other than to extend it to other authorized practitioners. The privilege established by the provision applies only to the extent that communications would be privileged if they were between a taxpayer and an attorney. Accordingly, the privilege does not apply to any communication between a certified public accountant, enrolled agent, or enrolled actuary and such individual's client (or prospective client) if the communication would not have been privileged between an attorney and the attorney's client or prospective client. For example, information disclosed to an attorney for the purpose of preparing a tax return is not privileged under present law. Such information would not be privileged under the provision whether it was

disclosed to an attorney, certified public accountant, enrolled agent or enrolled actuary.

The privilege granted by the provision may only be asserted in noncriminal tax proceedings before the IRS and in the Federal Courts with regard to such noncriminal tax matters in proceedings where the IRS is a party. The privilege may not be asserted to prevent the disclosure of information to any regulatory body other than the IRS. The ability of any other regulatory body, including the Securities and Exchange Commission (SEC), to gain or compel information is unchanged by the provision. No privilege may be asserted under this provision by a taxpayer in dealings with such other regulatory bodies in an administrative or court proceeding.

Conference Agreement

The conference agreement follows the Senate amendment with a modification. The privilege of confidentiality created by this provision will not apply to any written communication between a federally authorized tax practitioner and any director, shareholder, officer, employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of such corporation in any tax shelter (as defined in section 6662(d)(2)(C)(iii)).

A tax shelter for this purpose is any partnership, entity, plan, or arrangement a significant purpose of which is the avoidance or evasion of income tax. Tax shelters for which no privilege of confidentiality will apply include, but are not limited to, those required to be registered as confidential corporate tax shelter arrangements under section 6111(d). The Conferees do not understand the promotion of tax shelters to be part of the routine relationship between a tax practitioner and a client. Accordingly, the Conferees do not anticipate that the tax shelter limitation will adversely affect such routine relationships.

The privilege created by this provision may be waived in the same manner as the attorney-client privilege. For example, if a taxpayer or federally authorized tax practitioner discloses to a third party the substance of a communication protected by the privilege, the privilege for that communication and any related communications is considered to be waived to the same extent and in the same manner as the privilege would be waived if the disclosure related to an attorney-client communication.

The conference agreement also clarifies that the privilege created by this provision may be asserted in noncriminal tax proceedings before the IRS and in the Federal courts with regard to a noncriminal tax proceeding where the United States is a party.

This provision relates only to matters of privileged communications. No inference is intended as to whether aspects of federal tax practice covered by the new privilege constitute the authorized or unauthorized practice of law under various State laws.

Effective date.—The provision is effective with regard to communications made on or after the date of enactment.

b. Limitation on financial status audit techniques (sec. 343 of the House bill and sec. 3412 of the Senate amendment)

Present Law

The Secretary is authorized and required to make the inquiries and determinations necessary to insure the assessment of Federal income taxes. For this purpose, any reasonable method may be used to determine the amount of Federal income tax owed. The courts have upheld the use of financial status and economic reality examination techniques to determine the existence of unreported income in appropriate circumstances.

House Bill

The provision prohibits the IRS from using financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the IRS has a reasonable indication that there is a likelihood of unreported income.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

c. Software trade secrets protection (sec. 344 of the House bill and sec. 3413 of the Senate amendment)

Present Law

The Secretary of the Treasury is authorized to examine any books, papers, records, or other data that may be relevant or material to an inquiry into the correctness of any Federal tax return. The Secretary may issue and serve summonses necessary to obtain such data, including summonses on certain third-party recordkeepers.

The Secretary is considered to have made a prima facie case for the enforcement of a summons if the so-called "Powell standards" are met.[17] The Powell standards require: (1) that the examination to which the summons relates is being conducted pursuant to a legitimate purpose; (2) that the summons seek information that may be relevant to such examination; (3) that the IRS not already be in possession of the information; and (4) that the administrative steps required by the Code have been followed. However, a summons will not be enforced if the burden it places on the summonsed party is out of proportion to the end sought.[18] Where the summons is issued against a third-party, particularly one that is a stranger to the taxpayer's affairs, the IRS has been required to show that the circumstances of the investigation indicate a real-

[17] See *Powell* v. *U.S.*, 379 U.S. 48 (1964).
[18] *Harrington* v. *U.S.*, 388 F. 2d 520 (2nd Cir, 1968).

istic expectation, and not merely an idle hope, that something relevant to the investigation may be discovered in order to have the summons enforced.[19]

There are no specific statutory restrictions on the ability of the Secretary to demand the production of computer records, programs, source code or similar materials; whether held by the taxpayer or by a third-party.

House Bill

The House bill prohibits the Secretary from issuing (or beginning an action to enforce) a summons in a civil action for any portion of any third-party tax-related computer source code unless (1) the Secretary is unable to otherwise reasonably ascertain the correctness of an item on a return from the taxpayer's other books, papers, records, other data, or the computer software program and associated data itself and (2) the Secretary first identifies with reasonable specificity the portion of the computer source code to be used to verify the correctness of the item.

The Secretary is considered to have satisfied these requirements with regard to the identified portion of the source code if the Secretary makes a formal request for such materials to both the taxpayer and the owner or developer of the software that is not satisfied within 90 days.

The Secretary's determination that the identified portion of the third-party tax-related computer source code may be summoned may be contested in any proceeding to enforce the summons, by any person to whom the summons is addressed. For this purpose, the special procedures for third-party summonses will apply. In any such proceeding, the court may issue any order that is necessary to prevent the disclosure of trade secrets or other confidential information.

The prohibition on issuing summons for tax-related computer source code does not apply in connection with any inquiry into any offense connected with the administration or enforcement of the internal revenue laws. A computer software program will not be treated as tax advice for the purpose of the professional-client privilege contained in section 341 of the House bill.

Effective date.—Summonses issued more than 90 days after the date of enactment.

Senate Amendment

The Senate amendment expands the limitations in the House bill in the following manner:

(1) The prohibitions apply to all computer source code unless developed for the internal use of the taxpayer or a related person.

(2) In order to summons source code, the Secretary is required to determine that the need for the source code outweighs the risks of disclosure of the computer source code in addition to being unable to otherwise reasonably ascertain the correctness of an item on a taxpayer's return and identifying the portion of the Code with reasonable specificity.

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[19] *Harrington*, supra.

(3) If the Secretary makes such a determination he will be considered to have satisfied the statutory requirements to summons source code if he (a) makes a good faith determination that it is not feasible to determine the correctness of the return item in question without access to the computer software program and associated data, (b) makes a formal request for such program and any data from the taxpayer and requests such program from the owner of the source code after reaching such determination, and (c) has not received such program and data within 180 days of making the formal request.

In addition to authorizing any court enforcing a subpoena to issue any order necessary to prevent the disclosure of confidential information, the Senate amendments establishes a number of specific protections against the disclosure and improper use of trade secrets and confidential information incident to the examination by the Secretary of any computer software program or source code that comes into the possession or control of the Secretary in the course of any examination with respect to any taxpayer. These protections include the following:

(1) Such software or source code may be examined only in connection with the examination of the taxpayer's return with regard to which it was received.

(2) Such software or source code must be maintained in a secure area.

(3) Such source code may not be removed from the owner's place of business without the owner's consent unless such removal is pursuant to a court order.

(4) Such software or source code may not be decompiled or disassembled.

(5) Such software or source code may only be copied as necessary to perform the specific examination. The owner of the software must be informed of any copies that are made, such copies must be numbered, and at the conclusion of the examination and any related court proceedings, all such copies must be accounted for and returned to the owner, permanently deleted, or destroyed. The Secretary must provide the owner of such software or source code with the names of any individuals who will have access to such software or source code.

(6) If an individual who is not an officer or employee of the U.S. Government will examine the software or source code, such individual must enter into a written agreement with the Secretary that such individual will not disclose such software or source code to any person other than authorized employees or agents of the Secretary at any time, and that such individual will not participate in the development of software that is intended for a similar purpose as the summoned software for a period of two years.

(7) Criminal penalties are provided where any person willfully divulges or makes known software that was obtained (whether or not by summons) for the purpose of examining a taxpayer's return in violation of this provision.

Effective date.—Summons issued and software acquired after the date of enactment. In addition, 90 days after the date of enactment, the protections against the disclosure and improper use of trade secrets and confidential information added by the provision

(except for the requirement that the Secretary provide a written agreement from non-U.S. government officers and employees) apply to software and source code acquired on or before the date of enactment.

Conference Agreement

The conference agreement generally follows the Senate amendment with regard to the safeguards for protection of computer software and source code that is obtained by the IRS in the course of the examination of a taxpayer's return. The conference agreement specifically provides that computer software or source code that is obtained by the IRS in the course of the examination of a taxpayer's return will be treated as return information for the purposes of section 6103. The conference agreement follows the Senate amendment with regard to the standards the Secretary must meet in order to summons certain types of computer source code. The conference agreement follows the House bill in limiting the higher standards for a summons to third-party tax-related computer source code.

Under the conference agreement, no summons may be issued for tax-related computer software source code unless (1) the Secretary is unable otherwise to ascertain the correctness of any item on a return from the taxpayer's books and records or the computer software program and associated data, (2) the Secretary identifies with reasonable specificity the portion of the computer source code needed to verify the correctness of the item and (3) the Secretary determines that the need for the source code outweighs the risk of unauthorized disclosure of trade secrets. The Secretary is considered to have satisfied the first two of these requirements if the Secretary makes a formal request for such materials to both the taxpayer and the owner of the software that is not satisfied within 180 days.

This limitation on the summons of tax-related computer software source code does not apply if the summons is issued in connection with an inquiry into any offense connected with the administration or enforcement of the internal revenue laws. The limitation also does not apply to a summons of computer software source code that was acquired or developed by the taxpayer or a related person primarily for internal use by the taxpayer or such person rather than for commercial distribution. A finding that computer software source code was developed for internal use, and thus not eligible for the limitation in summons authority in this provision, is not intended to be dispositive of whether such software was intended for internal use for any other purpose of this title.

Communications between the owner of the tax-related computer software source code and the taxpayer are not protected from summons by this provision. Communications between the owner of the tax-related source code and persons not related to the taxpayer that are related to the functioning and operation of the software may be treated as a part of the computer software source code.

The provision does not change or eliminate any other requirement of the Code. A summons for third-party tax-related computer source code that meets the standards established by the provision will not be enforced if it would not be enforced under present law.

For example, if the Secretary's purpose in issuing the summons is shown to be improper, the summons would not be enforced, even if the Secretary otherwise met the standards for the summons of computer source code established by the provision. The limitations on the summons of tax-related computer software source code apply only with respect to computer software that is used for accounting tax return preparation, tax compliance or tax planning purposes. No inference is intended with respect to computer software used for all other purposes. In such cases, current law will continue to apply, subject to the protections against the disclosure and improper use of trade secrets and other confidential information added by this provision.

Software or source code that is required to be provided under present law must be provided without regard to this provision. For example, computer software or source code that is required to be provided in connection with the registration of a confidential corporate tax shelter arrangements under section 6111 would continue to be required to be provided without regard to this provision. Thus, the registration requirement of section 6111 cannot be avoided where the tax benefits of the shelter are discernible only from the operation of a computer program.

The conference agreement includes the protections against the disclosure and improper use of trade secrets and confidential information contained in the Senate amendment. The requirement that software or source code obtained by the Secretary in the course of an examination be used only in connection with that examination is intended to prevent the Secretary from using the software for the purpose of examining other, unrelated taxpayers. The requirement is not intended to prevent the Secretary from using knowledge it obtains in the course of the examination, so long as such use does not result in the disclosure of tax return information (including the software or source code) or the violation of any statutory protection or judicial order.

Effective date.—The conference agreement follows the Senate effective date.

d. Threat of audit prohibited to coerce tip reporting alternative commitment agreements (sec. 349 of the House bill and sec. 3414 of the Senate amendment)

Present Law

Restaurants may enter into Tip Reporting Alternative Commitment (TRAC) agreements. A restaurant entering into a TRAC agreement is obligated to educate its employees on their tip reporting obligations, to institute formal tip reporting procedures, to fulfill all filing and record keeping requirements, and to pay and deposit taxes. In return, the IRS agrees to base the restaurant's liability for employment taxes solely on reported tips and any unreported tips discovered during an IRS audit of an employee.

House Bill

The provision requires the IRS to instruct its employees that they may not threaten to audit any taxpayer in an attempt to coerce the taxpayer to enter into a TRAC agreement.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Taxpayers allowed motion to quash all third-party summonses (sec. 3415 of the Senate amendment)

Present Law

When the IRS issues a summons to a "third-party recordkeeper" relating to the business transactions or affairs of a taxpayer, notice of the summons must be given to the taxpayer within three days by certified or registered mail. The taxpayer is thereafter given up to 23 days to begin a court proceeding to quash the summons. If the taxpayer does so, third-party recordkeepers are prohibited from complying with the summons until the court rules on the taxpayer's petition or motion to quash, but the statute of limitations for assessment and collection with respect to the taxpayer is stayed during the pendency of such a proceeding. Third-party recordkeepers are generally persons who hold financial information about the taxpayer, such as banks, brokers, attorneys, and accountants.

House Bill

No provision.

Senate Amendment

The Senate amendment generally expands the current "third-party recordkeeper" procedures to apply to summonses issued to persons other than the taxpayer. Thus, the taxpayer whose liability is being investigated receives notice of the summons and is entitled to bring an action in the appropriate U.S. District Court to quash the summons. As under the current third-party recordkeeper provision, the statute of limitations on assessment and collection is stayed during the litigation, and certain kinds of summonses specified under present law are not subject to these requirements.

Effective date.—Summonses served after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment with a clarification that nothing in section 7609 of the Code (relating to special procedures for third-party summonses) shall be construed to

limit the ability of the IRS to obtain information (other than by summons) through formal or informal procedures authorized by the Code.

f. Service of summonses to third-party recordkeepers permitted by mail (sec. 3416 of the Senate amendment)

Present Law

A summons must be served "by an attested copy delivered in hand to the person to whom it is directed or left at his last and usual place of abode." If a third-party recordkeeper summons is served, the IRS may give the taxpayer notice of the summons via certified or registered mail. The Federal Rules of Civil Procedure permits service of process by mail even in summons enforcement proceedings.

House Bill

No provision.

Senate Amendment

The Senate amendment allows the IRS the option of serving any summons either in person or by certified or registered mail.

Effective date.—Summonses served after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

g. Notice of IRS contact of third parties (sec. 3417 of the Senate amendment)

Present Law

Third parties may be contacted by the IRS in connection with the examination of a taxpayer or the collection of the tax liability of the taxpayer. The IRS has the right to summon third-party recordkeepers. In general, the taxpayer must be notified of the service of summons on a third party within three days of the date of service. The IRS also has the right to seize property of the taxpayer that is held in the hands of third parties. Except in jeopardy situations, the Internal Revenue Manual provides that IRS will personally contact the taxpayer and inform the taxpayer that seizure of the asset is planned.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to notify the taxpayer before contacting third parties regarding examination or collection activities (including summonses) with respect to the taxpayer. Contacts with government officials relating to matters such as the loca-

tion of assets or the taxpayer's current address are not restricted by this provision. The provision does not apply to criminal tax matters, if the collection of the tax liability is in jeopardy, or if the taxpayer authorized the contact.

Effective date.—Contacts made after 180 days after the date of enactment.

Conference Agreement

The conference agreement provides that the IRS may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of the taxpayer without providing reasonable notice in advance to the taxpayer that the IRS may contact persons other than the taxpayer. It is intended that in general this notice will be provided as part of an existing IRS notice provided to taxpayers. The conference agreement also requires the IRS to provide periodically to the taxpayer a record of persons previously contacted during that period by the IRS with respect to the determination or collection of that taxpayer's tax liability. This record shall also be provided upon request of the taxpayer. The provision does not apply to criminal tax matters, if the collection of the tax liability is in jeopardy, if the Secretary determines for good cause shown that disclosure may involve reprisal against any person, or if the taxpayer authorized the contact.

Effective date.—Contacts made after 180 days after the date of enactment.

3. Collection activities

a. Approval process for liens, levies, and seizures (sec. 3421 of the Senate amendment)

Present Law

Supervisory approval of liens, levies or seizures is only required under certain circumstances. For example, a levy on a taxpayer's principal residence is only permitted upon the written approval of the District Director or Assistant District Director.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to implement an approval process under which any lien, levy or seizure would, where appropriate, be approved by a supervisor, who would review the taxpayer's information, verify that a balance is due, and affirm that a lien, levy or seizure is appropriate under the circumstances. Circumstances to be considered include the amount due and the value of the asset.

Effective date.—Collection actions commenced after date of enactment, except for automated collection system actions initiated before January 1, 2000.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees intend that the Commissioner have discretion in promulgating the procedures required by this provision to determine the circumstances under which supervisory review of liens or levies issued by the automated collection system is or is not appropriate.

Effective date.—Collection actions commenced after date of enactment, except in the case of any action under the automated collection system, the provision applies to actions initiated after December 31, 2000.

b. Modifications to certain levy exemption amounts (sec. 3431 of the Senate amendment)

Present Law

IRS may levy on all non-exempt property of the taxpayer. Property exempt from levy includes up to $2,500 in value of fuel, provisions, furniture, and personal effects in the taxpayer's household and up to $1,250 in value of books and tools necessary for the trade, business or profession of the taxpayer.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the value of personal effects exempt from levy to $10,000 and the value of books and tools exempt from levy to $5,000. These amounts are indexed for inflation.

Effective date.—Levies issued after date of enactment.

Conference Agreement

The conference agreement increases the value of personal effects exempt from levy to $6,250 and the value of books and tools exempt from levy to $3,125. These amounts are indexed for inflation.

Effective date.—Levies issued after date of enactment.

c. Release of levy upon agreement that amount is uncollectible (sec. 3432 of the Senate amendment)

Present Law

Some taxpayers have contended that the IRS does not release a wage levy immediately upon receipt of proof that the tax is not collectible. Instead, they claim, the IRS levies on one period's wage payment before releasing the levy.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to immediately release a wage levy upon agreement with the taxpayer that the tax is not collectible.

Effective date.—Levies imposed after December 31, 1999.

Conference Agreement

The conference agreement follows the Senate amendment, with a clarification that the release is to occur as soon as practicable. The IRS is not to intentionally delay until after one wage payment has been made and levied upon before releasing the levy.

d. Levy prohibited during pendency of refund proceedings (sec. 3433 of the Senate amendment)

Present Law

The IRS is prohibited from making a tax assessment (and thus prohibited from collecting payment) with respect to a tax liability while it is being contested in Tax Court. However, the IRS is permitted to assess and collect tax liabilities during the pendency of a refund suit relating to such tax liabilities, under the circumstances described below.

Generally, full payment of the tax at issue is a prerequisite to a refund suit. However, if the tax is divisible (such as employment taxes or the trust fund penalty under Code section 6672), the taxpayer need only pay the tax for the applicable period before filing a refund claim.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to withhold collection of liabilities that are the subject of a refund suit during the pendency of the litigation. This will only apply when refund suits can be brought without the full payment of the tax, i.e., in the case of divisible taxes. Collection by levy would be withheld unless jeopardy exists or the taxpayer waives the suspension of collection in writing (because collection will stop the running of interest and penalties on the tax liability). The Secretary could not commence a civil action to collect a liability except in a proceeding related to the initial refund proceeding. The statute of limitations on collection is stayed for the period during which the IRS is prohibited from collecting by levy or otherwise.

Effective date.—Unpaid tax attributable to taxable periods beginning after December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, with a technical modification. The conferees wish to clarify that proceed-

ings related to a proceeding[20] under this provision include, but are not limited to, civil actions or third-party complaints initiated by the United States or another person with respect to the same kinds of tax (or related taxes or penalties) for the same (or overlapping) tax periods. For example, if a taxpayer brings a suit for a refund of a portion of a penalty that the taxpayer has paid under section 6672, the United States could, consistent with this provision, counterclaim against the taxpayer for the balance of the penalty or initiate related claims against other persons assessed penalties under section 6672 for the same employment taxes.

e. Approval required for jeopardy and termination assessments and jeopardy levies (sec. 3434 of the Senate amendment)

Present Law

In general, a 30-day waiting period is imposed after assessment of all types of taxes. In certain circumstances, the waiting period puts the collection of taxes at risk. The Code provides special procedures that allow the IRS to make jeopardy assessments or termination assessments in certain extraordinary circumstances, such as if the taxpayer is leaving or removing property from the United States, or if assessment or collection would be jeopardized by delay. In jeopardy or termination situations, a levy may be made without the 30-days' notice of intent to levy that is ordinarily required.

House Bill

No provision.

Senate Amendment

The Senate amendment requires IRS Counsel review and approval before the IRS can make a jeopardy assessment, a termination assessment, or a jeopardy levy. If Counsel's approval is not obtained, the taxpayer is entitled to obtain abatement of the assessment or release of the levy, and, if the IRS fails to offer such relief, to appeal first to IRS Appeals under the new due process procedure for IRS collections and then to court.

Effective date.—Taxes assessed and levies made after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

f. Increase in amount of certain property on which lien not valid (sec. 3435 of the Senate amendment)

Present Law

A Federal tax lien attaches to all property and rights in property of the taxpayer, if the taxpayer fails to pay the assessed tax liability after notice and demand. However, the Federal tax lien is not valid as to certain "superpriority" interests.

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[20] For purposes of new section 6331(i)(4)(A)(ii) of the Code.

Two of these interests are limited by a specific dollar amount. Purchasers of personal property at a casual sale are presently protected against a Federal tax lien attached to such property to the extent the sale is for less than $250. In addition, present law provides protection to mechanic's lienors with respect to the repairs or improvements made to owner-occupied personal residences, but only to the extent that the contract for repair or improvement is for not more than $1,000.

In addition, a superpriority is granted to banks and building and loan associations which make passbook loans to their customers, provided that those institutions retain the passbooks in their possession until the loan is completely paid off.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the dollar limit for purchasers at a casual sale from $250 to $1,000, and further increases the dollar limit from $1,000 to $5,000 for mechanics lienors providing home improvement work for owner-occupied personal residences. The Senate amendment indexes these amounts for inflation. The Senate amendment also clarifies the superpriority rules to reflect present banking practices, where a passbook-type loan may be made even though an actual passbook is not used.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

g. Waiver of early withdrawal tax for IRS levies on employer-sponsored retirement plans or IRAs (sec. 3436 of the Senate amendment)

Present Law

Under present law, a distribution of benefits from a employer-sponsored retirement plan or an Individual Retirement Arrangement ("IRA") generally is includible in gross income in the year it is paid or distributed, except to the extent the amount distributed represents the employee's after-tax contributions or investment in the contract (i.e., basis). Special rules apply to lump-sum distributions from qualified retirement plans, distributions rolled over to an IRA or employer-sponsored retirement plan, and distributions of employer securities.

Early distributions from qualified plans and IRAs includible in income generally are subject to a 10-percent early withdrawal tax, unless an exception to the tax applies. Includible amounts withdrawn prior to attainment of age 59½ are subject to the additional 10-percent early withdrawal tax, unless the withdrawal is due to death or disability, is made in the form of certain periodic payments, is used to pay medical expenses in excess of 7.5 percent of adjusted gross income ("AGI"), or is used to purchase health insurance of an unemployed individual. Certain additional exceptions to

the tax apply separately to withdrawals from IRAs and qualified plans. Distributions from IRAs for education expenses and for up to $10,000 of first-time homebuyer expenses, or to unemployed individuals to purchase health insurance are not subject to the 10-percent early withdrawal tax. A distribution from a qualified plan made by an employee after separation from service after attainment of age 55 is not subject to the 10-percent early withdrawal tax.

Under present law, the IRS is authorized to levy on all nonexempt property of the taxpayer. Benefits under employer-sponsored retirement plans (including 403(b) and 457 plans) and IRAs are not exempt from levy by the IRS.

Distributions from employer-sponsored retirement plans or IRAs made on account of an IRS levy would be includible in the gross income of the individual, except to the extent the amount distributed represents after-tax contributions. In addition, the amount includible in income would be subject to the 10-percent early withdrawal tax, unless an exception described above applies.

House Bill

No provision.

Senate Amendment

The Senate amendment provides an exception from the 10-percent early withdrawal tax for amounts withdrawn from an employer-sponsored retirement plan or an IRA that are subject to a levy by the IRS. The exception applies only if the plan or IRA is levied; it does not apply, for example, if the taxpayer withdraws funds to pay taxes in the absence of a levy, in order to release a levy on other interests.

Effective date.—The provision is effective for withdrawals after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with a modification to the effective date. The provision is effective for distributions after December 31, 1999.

h. Prohibition of sales of seized property at less than minimum bid (sec. 3441 of the Senate amendment)

Present Law

A minimum bid price must be established for seized property offered for sale. To conserve the taxpayer's equity, the minimum bid price should normally be computed at 80 percent or more of the forced sale value of the property less encumbrances having priority over the Federal tax lien. If the group manager concurs, the minimum sales price may be set at less than 80 percent. The taxpayer is to receive notice of the minimum bid price within 10 days of the sale. The taxpayer has the opportunity to challenge the minimum bid price, which cannot be more than the tax liability plus the expenses of sale. Present law does not contemplate a sale of the seized property at less than the minimum bid price. Rather, if no

person offers the minimum bid price, the IRS may buy the property at the minimum bid price or the property may be released to the owner.

House Bill

No provision.

Senate Amendment

The Senate amendment prohibits the IRS from selling seized property for less than the minimum bid price. The Senate amendment provides that the sale of property for less than the minimum bid price would constitute an unauthorized collection action, which would permit an affected person to sue for civil damages.

Effective date.—Sales occurring after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

i. Accounting of sales of seized property (sec. 3442 of the Senate amendment)

Present Law

The IRS is authorized to seize and sell a taxpayer's property to satisfy an unpaid tax liability. The IRS is required to give written notice to the taxpayer before seizure of the property. The IRS must also give written notice to the taxpayer at least 10 days before the sale of the seized property.

The IRS is required to keep records of all sales of real property. The records must set forth all proceeds and expenses of the sale. The IRS is required to apply the proceeds first against the expenses of the sale, then against a specific tax liability on the seized property, if any, and finally against any unpaid tax liability of the taxpayer. Any surplus proceeds are credited to the taxpayer or persons legally entitled to the proceeds.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to provide a written accounting of all sales of seized property, whether real or personal, to the taxpayer. The accounting must include a receipt for the amount credited to the taxpayer's account.

Effective date.—Seizures occurring after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

j. Uniform asset disposal mechanism (sec. 3443 of the Senate amendment)

Present Law

The IRS must sell property seized by levy either by public auction or by public sale under sealed bids. These are often conducted by the revenue officer charged with collecting the tax liability.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to implement a uniform asset disposal mechanism for sales of seized property. The disposal mechanism should be designed to remove any participation in the sale of seized assets by revenue officers. The provision authorizes the consideration of outsourcing of the disposal mechanism.

Effective date.—Requires a uniform asset disposal system to be implemented within two years from the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

k. Codification of IRS administrative procedures for seizure of taxpayer's property (sec. 3444 of the Senate amendment)

Present Law

The Internal Revenue Manual (IRM) provides general guidelines for seizure actions.

Prior to the levy action, the revenue officer must determine that there is sufficient equity in the property to be seized to yield net proceeds from the sale to apply to unpaid tax liabilities. If it is determined after seizure that the taxpayer's equity is insufficient to yield net proceeds from sale to apply to the unpaid tax, the revenue officer will immediately release the seized property.

House Bill

No provision.

Senate Amendment

The Senate amendment codifies the IRS administrative procedures which require the IRS to investigate the status of property prior to levy.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with a technical modification applying the investigation requirement only to property to be sold pursuant to section 6335.

l. Procedures for seizure of residences and businesses (sec. 3445 of the Senate amendment)

Present Law

Subject to certain procedural rules and limitations, the Secretary may seize the property of the taxpayer who neglects or refuses to pay any tax within 10 days after notice and demand. The IRS may not levy on the personal residence of the taxpayer unless the District Director (or the assistant District Director) personally approves in writing or in cases of jeopardy. There are no special rules for property that is used as a residence by parties other than the taxpayer. IRS Policy Statement P-5-34 states that the facts of a case and alternative collection methods must be thoroughly considered before deciding to seize the assets of a going business.

House Bill

No provision.

Senate Amendment

The Senate amendment prohibits the IRS from seizing real property that is used as a residence (by the taxpayer or another person) to satisfy an unpaid liability of $5,000 or less, including penalties and interest.

The Senate amendment requires the IRS to exhaust all other payment options before seizing the taxpayer's business assets or principal residence. For this purpose, future income that may be derived by a taxpayer from the commercial sale of fish or wildlife under a specified State permit must be considered in evaluating other payment options before seizing the taxpayer's business assets. The provision does not apply in cases of jeopardy.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except as follows. The prohibition on seizing a residence to satisfy an unpaid liability of $5,000 or less is clarified to apply to any real property used as a residence by the taxpayer or any nonrental real property of the taxpayer used by any other individual as a residence. The definition of business assets is clarified to apply to tangible personal property or real property used in the trade or business of an individual taxpayer (other than real property that is rented). The conference agreement provides that a levy is permitted on a principal residence only if a judge or magistrate of a United States district court approves (in writing) of the levy.

4. Provisions relating to examination and collection activities

a. Procedures relating to extensions of statute of limitations by agreement (sec. 345 of the House bill and sec. 3461 of the Senate amendment)

Present Law

The statute of limitations within which the IRS may assess additional taxes is generally three years from the date a return is filed. Prior to the expiration of the statute of limitations, both the taxpayer and the IRS may agree in writing to extend the statute. An extension may be for either a specified period or an indefinite period. The statute of limitations within which a tax may be collected after assessment is 10 years after assessment. Prior to the expiration of the statute of limitations on collection, both the taxpayer and the IRS may agree in writing to extend the statute.

House Bill

The House bill requires that, on each occasion on which the taxpayer is requested by the IRS to extend the statute of limitations, the IRS must notify the taxpayer of the taxpayer's right to refuse to extend the statute of limitations or to limit the extension to particular issues.

Effective date.—Requests to extend the statute of limitations made after the date of enactment.

Senate Amendment

The Senate amendment eliminates the provision of present law that allows the statute of limitations on collections to be extended by agreement between the taxpayer and the IRS.

The Senate amendment also requires that, on each occasion on which the taxpayer is requested by the IRS to extend the statute of limitations on assessment, the IRS must notify the taxpayer of the taxpayer's right to refuse to extend the statute of limitations or to limit the extension to particular issues.

Effective date.—Requests to extend the statute of limitations made after December 31, 1999 and to all extensions of the statute of limitations on collection that are open on December 31, 1999.

Conference Agreement

The conference agreement follows the Senate amendment, except that extensions of the statute of limitations on collection may be made in connection with an installment agreement; the extension is only for the period for which the waiver of the statute of limitations entered in connection with the original written terms of the installment agreement extends beyond the end of the otherwise applicable 10-year period, plus 90 days.

Effective date. Requests to extend the statute of limitations made after December 31, 1999. If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend that period beyond the 10-year statute of limitations on collection, that extension shall expire on the latest

of: the last day of such 10-year period, December 31, 2002, or, in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension.

b. Offers-in-compromise (sec. 346 of the House bill and sec. 3462 of the Senate amendment)

Present Law

The Code permits the IRS to compromise a taxpayer's tax liability. An offer-in-compromise is an offer by the taxpayer to settle unpaid tax accounts for less than the full amount of the assessed balance due. An offer-in-compromise may be submitted for all types of taxes, as well as interest and penalties, arising under the Internal Revenue Code.

There are two bases on which an offer can be made: doubt as to liability for the amount owed and doubt as to ability to pay the amount owed.

A compromise agreement based on doubt as to ability to pay requires the taxpayer to file returns and pay taxes for five years from the date the IRS accepts the offer. Failure to do so permits the IRS to begin immediate collection actions for the original amount of the liability. The Internal Revenue Manual provides guidelines for revenue officers to determine whether an offer-in-compromise is adequate. An offer is adequate if it reasonably reflects collection potential. Although the revenue officer is instructed to consider the taxpayer's assets and future and present income, the IRM advises that rejection of an offer solely based on narrow asset and income evaluations should be avoided.

Pursuant to the IRM, collection normally is withheld during the period an offer-in-compromise is pending, unless it is determined that the offer is a delaying tactic and collection is in jeopardy.

House Bill

Rights of taxpayers entering into offers-in-compromise.—The House bill requires the IRS to develop and publish schedules of national and local allowances that will provide taxpayers entering into an offer-in-compromise with adequate means to provide for basic living expenses.

Suspend collection by levy while offer-in-compromise is pending.—No provision.

Procedures for reviews of rejections of offers-in-compromise and installment agreements.—No provision.

Publication of taxpayer's rights with respect to offers-in-compromise.—The House bill requires the IRS to publish guidance on the rights and obligations of taxpayers and the IRS relating to offers in compromise, including a compliant spouse's right to apply to reinstate an agreement that would otherwise be revoked due to the nonfiling or nonpayment of the other spouse, providing all payments required under the compromise agreement are current.

Liberal acceptance policy.—No provision.

Effective date.—Date of enactment.

Senate Amendment

Rights of taxpayers entering into offers-in-compromise.—Same as the House bill, except as follows. Under the Senate amendment, the IRS also is required to consider the facts and circumstances of a particular taxpayer's case in determining whether the national and local schedules are adequate for that particular taxpayer. If the facts indicate that use of scheduled allowances would be inadequate under the circumstances, the taxpayer is not limited by the national or local allowances.

The Senate amendment prohibits the IRS from rejecting an offer-in-compromise from a low-income taxpayer solely on the basis of the amount of the offer. The Senate amendment provides that, in the case of an offer-in-compromise submitted solely on the basis of doubt as to liability, the IRS may not reject the offer merely because the IRS cannot locate the taxpayer's file. The Senate amendment prohibits the IRS from requesting a financial statement if the taxpayer makes an offer-in-compromise based solely on doubt as to liability.

Suspend collection by levy while offer-in-compromise is pending.—The Senate amendment prohibits the IRS from collecting a tax liability by levy (1) during any period that a taxpayer's offer-in-compromise for that liability is being processed, (2) during the 30 days following rejection of an offer, and (3) during any period in which an appeal of the rejection of an offer is being considered. Taxpayers whose offers are rejected and who made good faith revisions of their offers and resubmitted them within 30 days of the rejection or return would be eligible for a continuous period of relief from collection by levy. This prohibition on collection by levy would not apply if the IRS determines that collection is in jeopardy or that the offer was submitted solely to delay collection. The Senate amendment provides that the statute of limitations on collection would be tolled for the period during which collection by levy is barred.

Procedures for reviews of rejections of offers-in-compromise and installment agreements.—The Senate amendment requires that the IRS implement procedures to review all proposed IRS rejections of taxpayer offers-in-compromise and requests for installment agreements prior to the rejection being communicated to the taxpayer. The Senate amendment requires the IRS to allow the taxpayer to appeal any rejection of such offer or agreement to the IRS Office of Appeals. The IRS must notify taxpayers of their right to have an appeals officer review a rejected offer-in-compromise on the application form for an offer-in-compromise.

Publication of taxpayer's rights with respect to offers-in-compromise.—Same as the House bill.

Liberal acceptance policy.—The Senate amendment provides that the IRS will adopt a liberal acceptance policy for offers-in-compromise to provide an incentive for taxpayers to continue to file tax returns and continue to pay their taxes.

Effective date.—Generally effective for offers-in-compromise submitted after the date of enactment. The provision suspending levy is effective with respect to offers-in-compromise pending on or made after December 31, 1999.

Conference Agreement

The conference agreement follows the Senate amendment, with the following additions. First, the provision suspending collection by levy while an offer-in-compromise is pending is also expanded to apply while an installment agreement is pending.

Second, the provision authorizes the Secretary to prescribe guidelines for the IRS to determine whether an offer-in-compromise is adequate and should be accepted to resolve a dispute. Accordingly, the conferees expect that the present regulations will be expanded so as to permit the IRS, in certain circumstances, to consider additional factors (i.e., factors other than doubt as to liability or collectibility) in determining whether to compromise the income tax liabilities of individual taxpayers. For example, the conferees anticipate that the IRS will take into account factors such as equity, hardship, and public policy where a compromise of an individual taxpayer's income tax liability would promote effective tax administration. The conferees anticipate that, among other situations, the IRS may utilize this new authority to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability. The conferees believe that the ability to compromise tax liability and to make payments of tax liability by installment enhances taxpayer compliance. In addition, the conferees believe that the IRS should be flexible in finding ways to work with taxpayers who are sincerely trying to meet their obligations and remain in the tax system. Accordingly, the conferees believe that the IRS should make it easier for taxpayers to enter into offer-in-compromise agreements, and should do more to educate the taxpaying public about the availability of such agreements.

c. Notice of deficiency to specify deadlines for filing Tax Court petition (sec. 347 of the House bill and sec. 3463 of the Senate amendment)

Present Law

Taxpayers must file a petition with the Tax Court within 90 days after the deficiency notice is mailed (150 days if the person is outside the United States) (sec. 6213). If the petition is not filed within that time period, the Tax Court does not have jurisdiction to consider the petition.

House Bill

The provision requires the IRS to include on each deficiency notice the date determined by the IRS as the last day on which the taxpayer may file a petition with the Tax Court. The provision provides that a petition filed with the Tax Court by this date is treated as timely filed.

Effective date.—Notices mailed after December 31, 1998.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Refund or credit of overpayments before final determination (sec. 348 of the House bill and sec. 3464 of the Senate amendment)

Present Law

Generally, the IRS may not take action to collect a deficiency during the period a taxpayer may petition the Tax Court, or if the taxpayer petitions the Tax Court, until the decision of the Tax Court becomes final. Actions to collect a deficiency attempted during this period may be enjoined, but there is no authority for ordering the refund of any amount collected by the IRS during the prohibited period.

If a taxpayer contests a deficiency in the Tax Court, no credit or refund of income tax for the contested taxable year generally may be made, except in accordance with a decision of the Tax Court that has become final. Where the Tax Court determines that an overpayment has been made and a refund is due the taxpayer, and a party appeals a portion of the decision of the Tax Court, no provision exists for the refund of any portion of any overpayment that is not contested in the appeal.

House Bill

The provision provides that a proper court (including the Tax Court) may order a refund of any amount that was collected within the period during which the Secretary is prohibited from collecting the deficiency by levy or other proceeding.

The provision also allows the refund of that portion of any overpayment determined by the Tax Court to the extent the overpayment is not contested on appeal.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. IRS procedures relating to appeal of examinations and collections (sec. 3465 of the Senate amendment)

Present Law

IRS Appeals operates through regional Appeals offices which are independent of the local District Director and Regional Commissioner's offices. In general, IRS Appeals offices have jurisdiction over both pre-assessment and post-assessment cases. The taxpayer generally has an opportunity to seek Appeals jurisdiction after fail-

ing to reach agreement with the Examination function and before filing a petition in Tax Court, after filing a petition in Tax Court (but before litigation), after assessment of certain penalties, after a claim for refund has been rejected by the District Director's office, and after a proposed rejection of an offer-in-compromise in a collection case.

In certain cases under Coordinated Examination Program procedures, the taxpayer has an opportunity to seek early Appeals jurisdiction over some issues while an examination is still pending on other issues. The early referral procedures also apply to employment tax issues on a limited basis.

A mediation or alternative dispute resolution (ADR) process is also available in certain cases. ADR is used at the end of the administrative process as a final attempt to resolve a dispute before litigation. ADR is currently only available for cases with more than $10 million in dispute. ADR processes are also available in bankruptcy cases and cases involving a competent authority determination.

In April 1996, the IRS implemented a Collections Appeals Program within the Appeals function, which allows taxpayers to appeal lien, levy, or seizure actions proposed by the IRS. In January 1997, appeals for installment agreements proposed for termination were added to the program.

House Bill

No provision.

Senate Amendment

The Senate amendment codifies existing IRS procedures with respect to early referrals to Appeals and the Collections Appeals Process. The Senate amendment also codifies the existing ADR procedures, as modified by eliminating the dollar threshold.

In addition, the IRS is required to establish a pilot program of binding arbitration for disputes of all sizes. Under the pilot program, binding arbitration must be agreed to by both the taxpayer and the IRS.

The Senate amendment requires the IRS to make Appeals officers available on a regular basis in each State, and consider videoconferencing of Appeals conferences for taxpayers seeking appeals in rural or remote areas.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

f. Application of certain fair debt collection practices (sec. 3466 of the Senate amendment)

Present Law

The Fair Debt Collection Practices Act provides a number of rules relating to debt collection practices. Among these are restrictions on communication with the consumer, such as a general prohibition on telephone calls outside the hours of 8:00 a.m. to 9:00

p.m. local time, and prohibitions on harassing or abusing the consumer. In general, these provisions do not apply to the Federal Government.

House Bill

No provision.

Senate Amendment

The Senate amendment applies the restrictions relating to communication with the taxpayer/debtor and the prohibitions on harassing or abusing the debtor to the IRS. The restrictions relating to communication with the taxpayer/debtor are not intended to hinder the ability of the IRS to respond to taxpayer inquiries (such as answering telephone calls from taxpayers).

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

g. Guaranteed availability of installment agreements (sec. 3467 of the Senate amendment)

Present Law

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer is allowed to pay taxes owed, as well as interest and penalties, in installment payments if the IRS determines that doing so will facilitate collection of the amounts owed. An installment agreement does not reduce the amount of taxes, interest, or penalties owed, but does provide for a longer period during which payments may be made during which other IRS enforcement actions (such as levies or seizures) are held in abeyance. The IRS in most instances readily approves these requests if the amounts involved are not large (in general, below $10,000) and if the taxpayer has filed tax returns on time in the past. Some taxpayers are required to submit background information to the IRS substantiating their application.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the Secretary to enter an installment agreement, at the taxpayer's option, if: (1) the liability is $10,000, or less (excluding penalties and interest); (2) within the previous 5 years, the taxpayer has not failed to file or to pay, nor entered an installment agreement under this provision; (3) if requested by the Secretary, the taxpayer submits financial statements, and the Secretary determines that the taxpayer is unable to pay the tax due in full; (4) the installment agreement provides for full payment of the liability within 3 years; and (5) the taxpayer agrees to continue to comply with the tax laws and the terms of

the agreement for the period (up to 3 years) that the agreement is in place.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

h. Prohibition on requests to taxpayers to waive rights to bring actions (sec. 3468 of the Senate amendment)

Present Law

There is no restriction on the circumstances under which the Government may request a taxpayer to waive the taxpayer's right to sue the United States or one of its employees for any action taken in connection with the tax laws.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the Government may not request a taxpayer to waive the taxpayer's right to sue the United States or one of its employees for any action taken in connection with the tax laws, unless (1) the taxpayer knowingly and voluntarily waives that right, or (2) the request is made to the taxpayer's attorney or other representative.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees do not intend this provision to apply to the waiver of claims for attorneys' fees or costs or to the waiver of one or more claims brought in the same administrative or judicial proceeding with other claims that are being settled.

F. Disclosures to Taxpayers

1. Explanation of joint and several liability (sec. 351 of the House bill and sec. 3501 of the Senate amendment)

Present Law

In general, spouses who file a joint tax return are each fully responsible for the accuracy of the tax return and for the full liability. Spouses who wish to avoid such joint and several liability may file as married persons filing separately. Special rules apply in the case of innocent spouses.

House Bill

The House bill requires that the IRS establish procedures clearly to alert married taxpayers of their joint and several liability on all appropriate tax publications and instructions. The IRS will

make an appropriate cross reference to these statements near the signature line on appropriate tax forms.

Effective date.—Requires that the procedures be established as soon as practicable, but no later than 180 days after the date of enactment.

Senate Amendment

Same as the House bill, except that the Senate amendment also requires notification of the availability of electing separate liability.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, except that notification must be given of an individual's right to relief under new section 6015 of the Code.

2. Explanation of taxpayers' rights in interviews with the IRS (sec. 352 of the House bill and sec. 3502 of the Senate amendment)

Present Law

Prior to or at initial in-person audit interviews, the IRS must explain to taxpayers the audit process and taxpayers' rights under that process and the collection process and taxpayers' rights under that process. If a taxpayer clearly states during an interview with the IRS that the taxpayer wishes to consult with the taxpayer's representative, the interview must be suspended to afford the taxpayer a reasonable opportunity to consult with the representative.

House Bill

The House bill requires that the IRS rewrite Publication 1 ("Your Rights as a Taxpayer") to inform taxpayers more clearly of their rights (1) to be represented by a representative and (2) if the taxpayer is so represented, that the interview may not proceed without the presence of the representative unless the taxpayer consents.

Effective date.—The addition to Publication 1 must be made not later than 180 days after the date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Disclosure of criteria for examination selection (sec. 353 of the House bill and sec. 3503 of the Senate amendment)

Present Law

The IRS examines Federal tax returns to determine the correct liability of taxpayers. The IRS selects returns to be audited in a number of ways, such as through a computerized classification system (the discriminant function ("DIF") system).

House Bill

The provision requires that IRS add to Publication 1 ("Your Rights as a Taxpayer") a statement which sets forth in simple and nontechnical terms the criteria and procedures for selecting taxpayers for examination. The statement must not include any information the disclosure of which would be detrimental to law enforcement. The statement must specify the general procedures used by the IRS, including whether taxpayers are selected for examination on the basis of information in the media or from informants.

Effective date.—The addition to Publication 1 must be made not later than 180 days after the date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Explanation of the appeals and collection process (sec. 354 of the House bill and sec. 3504 of the Senate amendment)

Present Law

There is no statutory requirement that specific notices be given to taxpayers with the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals.

House Bill

The House bill requires that an explanation of the appeals process and the collection process be provided with the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals.

Effective date.—Requires that the explanation be included as soon as practicable, but no later than 180 days after the date of enactment.

Senate Amendment

The Senate amendment requires that, no later than 180 days after the date of enactment, a description of the entire process from examination through collections, including the assistance available

to taxpayers from the Taxpayer Advocate at various points in the process, be provided with the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Explanation of reason for refund disallowance (sec. 3505 of the Senate amendment)

Present Law

The Examination Division of the IRS examines claims for refund submitted by taxpayers. The Internal Revenue Manual requires examination or other audit action on refund claims within 30 days after receipt of the claims. The refund claim is preliminarily examined to determine if it should be disallowed. The taxpayer will receive a form from the IRS stating that the claim for refund cannot be considered. Other cases will be examined as quickly as possible and the disposition of the case, including the reasons for the disallowance or partial disallowance of the refund claim, must be stated in the portion of the revenue agent's report that is sent to the taxpayer.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to notify the taxpayer of the specific reasons for the disallowance (or partial disallowance) of the refund claim.

Effective date.—180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with technical modifications.

6. Statements to taxpayers with installment agreements (sec. 3506 of the Senate amendment)

Present Law

A taxpayer entering into an installment agreement to pay tax liabilities due to the IRS must complete a Form 433–D which sets forth the installment amounts to be paid monthly and the total amount of tax due. The IRS does not provide the taxpayer with an annual statement reflecting the amounts paid and the amount due remaining.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to send every taxpayer in an installment agreement an annual statement of the initial balance owed, the payments made during the year, and the remaining balance.

Effective date.—No later than 180 days after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—July 1, 2000.

7. Notification of change in tax matters partner (sec. 3507 of the Senate amendment)

Present Law

In general, the tax treatment of items of partnership income, loss, deductions and credits are determined at the partnership level in a unified partnership proceeding rather than in separate proceedings with each partner. In providing notice to taxpayers with respect to partnership proceedings, the IRS relies on information furnished by a party designated as the tax matters partner (TMP) of the partnership. The TMP is required to keep each partner informed of all administrative and judicial proceedings with respect to the partnership. Under certain circumstances, the IRS may require the resignation of the incumbent TMP and designate another partner as the TMP of a partnership

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS to notify all partners of any resignation of the tax matters partner that is required by the IRS, and to notify the partners of any successor tax matters partner.

Effective date.—Selections of tax matters partners made by the Secretary after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

8. Conditions under which taxpayers' returns may be disclosed (sec. 3508 of the Senate amendment)

Present Law

There is no requirement that the general tax forms instruction booklets include a description of conditions under which tax return information may be disclosed outside the IRS (including to States).

House Bill

No provision.

Senate Amendment

The Senate amendment requires that general tax forms instruction booklets include a description of conditions under which tax return information may be disclosed outside the IRS (including to States).

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment with technical modifications; the conferees consider the statement currently contained in the general tax forms instruction booklets to be sufficient to fulfill the requirements of this provision.

9. Disclosure of Chief Counsel advice

Present Law

Section 6110 of the Code provides for the public inspection of written determinations, i.e., rulings, determination letters, and technical advice memoranda. The IRS issues annual revenue procedures setting forth the procedures for requests for these various forms of written determinations and participation in the formulation of such determinations.[21] Under section 6110 and the regulations promulgated thereunder, the taxpayer who is the subject of a written determination can participate in the redaction of the documents to ensure that the taxpayer's privacy is protected and that sensitive private information is removed before the determination is publicly disclosed. In the event there is disagreement as to the information to be deleted, the section provides for litigation in the courts to resolve such disagreements.

One of the Office of Chief Counsel's major roles is to advise Internal Revenue Service personnel on legal matters at all stages of case development. The Office of Chief Counsel thus issues various forms of written legal advice to field agents of the IRS and to its own field attorneys that do not fall within the current definition of "written determination" under section 6110. Traditionally, field Counsel offices provided most of the assistance to the IRS, usually at IRS field offices, but since 1988, the National Office of Chief Counsel has been rendering more assistance to field Counsel and IRS offices. National Office of Chief Counsel assistance in taxpayer-specific cases is generally called "field service advice." The taxpayers who are the subject of field service advice generally do not participate in the process, leading some tax commentators to express concern that the field service advice process was displacing the technical advice process.

There has been controversy as to whether the Office of Chief Counsel must release forms of advice other than written determinations pursuant to the Freedom of Information Act (FOIA). In

[21] See e.g., Rev. Procs. 98–1 and 98–2.

Tax Analysts v. *IRS*,[22] the D.C. Circuit held that the legal analysis portions of field service advice created in the context of specific taxpayers' cases are not "return information," as defined by section 6103(b)(2), and must be released under FOIA. The court also found that portions of field service advice issued in docketed cases may be withheld as privileged attorney work product. However, some issues remain outstanding. Although the extent to which such materials must be released is still in dispute, it is clear that they are not expressly covered by section 6110. As a consequence, there exists no mechanism by which taxpayers may participate in the administrative process of redacting their private information from such documents or to resolve disagreements in court.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

In general

The conferees believe that written documents issued by the National Office of Chief Counsel to its field components and field agents of the IRS should be subject to public release in a manner similar to technical advice memoranda or other written determinations. In this way, all taxpayers can be assured of access to the "considered view of the Chief Counsel's national office on significant tax issues."[23] Creating a structured mechanism by which these types of legal memoranda are open to public inspection will increase the public's confidence that the tax system operates fairly and in an even-handed manner with respect to all taxpayers.

As part of making these documents public, however, the privacy of the taxpayer who is the subject of the advice must be protected. Any procedure for making such advice public must therefore include adequate safeguards for taxpayers whose privacy interests are implicated. There should be a mechanism for taxpayer participation in the deletion of any private information. There should also be a process whereby appropriate governmental privileges may be asserted by the IRS and contested by the public or the taxpayer.

The provision amends section 6110 of the Code, establishing a structured process by which the IRS will make certain work products, designated as "Chief Counsel Advice," open to public inspection on an ongoing basis. It is designed to protect taxpayer privacy while allowing the public inspection of these documents in a manner generally consistent with the mechanism of section 6110 for the public inspection of written determinations. In general, the provision operates by establishing that Chief Counsel Advice are written determinations subject to the public inspection provisions of section 6110.

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[22] 117 F.3d 607 (D.C. Cir. 1997).
[23] 117 F.3d at 617.

Definition of Chief Counsel Advice

For purposes of this provision, Chief Counsel Advice is written advice or instruction prepared and issued by any national office component of the Office of Chief Counsel to field employees of the Service or the Office of Chief Counsel that convey certain legal interpretations or positions of the IRS or the Office of Chief Counsel concerning existing or former revenue provisions. For these purposes, the term "revenue provisions" includes, without limitation: the Internal Revenue Code itself; regulations, revenue rulings, revenue procedures, or other administrative interpretations or guidance, whether published or unpublished (including, for example, other Chief Counsel Advice); tax treaties; and court decisions and opinions. Chief Counsel Advice also includes legal interpretations of State law, foreign law, or other federal law relating to the assessment or collection of liabilities under revenue provisions.

Chief Counsel Advice may interpret or set forth policies concerning the internal revenue laws either in general or as applied to specific taxpayers or groups of specific taxpayers. The definition is, however, not meant to include advice written with respect to nontax matters, including but not limited to employment law, conflicts of interest, or procurement matters.

The new statutory category of written determination encompasses certain existing categories of advisory memoranda or instructions written by the National Office of Chief Counsel to field personnel of either the IRS or the Office of Chief Counsel. Specifically, Chief Counsel Advice includes field service advice, technical assistance to the field, service center advice, litigation guideline memoranda, tax litigation bulletins, general litigation bulletins, and criminal tax bulletins. The definition applies not only to the case-specific field service advice issued from the offices of the Associate Chief Counsel (International), Associate Chief Counsel (Employee Benefits and Exempt Organizations), and the Assistant Chief Counsel (Field Service), which were at issue in the *Tax Analysts* decision, but any case-specific or noncase-specific written advice or instructions issued by the National Office of Chief Counsel to field personnel of either the IRS or the Office of Chief Counsel.

Moreover, Chief Counsel Advice includes any documents created subsequent to the enactment of this provision that satisfy the general statutory definition, regardless of their name or designation. Chief Counsel Advice also includes any such advice or instruction even if the organizations currently issuing them are reorganized or reconstituted as part of any IRS restructuring.

The new subsection covers written advice "issued" to field personnel of either the IRS or the Office of Chief Counsel in its final form. With respect to Chief Counsel Advice, issuance occurs when the Chief Counsel Advice has been approved within the national office component of the office of Chief Counsel in which the Chief Counsel Advice was proposed, signed by the person authorized to do so (usually the Assistant Chief Counsel or a Branch Chief), and sent to the field. Chief Counsel Advice does not include written recordations of informal telephonic advice by the National Office of Chief Counsel to field personnel of either the IRS or the Office of Chief Counsel. Drafts of Chief Counsel Advice sent to the field for review, criticism, or comment prior to approval within the National

Office also need not be made public. However, Chief Counsel Advice may be treated as issued even if supplemental advice is contemplated. The Secretary is expected to issue regulations to clarify the distinction between issuance as it applies to Chief Counsel Advice and as it applies to other documents disclosed under section 6110.

The provision also allows the Secretary to promulgate regulations providing that additional types of advice or instruction issued by the Office of Chief Counsel (or components of the Office of Chief Counsel, such as regional or local Counsel offices) will be treated as Chief Counsel Advice and subject to public inspection pursuant to this provision. No inference shall be drawn from the failure of the Secretary to treat additional types of advice or instruction as Chief Counsel Advice in determining whether such advice or instruction is to be disclosed under FOIA.

As with other written determinations, Chief Counsel Advice may not be used or cited as precedent, except as the Secretary otherwise establishes by regulation.

Redaction process

Under this provision, Chief Counsel Advice will be redacted prior to their public release in a manner similar to that provided for private letter rulings, technical advice memoranda, and determination letters. Specific taxpayers or groups of specific taxpayers who are the subject of Chief Counsel Advice will be afforded the opportunity to participate in the process of redacting the Chief Counsel Advice prior to their public release.

In addition, the new provision affords additional protection for certain governmental interests implicated by Chief Counsel Advice. Information may be redacted from Chief Counsel Advice under subsections (b) and (c) of the Freedom of Information Act, 5 U.S.C. sec. 552 (except, with respect to 5 U.S.C. sec. 552(b)(3), only material required to be withheld under a Federal statute, other than title 26, may be redacted), as those provisions have been, or shall be, interpreted by the courts of the United States. For those deletions that are discretionary, such as those under FOIA section 552(b)(5), it is expected that the Office of Chief Counsel and the IRS will apply any discretionary standards applicable to federal agencies in general or the Chief Counsel or the IRS in particular.[24]

Under new section 6110(i), as with current section 6110(c)(1), identifying details consisting of names, addresses, and any other information that the Secretary determines could identify any person, including the taxpayer's representative, will be redacted, after the participation of the taxpayer in the redaction process. In some situations, information included in a Chief Counsel Advice (other than a name or address) may not identify a person as of the time the advice is made open to public inspection, but that information, together with information that is expected to be disclosed by another source at a later date, will serve to identify a person. Consequently, in deciding whether a Chief Counsel Advice contains identifying information, the Secretary is to take into account infor-

[24] The current standards for the exercise of such discretion are set forth in the Internal Revenue Manual (part 1230, section 293(2)) and the Attorney General's October 4, 1993, Memorandum for Heads of Departments and Agencies.

mation that is available to the public at the time that the advice is made open to public inspection as well as information that is expected to be publicly available from other sources within a reasonable time after the Chief Counsel Advice is made open to public inspection. Generally, it is intended that the standard the IRS is to use in determining whether information will identify a person is a standard of a reasonable person generally knowledgeable with respect to the appropriate community. The standard is not, however, to be one of a person with inside knowledge of the particular taxpayer.

As under current section 6110, taxpayers who are the subject of Chief Counsel Advice, as well as members of the public, will be afforded the opportunity to challenge judicially the redaction determinations by the Secretary.

Relation to present law

The public inspection of Chief Counsel Advice is to be accomplished only pursuant to the rules and procedures set forth in section 6110, as amended, and not under those of any other provision of law, such as FOIA. This provision is not intended to affect the disclosure under FOIA, or under any other provision of law, of any documents not included within the definition of Chief Counsel Advice in new sections 6110(i)(1) and (i)(2). The only FOIA exemption affected by this provision is 5 U.S.C. section 552(b)(3), to the extent that it incorporates section 6103 of the Code. The timetable and the manner in which existing Chief Counsel Advice may ultimately be open to public inspection shall be governed by this provision, except that the provision is inapplicable to Chief Counsel Advice that any federal district court has, prior to the date of enactment, ordered be disclosed. Disclosure of any documents that are subject to such a court order is to proceed pursuant to the order rather than this provision. Finally, no inference is intended with respect to the disclosure, under FOIA or any other provision of law, of any other documents produced by the Office of Chief Counsel that are not included in the definition of Chief Counsel Advice.

Effective date

The provision applies to Chief Counsel Advice issued more than ninety days after enactment. In addition, the provision contains certain rules governing disclosure of any document fitting the definition of Chief Counsel Advice issued after 1985 and before 90 days after the date of enactment by the offices of the associate chief counsel for domestic, employee benefits and exempt organizations, and international. It sets forth a schedule for the IRS to release such Chief Counsel Advice over a six year period after the date of enactment. Finally, additional advice or instruction that the Secretary determines by regulations to treat as Chief Counsel Advice shall be made public pursuant to this provision in accordance with the effective dates set forth in such regulations.

G. Low-Income Taxpayer Clinics (sec. 361 of the House bill and sec. 3601 of the Senate amendment)

Present Law

There are no provisions in present law providing for assistance to clinics that assist low-income taxpayers.

House Bill

The House bill provides that the Secretary is authorized to provide up to $3,000,000 per year in matching grants to certain low-income taxpayer clinics. No clinic could receive more than $100,000 per year. Eligible clinics would be those that charge no more than a nominal fee to either represent low-income taxpayers in controversies with the IRS or provide tax information to individuals for whom English is a second language.

A "clinic" includes (1) a clinical program at an accredited law school, in which students represent low-income taxpayers, or (2) an organization exempt from tax under Code section 501(c) which either represents low-income taxpayers or provides referral to qualified representatives.

Effective date.—Date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Secretary is authorized to provide up to $6,000,000 per year in matching grants. A clinic also includes an accredited business school or an accredited accounting school. Grants can also be made to volunteer income tax assistance programs. Grants can also be made to training and technical assistance programs, up to 7.5 percent of total amount available for grants, and without regard to the $100,000 per clinic per year limitation.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill, except that the overall limit is $6,000,000 and clinical programs at accredited business schools or accounting schools would be eligible for grants.

H. Other Provisions

1. Cataloging complaints (sec. 372 of the House bill and sec. 3701 of the Senate amendment)

Present Law

The IRS is required to make an annual report to the Congress, beginning in 1997, on all categories of instances involving allegations of misconduct by IRS employees, arising either from internally identified cases or from taxpayer or third-party initiated complaints. The report must identify the nature of the misconduct or complaint, the number of instances received by category, and the disposition of the complaints.

House Bill

The provision requires that, in collecting data for this report, records of taxpayer complaints of misconduct by IRS employees must be maintained on an individual employee basis. These individual records are not to be listed in the report.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

Effective date.—January 1, 2000.

2. Archive of records of Internal Revenue Service (sec. 373 of the House bill and sec. 3702 of the Senate amendment)

Present Law

The IRS is obligated to transfer agency records to the National Archives and Records Administration ("NARA") for retention or disposal. The IRS is also obligated to protect confidential taxpayer records from disclosure. These two obligations have created conflict between NARA and the IRS. Under present law, the IRS determines whether records contain taxpayer information. Once the IRS has made that determination, NARA is not permitted to examine those records. NARA has expressed concern that the IRS may be using the disclosure prohibition to improperly conceal agency records with historical significance.

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). Section 6103 does not authorize the disclosure of confidential return information to NARA.

House Bill

The House bill provides an exception to the disclosure rules to require IRS to disclose IRS records to officers or employees of NARA, upon written request from the U.S. Archivist, for purposes of the appraisal of such records for destruction or retention. The present-law prohibitions on and penalties for disclosure of tax information would generally apply to NARA.

Effective date.—Effective for requests made by the Archivist after the date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Payment of taxes (sec. 374 of the House bill and sec. 3703 of the Senate amendment)

Present Law

The Code provides that it is lawful for the Secretary to accept checks or money orders as payment for taxes, to the extent and under the conditions provided in regulations prescribed by the Secretary (sec. 6311). Those regulations state that checks or money orders should be made payable to the Internal Revenue Service.

House Bill

The House bill requires the Secretary or his delegate to establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order to be made payable to the United States Treasury.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Clarification of authority of Secretary relating to the making of elections (sec. 375 of the House bill and sec. 3704 of the Senate amendment)

Present Law

Except as otherwise provided, elections provided by the Code are to be made in such manner as the Secretary shall by regulations or forms prescribe.

House Bill

The provision clarifies that, except as otherwise provided, the Secretary may prescribe the manner of making of any election by any reasonable means.

Effective date.—Date of enactment.

Senate Amendment

Same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. IRS employee contacts (sec. 3705 of the Senate amendment)

Present Law

The IRS sends many different notices to taxpayers. Some (but not all) of these notices contain a name and telephone number of an IRS employee whom the taxpayer may call if the taxpayer has any questions.

House Bill

No provision.

Senate Amendment

The Senate amendment requires that all IRS notices and correspondence contain a name and telephone number of an IRS employee whom the taxpayer may call. In addition, to the extent practicable and advantageous to the taxpayer, the IRS should assign one employee to handle a matter with respect to a taxpayer until that matter is resolved.

The Senate amendment also requires that all IRS telephone helplines provide an option for any taxpayer questions to be answered in Spanish.

Further, the Senate amendment requires that all IRS telephone helplines provide an option for any taxpayer to talk to a live person in addition to hearing a recorded message. That person can then direct the taxpayer to other IRS personnel who can provide understandable information to the taxpayer.

Effective date.—Effective January 1, 2000.

Conference Agreement

The conference agreement generally follows the Senate amendment, with modifications. Any manually generated correspondence received by a taxpayer from the IRS must include in a prominent manner the name, telephone number, and unique identifying number of an IRS employee the taxpayer may contact with respect to the correspondence. Any other correspondence or notice received by a taxpayer from the IRS must include in a prominent manner a telephone number that the taxpayer may contact. An IRS employee must give a taxpayer during a telephone or personal contact the employee's name and unique identifying number. The requirements pertaining to a unique identifying number are effective six months after the date of enactment.

6. Use of pseudonyms by IRS employees (sec. 3706 of the Senate amendment)

Present Law

The Federal Service Impasses Panel has ruled that if an employee believes that use of the employee's last name only will identify the employee due to the unique nature of the employee's last name, and/or nature of the office locale, then the employee may "register" a pseudonym with the employee's supervisor.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that an IRS employee may use a pseudonym only if (1) adequate justification, such as protecting personal safety, for using the pseudonym was provided by the employee as part of the employee's request, and (2) management has approved the request to use the pseudonym prior to its use.

Effective date.—Requests made after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

7. Conferences of right in the National Office of IRS (sec. 3707 of the Senate amendment)

Present Law

In any matter involving the submission of a substantive legal matter involving a specific taxpayer to the National Office of the IRS, the taxpayer is entitled to at least one conference (the "conference of right") at which it can explain its position.

House Bill

No provision.

Senate Amendment

The Senate amendment gives a taxpayer the right to limit participation in its conference of right to IRS national office personnel.

Effective date.—Requests made after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

8. Illegal tax protester designations (sec. 3708 of the Senate amendment)

Present Law

The IRS designates individuals who meet certain criteria as "illegal tax protesters" in the IRS master file.

House Bill

No provision.

Senate Amendment

The Senate amendment prohibits the use by the IRS of the "illegal tax protester" designation. Any extant designation in the individual master file (the main computer file) must be removed and any other extant designation (such as on paper records that have

been archived) must be disregarded. The IRS is, however, permitted to designate appropriate taxpayers as nonfilers. The IRS must remove the nonfiler designation once the taxpayer has filed valid tax returns for two consecutive years and paid all taxes shown on those returns.

Effective date.—Date of enactment, except that the removal of any designation from the master file, is not required to begin before January 1, 1999.

Conference Agreement

The conference agreement follows the Senate amendment. While this provision prohibits the use by the IRS of the "illegal tax protester" designation, it does allow the IRS to continue its current practice of tracking "potentially dangerous taxpayers." The conferees recognize the potential hazards connected with the assessment and collection of taxes, and this provision is not intended to jeopardize the safety of IRS employees. Accordingly, if the IRS needs to implement additional procedures, such as the maintenance of appropriate records, in connection with this provision so as to ensure IRS employees' safety, it has the authority to do so.

9. Provision of confidential information to Congress by whistleblowers (sec. 3709 of the Senate amendment)

Present Law

Tax return information generally may not be disclosed, except as specifically provided by statute. The Secretary of the Treasury may furnish tax return information to the Senate Committee on Finance, the House Committee on Ways and Means, and the Joint Committee on Taxation upon a written request from the chairmen of such committees. If the information can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, the information may be furnished to the committee only while sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

House Bill

No provision.

Senate Amendment

The Senate amendment allows any person who is (or was) authorized to receive confidential tax return information to disclose tax return information directly to the Chairman of the Senate Committee on Finance, the Chairman of the House Committee on Ways and Means, or the Chief of Staff of the Joint Committee on Taxation provided: (1) such disclosure is for the purpose of disclosing an incident of IRS employee or taxpayer abuse, and (2) the Chairman of the committee to which the information will be disclosed gives prior approval for the disclosure in writing.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement provides that any person (i.e., a whistleblower) who otherwise has or had access to any return or return information under section 6103 may disclose such return or return information to the House Ways and Means Committee, the Senate Finance Committee, or the Joint Committee on Taxation or to any individual authorized by one of those committees to receive or inspect any return or return information if such person (the whistleblower) believes such return or return information may relate to evidence of possible misconduct, maladministration, or taxpayer abuse. Disclosure to one of these committees could be made either to the Chairman or to the full committee (sitting in closed executive session), but would not be permitted to be made to an individual Member of Congress (unless explicitly authorized as an agent). No inference is intended that such whistleblower disclosures are not permitted under present law.

Effective date.—Date of enactment.

10. Listing of local IRS telephone numbers and addresses (sec. 3710 of the Senate amendment)

Present Law

The IRS is not statutorily required to publish the local telephone number or address of its local offices.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the IRS, as soon as is practicable but no later than 180 days after the date of enactment, to publish addresses and local telephone numbers of local IRS offices in appropriate local telephone directories.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement generally follows the Senate amendment. The conferees intend that (1) the IRS not be required to publish in more than one directory in any local area and (2) publication in alternate language directories is permissible.

Effective date.—As soon as is practicable.

11. Identification of return preparers (sec. 3711 of the Senate amendment)

Present Law

Any return or claim for refund prepared by an income tax return preparer must bear the social security number of the return preparer, if such preparer is an individual.

House Bill

No provision.

Senate Amendment

The Senate amendment authorizes the IRS to approve alternatives to social security numbers to identify tax return preparers.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

12. Offset of past-due, legally enforceable State income tax obligations against overpayments (sec. 3712 of the Senate amendment)

Present Law

Overpayments of Federal tax may be used to pay past-due child support and debts owed to Federal agencies, without the consent of the taxpayer. Such amount for past-due child support may be paid directly to a State. Present law provides that offsets are made in the following priority: (1) child support and (2) other Federal debts, in the order in which such debts accrued.

House Bill

No provision.

Senate Amendment

The Senate amendment permits States to participate in the IRS refund offset program for specified past-due, legally enforceable State income tax debts, providing the person making the Federal tax overpayment has shown on the Federal return for the taxable year of the overpayment an address that is within the State seeking the tax offset. The offset applies after the offsets provided in present law for internal revenue tax liabilities, past-due support, and past-due, legally enforceable obligations owed a Federal agency. The offset occurs before the designation of any refund toward future Federal tax liability.

Effective date.—Federal income tax refunds payable after December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, with technical modifications. The provision permits the Secretary to prescribe additional conditions (pursuant to new section 6402(e)(4)(D)) to ensure that the determination is valid that the State or local income tax liability is past-due and legally enforceable. The conferees intend that this include consideration of questions that may arise as a result of the taxpayer being a Native American.

Effective date.—Federal income tax refunds payable after December 31, 1999.

13. Moratorium regarding regulations under Notice 98–11 (sec. 3713(a)(1) of the Senate amendment)

Present Law

Overview

U.S. citizens and residents and U.S. corporations are taxed currently by the United States on their worldwide income, subject to a credit against U.S. tax on foreign-source income for foreign income taxes paid with respect to such income. A foreign corporation generally is not subject to U.S. tax on its income from operations outside the United States.

Income of a foreign corporation generally is taxed by the United States when it is repatriated to the United States through payment to the corporation's U.S. shareholders, subject to a foreign tax credit. However, various regimes imposing current U.S. tax on income earned through a foreign corporation are reflected in the Code. One anti-deferral regime set forth in the Code is the controlled foreign corporation rules of subpart F (secs. 951-964).

A controlled foreign corporation ("CFC") is defined generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only) (sec. 957). Stock ownership includes not only stock owned directly, but also stock owned indirectly or constructively (sec. 958).

The United States generally taxes the U.S. 10-percent shareholders of a CFC currently on their pro rata shares of certain income of the CFC (so-called "subpart F income") (sec. 951). In effect, the Code treats those shareholders as having received a current distribution out of the CFC's subpart F income. Such shareholders also are subject to current U.S. tax on their pro rata shares of the CFC's earnings invested in U.S. property (sec. 951). The foreign tax credit may reduce the U.S. tax on these amounts.

Subpart F income includes, among other items, foreign base company income (sec. 952). Foreign base company income, in turn, includes foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income and foreign base company oil related income (sec. 954). Foreign personal holding company income includes, among other items, dividends, interest, rents, and royalties. An exception from foreign personal holding company income applies to certain dividends and interest received from a related person which is created or organized in the same country as the CFC and which has a substantial part of its assets in that country, and to certain rents and royalties received from a related person for the use of property in the same country in which the CFC was created or organized (the so-called "same-country exception").

Foreign base company sales income includes income derived by a CFC from certain related-party transactions, including the purchase of personal property from a related person and its sale to any person, the purchase of personal property from any person and its sale to a related person, and the purchase or sale of personal prop-

erty on behalf of a related person, where the property which is purchased or sold is manufactured outside the country in which the CFC was created or organized and the property is purchased or sold for use or consumption outside such foreign country. A special branch rule applies for purposes of determining a CFC's foreign base company sales income. Under this rule, a branch of a CFC is treated as a separate corporation (only for purposes of determining the CFC's foreign base company sales income) where the activities of the CFC through the branch outside the CFC's country of incorporation have substantially the same effect as if such branch were a subsidiary.

Because of differences in U.S. and foreign laws, it is possible for a taxpayer to enter into transactions that are treated in one manner for U.S. tax purposes and in another manner for foreign tax purposes. These transactions are referred to as hybrid transactions. For example, a hybrid transaction may involve the use of an entity that is treated as a corporation for purposes of the tax law of one jurisdiction but is treated as a branch or partnership for purposes of the tax law of another jurisdiction.

Notice 98–11 and the regulations issued thereunder

Notice 98–11, issued on January 16, 1998, addressed the treatment of hybrid branches under the subpart F provisions of the Code. The Notice stated that the Treasury Department and the Internal Revenue Service have concluded that the use of certain arrangements involving hybrid branches is contrary to the policy and rules of subpart F. The hybrid branch arrangements identified in Notice 98–11 involve structures that are characterized for U.S. tax purposes as part of a CFC but are characterized for purposes of the tax law of the country in which the CFC is incorporated as a separate entity. The Notice stated that regulations will be issued to prevent the use of hybrid branch arrangements to reduce foreign tax while avoiding the corresponding creation of subpart F income. The Notice stated that such regulations will provide that the branch and the CFC will be treated as separate corporations for purposes of subpart F. The Notice also stated that similar issues raised under subpart F by certain partnership or trust arrangements will be addressed in separate regulation projects.

On March 23, 1998, temporary and proposed regulations were issued to address the issues raised in Notice 98–11 and to address certain partnership and other issues raised under subpart F. Under the regulations, certain payments between a CFC and its hybrid branch or between hybrid branches of the CFC (so-called "hybrid branch payments") are treated as giving rise to subpart F income. The regulations generally provide that non-subpart F income of the CFC, in the amount of the hybrid branch payment, is recharacterized as subpart F income of the CFC if: (1) the hybrid branch payment reduces the foreign tax of the payor, (2) the hybrid branch payment would have been foreign personal holding company income if made between separate CFCs, and (3) there is a disparity between the effective tax rate on the payment in the hands of the payee and the effective tax rate that would have applied if the income had been taxed in the hands of the payor. The regulations also apply to other hybrid branch arrangements involving a part-

nership, including a CFC's proportionate share of any hybrid branch payment made between a partnership in which the CFC is a partner and a hybrid branch of the partnership or between hybrid branches of such a partnership. Under the regulations, if a partnership is treated as fiscally transparent by the CFC's taxing jurisdiction, the recharacterization rules are applied by treating the hybrid branch payment as if it had been made directly between the CFC and the hybrid branch, or as if the hybrid branches of the partnership were hybrid branches of the CFC, as applicable. If the partnership is treated as a separate entity by the CFC's taxing jurisdiction, the recharacterization rules are applied to treat the partnership as if it were a CFC.

The regulations also address the application of the same-country exception to the foreign personal holding company income rules under subpart F in the case of certain hybrid branch arrangements. Under the regulations, the same-country exception applies to payments by a CFC to a hybrid branch of a related CFC only if the payment would have qualified for the exception if the hybrid branch had been a separate CFC incorporated in the jurisdiction in which the payment is subject to tax (other than a withholding tax). The regulations provide additional rules regarding the application of the same-country exception in the case of certain hybrid arrangements involving a partnership.

The regulations generally apply to amounts paid or accrued pursuant to hybrid branch arrangements entered into or substantially modified on or after January 16, 1998. As a result, the regulations generally do not apply to amounts paid or accrued pursuant to hybrid branch arrangements entered into before January 16, 1998 and not substantially modified on or after that date.

In the case of certain hybrid arrangements involving partnerships, the regulations generally apply to amounts paid or accrued pursuant to such arrangements entered into or substantially modified on or after March 23, 1998. As a result, the regulations generally do not apply to amounts paid or accrued pursuant to such arrangements entered into before March 23, 1998 and not substantially modified on or after that date.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that no temporary or final regulations with respect to Notice 98–11 may be implemented prior to six months after the date of enactment of this provision. This moratorium applies to the regulations with respect to hybrid branches and to the regulations with respect to hybrid arrangements involving partnerships. It is intended that the moratorium delaying implementation of the regulations would not require a modification to the effective dates of the regulations. No inference is intended regarding the authority of the Department of the Treasury or the Internal Revenue Service to issue the Notice or the regulations.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment. The conferees have agreed not to include the Senate amendment because the Department of the Treasury has withdrawn Notice 98–11 and has announced its intention to withdraw the temporary and proposed regulations issued under Notice 98–11, and to reissue regulations in proposed form to be finalized no earlier than January 1, 2000. See Notice 98–35, 1998–26 I.R.B. 1. The conferees expect that the Congress will consider the international tax policy issues relating to the treatment of hybrid transactions under the subpart F provisions of the Code, and will consider taking legislative action as deemed appropriate. In this regard, the conferees expect that the Congress will consider the impact of any legislation or administrative guidance in this area on affected taxpayers and industries. The conferees strongly recommend that the Department of the Treasury also take into account the impact of any administrative guidance in this area on affected taxpayers and industries. No inference is intended regarding the authority of the Department of the Treasury or the Internal Revenue Service to issue the Notice or the regulations, or to issue any other notice or regulation which reaches the same or similar results with respect to the treatment of hybrid transactions under subpart F.

14. Sense of the Senate regarding Notices 98–5 and 98–11 (secs. 3713(a)(2) and (b) of the Senate amendment)

Present Law

Overview

U.S. citizens and residents and U.S. corporations are taxed currently by the United States on their worldwide income. U.S. persons may credit foreign taxes against U.S. tax on foreign-source income. The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S.-source income. Separate limitations are applied to specific categories of income.

A foreign corporation generally is not subject to U.S. tax on its income from operations outside the United States. Income of a foreign corporation generally is taxed by the United States when it is repatriated to the United States through payment to the corporation's U.S. shareholders, subject to a foreign tax credit. However, various regimes imposing current U.S. tax on income earned through a foreign corporation are reflected in the Code. One anti-deferral regime set forth in the Code is the controlled foreign corporation rules of subpart F (secs. 951–964).

A controlled foreign corporation ("CFC") is defined generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only) (sec. 957). Stock ownership includes not only stock owned directly, but also stock owned indirectly or constructively (sec. 958).

The United States generally taxes the U.S. 10-percent shareholders of a CFC currently on their pro rata shares of certain in-

come of the CFC (so-called "subpart F income") (sec. 951). In effect, the Code treats those shareholders as having received a current distribution out of the CFC's subpart F income. Such shareholders also are subject to current U.S. tax on their pro rata shares of the CFC's earnings invested in U.S. property (sec. 951). The foreign tax credit may reduce the U.S. tax on these amounts.

Subpart F income includes, among other items, foreign base company income (sec. 952). Foreign base company income, in turn, includes foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income and foreign base company oil related income (sec. 954). Foreign personal holding company income includes, among other items, dividends, interest, rents, and royalties. An exception from foreign personal holding company income applies to certain dividends and interest received from a related person which is created or organized in the same country as the CFC and which has a substantial part of its assets in that country, and to certain rents and royalties received from a related person for the use of property in the same country in which the CFC was created or organized (the so-called "same-country exception").

Foreign base company sales income includes income derived by a CFC from certain related-party transactions, including the purchase of personal property from a related person and its sale to any person, the purchase of personal property from any person and its sale to a related person, and the purchase or sale of personal property on behalf of a related person, where the property which is purchased or sold is manufactured outside the country in which the CFC was created or organized and the property is purchased or sold for use or consumption outside such foreign country. A special branch rule applies for purposes of determining a CFC's foreign base company sales income. Under this rule, a branch of a CFC is treated as a separate corporation (only for purposes of determining the CFC's foreign base company sales income) where the activities of the CFC through the branch outside the CFC's country of incorporation have substantially the same effect as if such branch were a subsidiary.

Because of differences in U.S. and foreign laws, it is possible for a taxpayer to enter into transactions that are treated in one manner for U.S. tax purposes and in another manner for foreign tax purposes. These transactions are referred to as hybrid transactions. For example, a hybrid transaction may involve the use of an entity that is treated as a corporation for purposes of the tax law of one jurisdiction but is treated as a branch or partnership for purposes of the tax law of another jurisdiction.

Notices 98–5 and 98–11

Notice 98–5, issued on December 23, 1997, addresses the treatment of certain types of transactions under the foreign tax credit provisions of the Code. The Notice states that the Treasury Department and the Internal Revenue Service have concluded that the use of certain transactions creates the potential for foreign tax credit abuse. The Notice states that such transactions typically involve either: (1) the acquisition of an asset that generates an in-

come stream (e.g., royalties or interest) subject to a foreign withholding tax, or (2) the effective duplication of tax benefits through the use of certain structures designed to exploit inconsistencies between U.S. and foreign tax laws. The Notice includes five specific transactions as illustrations of arrangements creating the potential for foreign tax credit abuse. The Notice states that it is intended that regulations will be issued to disallow foreign tax credits for abusive transactions in cases where the reasonably expected economic profit from the transaction is insubstantial compared to the value of the foreign tax credits expected to be obtained as a result of the arrangement. The Notice further states that it is intended that regulations generally will apply with respect to such transactions for taxes paid or accrued on or after December 23, 1997. Regulations have not yet been issued under Notice 98–5.

Notice 98–11, issued on January 16, 1998, addressed the treatment of hybrid branches under the subpart F provisions of the Code. The Notice stated that the Treasury Department and the Internal Revenue Service have concluded that the use of certain arrangements involving hybrid branches is contrary to the policy and rules of subpart F. The hybrid branch arrangements identified in Notice 98–11 involve structures that are characterized for U.S. tax purposes as part of a CFC but are characterized for purposes of the tax law of the country in which the CFC is incorporated as a separate entity. The Notice stated that regulations will be issued to prevent the use of hybrid branch arrangements to reduce foreign tax while avoiding the corresponding creation of subpart F income. The Notice stated that such regulations will provide that the branch and the CFC will be treated as separate corporations for purposes of subpart F. The Notice also stated that similar issues raised under subpart F by certain partnership or trust arrangements will be addressed in separate regulation projects.

On March 23, 1998, temporary and proposed regulations were issued to address the issues raised in Notice 98–11 and to address certain partnership and other issues raised under subpart F. Under the regulations, certain payments between a CFC and its hybrid branch or between hybrid branches of the CFC (so-called "hybrid branch payments") are treated as giving rise to subpart F income. The regulations generally provide that non-subpart F income of the CFC, in the amount of the hybrid branch payment, is recharacterized as subpart F income of the CFC if: (1) the hybrid branch payment reduces the foreign tax of the payor, (2) the hybrid branch payment would have been foreign personal holding company income if made between separate CFCs, and (3) there is a disparity between the effective tax rate on the payment in the hands of the payee and the effective tax rate that would have applied if the income had been taxed in the hands of the payor. The regulations also apply to other hybrid branch arrangements involving a partnership, including a CFC's proportionate share of any hybrid branch payment made between a partnership in which the CFC is a partner and a hybrid branch of the partnership or between hybrid branches of such a partnership. Under the regulations, if a partnership is treated as fiscally transparent by the CFC's taxing jurisdiction, the recharacterization rules are applied by treating the hybrid branch payment as if it had been made directly between the

CFC and the hybrid branch, or as if the hybrid branches of the partnership were hybrid branches of the CFC, as applicable. If the partnership is treated as a separate entity by the CFC's taxing jurisdiction, the recharacterization rules are applied to treat the partnership as if it were a CFC.

The regulations also address the application of the same-country exception to the foreign personal holding company income rules under subpart F in the case of certain hybrid branch arrangements. Under the regulations, the same-country exception applies to payments by a CFC to a hybrid branch of a related CFC only if the payment would have qualified for the exception if the hybrid branch had been a separate CFC incorporated in the jurisdiction in which the payment is subject to tax (other than a withholding tax). The regulations provide additional rules regarding the application of the same-country exception in the case of certain hybrid arrangements involving a partnership.

The regulations generally apply to amounts paid or accrued pursuant to hybrid branch arrangements entered into or substantially modified on or after January 16, 1998. As a result, the regulations generally do not apply to amounts paid or accrued pursuant to hybrid branch arrangements entered into before January 16, 1998 and not substantially modified on or after that date.

In the case of certain hybrid arrangements involving partnerships, the regulations generally apply to amounts paid or accrued pursuant to such arrangements entered into or substantially modified on or after March 23, 1998. As a result, the regulations generally do not apply to amounts paid or accrued pursuant to such arrangements entered into before March 23, 1998 and not substantially modified on or after that date.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that it is the sense of the Senate that the Department of the Treasury and the Internal Revenue Service should withdraw Notice 98–11 and the regulations issued thereunder, and that the Congress, and not the Department of the Treasury or the Internal Revenue Service, should determine the international tax policy issues relating to the treatment of hybrid transactions under the subpart F provisions of the Code.

The Senate amendment further provides that it is the sense of the Senate that the Department of the Treasury and the Internal Revenue Service should limit any regulations issued under Notice 98–5 to the specific transactions described therein. In addition, such regulations should: (a) not affect transactions undertaken in the ordinary course of business, (b) not have an effective date any earlier than the date of issuance of proposed regulations, and (c) be issued in accordance with normal regulatory procedures which include an opportunity for comment. Nothing in this sense of the Senate should be construed to limit the ability of the Department of the Treasury or the Internal Revenue Service to address abusive transactions.

Effective date.—Date of enactment.

Conference Agreement

Notices 98–5 and 98–11

The conference agreement does not include the Senate amendment. The conferees are aware that the Department of the Treasury has withdrawn Notice 98–11 and has announced its intention to withdraw the temporary and proposed regulations issued under Notice 98–11, and to reissue regulations in proposed form to be finalized no earlier than January 1, 2000. See Notice 98–35, 1998–26 I.R.B. 1. The conferees expect that the Congress will consider the international tax policy issues relating to the treatment of hybrid transactions under the subpart F provisions of the Code, and will consider taking legislative action as deemed appropriate. In this regard, the conferees expect that the Congress will consider the impact of any legislation or administrative guidance in this area on affected taxpayers and industries. The conferees strongly recommend that the Department of the Treasury also take into account the impact of any administrative guidance in this area on affected taxpayers and industries. No inference is intended regarding the authority of the Department of the Treasury or the Internal Revenue Service to issue the Notice or the regulations, or to issue any other notice or regulation which reaches the same or similar results with respect to the treatment of hybrid transactions under subpart F.

The conferees believe that regulations under Notice 98–5 should be issued in accordance with normal regulatory procedures which include an opportunity for public comment. The conferees acknowledge recent actions by the Department of the Treasury to address legitimate taxpayer concerns regarding Notice 98–5 without compromising the ability of the Department of the Treasury or the Internal Revenue Service to address abusive transactions.

The conferees are concerned about the potential disruptive effect of the issuance of an administrative notice that describes general principles to be reflected in regulations that will be issued in the future, but provides that such future regulations will be effective as of the date of issuance of the notice. The conferees strongly encourage the Department of the Treasury and the Internal Revenue Service to limit similar types of action in the future.

Other matters

The conferees are aware of the Department of the Treasury's commitment to withdraw temporary and proposed regulations issued on March 2, 1998, with respect to a special sourcing rule under the foreign sales corporation provisions, and to reinstate the rule contained in the prior temporary regulations. See Temp. Treas. Reg. sec. 1.927(e)-1T, T.D. 8764 (March 2, 1998). In good faith reliance on this commitment, the conferees are deferring action on this issue at this time.

15. Combined employment tax reporting demonstration project (sec. 3715 of the Senate amendment)

Present Law

Traditionally, Federal tax forms are filed with the Federal government and State tax forms are filed with individual States. This necessitates duplication of items common to both returns.

The Taxpayer Relief Act permitted implementation of a demonstration project to assess the feasibility and desirability of expanding combined reporting in the future. There are several limitations on the demonstration project. First, it is limited to the State of Montana and the IRS. Second, it is limited to employment tax reporting. Third, it is limited to disclosure of the name, address, TIN, and signature of the taxpayer, which is information common to both the Montana and Federal portions of the combined form. Fourth, it is limited to a period of five years.

House Bill

No provision.

Senate Amendment

The Senate amendment authorizes a parallel demonstration project with Iowa.

Effective date.—Effective on the date of enactment and will expire on the date five years after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

16. Reporting requirements relating to education tax credits (sec. 3716 of the Senate amendment)

Present Law

Individual taxpayers are allowed to claim a nonrefundable HOPE credit against Federal income taxes up to $1,500 per student per year for qualified tuition and related expenses paid for the first two years of the student's post-secondary education in a degree program. A Lifetime Learning credit against Federal income taxes equal to 20 percent of qualified expenses (up to a maximum credit of $1,000 per taxpayer return for 1998 through 2002 and $2,000 per taxpayer return after 2002) is also available. Qualified tuition and related expenses do not include expenses covered by educational assistance that is not required to be included in the gross income of either the student or the taxpayer claiming the credit (e.g., scholarship or fellowship grants).

Code section 6050S requires information reporting by eligible educational institutions which receive payments for qualified tuition and related expenses, and certain other persons who make reimbursement or refunds of qualified tuition and related expenses, in order to assist students, their parents, and the IRS in calculating the amount of the HOPE and Lifetime Learning credits poten-

tially available. Section 6050S(b) provides that the annual information report to the Secretary must be in the form prescribed by the Secretary and must contain the following: (1) the name, address, and taxpayer identification number (TIN) of the individual which respect to whom the qualified tuition and related expenses were received or the reimbursement or refund was paid; (2) the name, address, and TIN of any individual certified by the student as the taxpayer who will claim that student as a dependent for purposes of the deduction under section 151 for any taxable years ending with or within the year for which the information return is filed; (3) the aggregate amount of payments of qualified tuition and related expenses received by the eligible educational institution and the aggregate amount of reimbursements or refunds (or similar amounts) paid during the calendar year with respect to the student; and (4) such other information as the Secretary may prescribe. Under section 6050S(d), an educational institution also must provide to each person identified on the information return submitted to the Secretary (e.g., the student and his or her parent(s)) a written statement showing the name, address, and phone number of the reporting person's information contact, and the amounts set forth in (3) above.

On December 22, 1997, the Department of Treasury issued Notice 97–73 setting forth the information reporting requirements under section 6050S for 1998. Notice 97–73 describes who must report information and the nature of the information that must be reported for 1998. In general, the required reporting under Notice 97–73 is more limited than that which will ultimately be required under section 6050S upon the issuance of final regulations. Accordingly, for 1998, educational institutions must report the following information: (1) the name, address, and TIN of the educational institution; (2) the name, address, and TIN of the student with respect to whom payments of qualified tuition and related expenses were received during 1998; (3) an indication as to whether the student was enrolled for at least half the full-time academic workload during any academic period commencing in 1998; and (4) an indication as to whether the student was enrolled exclusively in a program or programs leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential. Educational institutions must provide to students the information listed above, as well as the phone number of the information contact at the school. Information returns must be provided to students by February 1, 1999 and filed with the IRS by March 1, 1999. Notice 97–73 states that until final regulations are adopted, no penalties will be imposed under sections 6721 and 6722 for failure to file correct information returns or to furnish correct statements to the individuals with respect to whom information reporting is required under section 6050S. In addition, Notice 97–73 states that, even after final regulations are adopted, no penalties will be imposed under sections 6721 and 6722 for 1998 if the institution made a good faith effort to file information returns and furnish statements in accordance with Notice 97–73.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies the information reporting requirements under section 6050S. In addition to reporting the aggregate amount of payments for qualified tuition and related expenses received by the educational institution with respect to a student, the institution must report any grant amount received by the student and processed through the institution during the applicable calendar year. The institution is not required to report on grant aid that is paid directly to the student and is not processed through the institution. In addition, an educational institution is required to report only the aggregate amount of reimbursements or refunds paid to a student by the institution (and not by any other party).

Effective date.—The provision applies to returns required to be filed with respect to taxable years beginning after December 31, 1998.

Conference Agreement

The conference agreement follows the Senate amendment, but includes certain additional clarifications intended to minimize the reporting burdens imposed on educational institutions while preserving the ability of the IRS to monitor compliance with respect to the HOPE Scholarship and Lifetime Learning credits. In particular, the conference agreement clarifies that the definition of the term "qualified tuition and related expenses" shall be as set forth in section 25A, determined without regard to section 25A(g)(2) (which requires adjustments for certain scholarships). Eligible educational institutions that receive payments of qualified tuition and related expenses (or reimburse or refund such payments) are required separately to report the following items with respect to each student under section 6050S(b)(2)(C): (1) the aggregate amount of qualified tuition and related expenses (not including certain expenses relating to sports, games, or hobbies, or nonacademic fees); (2) any grant amount (whether or not excludable from income) received by such individual for payment of costs of attendance and processed through the institution during the applicable calendar year; and (3) the aggregate amount of reimbursements or refunds (or similar amounts) paid to such individual during the calendar year by the institution.

The conferees understand that the Department of Treasury is in the process of issuing regulatory guidance with respect to the education credit reporting requirements. In developing such guidance, the conferees urge Treasury to minimize the reporting burdens imposed on educational institutions in connection with the HOPE Scholarship and Lifetime Learning credits. For example, section 472(1) of the Higher Education Act contains a definition of tuition and fees that is used in calculating a student's total "cost of attendance." The conferees urge Treasury to conform the definition of "qualified tuition and related expenses" for purposes of the HOPE Scholarship and Lifetime Learning credits to the definition set forth in section 472(1) to the extent possible, so as to minimize the additional reporting burden on educational institutions.

In general, the conferees expect that the regulatory guidance regarding the education credit reporting requirements will have an

effective date that will provide educational institutions with sufficient time, after any notice and comment period, to implement additional required reporting. In addition, although the provision generally applies to taxable years beginning after December 31, 1998, the conferees intend that no reporting beyond the reporting currently required in Notice 97–73 would be required of educational institutions until such final regulatory guidance is available.

In furtherance of the objective of minimizing the reporting burden on educational institutions, the conferees note that, pursuant to the regulatory authority granted in section 25A(i), Treasury may exempt educational institutions from the reporting requirements with respect to certain categories of students, such as non-degree students enrolled in a course for which academic credit is not granted by the institution, provided that such exemptions do not undermine the overall compliance objectives of the provision. The conferees further expect that Treasury will provide clarification regarding the reasonable cause exception contained in section 6724(a) as it may apply to the education information reporting requirements. Finally, the conferees urge that any update and modernization of IRS computer systems incorporate the capacity to match a dependent's TIN with the return filed by the person claiming the individual as a dependent.

I. Studies

1. Administration of penalties and interest (sec. 381 of the House bill and sec. 3801 of the Senate amendment)

Present Law

The last major comprehensive revision of the overall penalty structure in the Internal Revenue Code was the "Improved Penalty Administration and Compliance Tax Act," enacted as part of the Omnibus Budget Reconciliation Act of 1989.

House Bill

The House bill requires the Joint Committee on Taxation to conduct a study reviewing the administration and implementation of the penalty reform provisions of the Omnibus Budget Reconciliation Act of 1989, and making any legislative and administrative recommendations it deems appropriate to simplify penalty administration and reduce taxpayer burden.

Effective date.—The report must be provided not later than nine months after the date of enactment.

Senate Amendment

The Senate amendment requires the Joint Committee on Taxation and the Treasury to each conduct a separate study reviewing the interest and penalty provisions of the Code, and making any legislative and administrative recommendations it deems appropriate to simplify penalty administration and reduce taxpayer burden.

Effective date.—The reports must be provided not later than nine months after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees expect that the Joint Committee on Taxation and the Treasury Department studies will examine whether the current penalty and interest provisions encourage voluntary compliance. The studies should also consider whether the provisions operate fairly, whether they are effective deterrents to undesired behavior, and whether they are designed in a manner that promotes efficient and effective administration of the provisions by the IRS. The conferees expect that the Joint Committee on Taxation and the Treasury Department will consider comments from taxpayers and practitioners on issues relevant to the studies.

Effective date.—The reports must be provided not later than one year after the date of enactment.

2. Confidentiality of tax return information (sec. 382 of the House bill and sec. 3802 of the Senate amendment)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code. Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both. An action for civil damages also may be brought for unauthorized disclosure. No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives.

House Bill

The House bill requires the Joint Committee on Taxation to conduct a study on provisions regarding taxpayer confidentiality. The study is to examine:

(1) present-law protections of taxpayer privacy;

(2) the need for third parties to use tax return information; and

(3) the ability to achieve greater levels of voluntary compliance by allowing the public to know who is legally required to file tax returns but does not do so.

Effective date.—The findings of the study, along with any recommendations, are required to be reported to the Congress no later than one year after the date of enactment.

Senate Amendment

The Senate amendment requires the Joint Committee on Taxation and Treasury to each conduct a separate study on provisions regarding taxpayer confidentiality. The studies are to examine:

(1) present-law protections of taxpayer privacy;

(2) the need, if any, for third parties to use tax return information;

(3) whether greater levels of voluntary compliance can be achieved by allowing the public to know who is legally required to file tax returns but does not do so;

(4) the interrelationship of the taxpayer confidentiality provisions in the Internal Revenue Code with those elsewhere in the United States Code (such as the Freedom of Information Act);

(5) whether return information should be disclosed to a State unless the State has first notified personally in advance each person with respect to whom information has been requested; and

(6) the impact on taxpayer privacy of sharing tax information for the purposes of enforcing State and local tax laws (other than income tax laws).

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement generally follows the Senate amendment. The conference agreement adds to the study an examination of whether the public interest would be served by greater disclosure of information relating to tax-exempt organizations (described in section 501 of the Code). The conference agreement deletes from the study an examination of whether return information should be disclosed to a State unless the State has first notified personally in advance each person with respect to whom information has been requested.

Effective date.—The findings of the study, along with any recommendations, are required to be reported to the Congress no later than 18 months after the date of enactment.

3. Study of transfer pricing enforcement (sec. 3803 of the Senate amendment)

Present Law

Section 482 authorizes the Secretary of the Treasury to distribute, apportion or allocate gross income, deductions, credits or allowances between or among commonly controlled parties to prevent tax evasion or to clearly reflect income. Regulations under section 482 generally provide for certain transfer pricing methods that are used to determine whether prices for transactions between or among commonly controlled parties are based on arm's-length terms.

House Bill

No provision.

Senate Amendment

The Senate amendment directs the Internal Revenue Service Oversight Board to undertake a study on whether the Internal Revenue Service has the resources to prevent tax avoidance by companies using unlawful transfer pricing methods. The Senate amendment also directs the Internal Revenue Service to assist in the study by analyzing its enforcement of transfer pricing abuses, including the effectiveness of current enforcement tools used to ensure compliance with section 482 and the scope of nonpayment of U.S. taxes by reason of such abuses. The findings of the study, in-

cluding recommendations to improve the Internal Revenue Service's enforcement tools to ensure that multinational companies doing business in the United States pay their fair share of U.S. taxes, are required to be reported to the Congress no later than one year after the date of enactment.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

4. Noncompliance with internal revenue laws by taxpayers (sec. 3804 of the Senate amendment)

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the Joint Committee on Taxation, the Secretary of the Treasury and the Commissioner of the Internal Revenue Service must jointly conduct a study of taxpayers' willful noncompliance with the tax law. The study must be reported to the Congress within one year of the date of enactment.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with clarifications that the study is to examine noncompliance with the internal revenue laws by taxpayers (including willful noncompliance and noncompliance due to tax law complexity or other factors). Treasury and IRS are to conduct the study, in consultation with the Joint Committee on Taxation.

5. Payments for informants (sec. 3714 of the Senate amendment)

Present Law

Under present law, rewards may be paid for information relating to civil violations, as well as criminal violations. Present law also provides that the rewards are paid out of the proceeds of amounts (other than interest) collected by reason of the information provided. An annual report on the rewards program is required.

House Bill

No provision.

Senate Amendment

The Senate amendment requires a study and report by Treasury to the Congress (within one year of the date of enactment) of the present-law reward program (including results) and any legislative or administrative recommendations regarding the program and its application.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

TITLE IV. CONGRESSIONAL ACCOUNTABILITY FOR THE IRS

A. Review of Requests for GAO Investigations of the IRS (sec. 401 of the House bill)

Present Law

There is currently no specific statutory requirement that requests for investigations by the General Accounting Office ("GAO") relating to the IRS be reviewed by the Joint Committee on Taxation (the "Joint Committee"). However, some of the studies that GAO conducts relating to taxation and oversight of the IRS require access under section 6103 of the Code to confidential tax returns and return information. Under section 6103, the GAO may inform the Joint Committee of its initiation of an audit of the IRS and obtain access to confidential taxpayer information unless, within 30 days, ⅗ths of the Members of the Joint Committee disapprove of the audit. This provision has not been utilized; the GAO generally seeks advance access to confidential taxpayer return information from the Joint Committee.

House Bill

Under the House bill, the Joint Committee on Taxation reviews all requests (other than requests by the chair or ranking member of a Committee or Subcommittee of the Congress) for investigations of the IRS by the GAO and approves such requests when appropriate. In reviewing such requests, the Joint Committee is to eliminate overlapping investigations, ensure that the GAO has the capacity to handle the investigation, and ensure that investigations focus on areas of primary importance to tax administration.

The provision does not change the present-law rules under section 6103.

Effective date.—The House bill provision is effective with respect to requests for GAO investigations made after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. The conferees intend that the provision exclude requests made by the chairman or ranking member of a committee or subcommittee, investigations required by statute, and work initiated by GAO under its basic statutory authorities.

Effective date.—Same as the House bill.

B. Joint Congressional Hearings and Coordinated Oversight Reports (secs. 401 and 402 of the House bill)

Present Law

Under the present Congressional committee structure, a number of committees have jurisdiction with respect to IRS oversight. The committees most responsible for IRS oversight are the House Committees on Ways and Means, Appropriations, Government Reform and Oversight, the corresponding Senate Committees on Finance, Appropriations, and Governmental Affairs, and the Joint Committee on Taxation. While these Committees have a shared interest in IRS matters, they typically act independently, and have separate hearings and make separate investigations into IRS matters. Each committee also has jurisdiction over certain issues. For example, the House Ways and Means Committee and the Senate Finance Committee have exclusive jurisdiction over changes to the tax laws. Similarly, the House and Senate Appropriations Committees have exclusive jurisdiction over IRS annual appropriations. The Joint Committee does not have legislative jurisdiction, but has significant responsibilities with respect to tax matters and IRS oversight.

House Bill

Under the House bill, there will be two annual joint hearings of two majority and one minority members of each of the Senate Committees on Finance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform and Oversight. The first annual hearing is to take place before April 1 of each calendar year and is to review the strategic plans and budget for the IRS (including whether the budget supports IRS objectives). The second annual hearing is to be held after the conclusion of the annual tax filing season, and is to review the progress of the IRS in meeting its objectives under the strategic and business plans, the progress of the IRS in improving taxpayer service and compliance, progress of the IRS on technology modernization, and the annual filing season. The bill does not modify the existing jurisdiction of the Committees involved in the joint hearings.

The House bill provides that the Joint Committee is to make annual reports to the Committee on Finance and the Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system as it may deem advisable. The Joint Committee also is to report annually to the Senate Committees on Fi-

nance, Appropriations, and Governmental Affairs and the House Committees on Ways and Means, Appropriations, and Government Reform and Oversight with respect to the matters that are the subject of the annual joint hearings of members of such Committees.

Effective date.—The House bill provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with modifications. The conference agreement provides that there will be one annual joint hearing to review: (1) the progress of the IRS in meeting its objectives under the strategic and business plans; (2) the progress of the IRS in improving taxpayer service and compliance; (3) the progress of the IRS on technology modernization; and (4) the annual filing season. The joint review will be held at the call of the Chairman of the Joint Committee on Taxation, and is to take place before June 1 of each calendar year.

In addition, the conference agreement modifies the House bill provision requiring the Joint Committee on Taxation to report on the overall state of the Federal tax system to provide that such report shall be prepared once in each Congress, but only if amounts necessary to carry out this requirement are specifically appropriated to the Joint Committee on Taxation.

Effective date.—Same as House bill, except that the requirement for an annual joint review, and report by the Joint Committee on Taxation, shall apply only for calendar years 1999–2003.

C. Budget Matters

1. Funding for century date change (sec. 411 of the House bill and sec. 4001 of the Senate amendment)

Present Law

No specific provision.

House Bill

The House bill provides that it is the sense of the Congress that the IRS efforts to resolve the century date change computing problems should be fully funded to provide for certain resolution of such problems.

Effective date.—The House bill provision is effective on the date of enactment.

Senate Amendment

The Senate amendment provides that it is the sense of the Congress that the IRS should place resolving the century date change computing problems as a high priority. The Senate amendment also provides that the Commissioner shall expeditiously submit a report to the Congress on the overall impact of the Senate amendment on the ability of the IRS to resolve the century date

change computing problems and on the provisions of the Senate amendment that will require significant amounts of computer programming changes prior to December 31, 1999, in order to carry out the provisions.

Effective date.—The Senate amendment provision is effective on the date of enactment.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with respect to the Sense of the Congress with respect to resolving the century date change conversion problems. The conference agreement does not include the Senate amendment provision requiring the Commissioner to report to the Congress on the impact of the legislation on the ability of the IRS to resolve century date change problems.

Effective date. Same as the House bill and Senate amendment.

2. Financial management advisory group (sec. 412 of the House bill)

Present Law

No provision.

House Bill

The House bill directs the Commissioner to convene a financial management advisory group consisting of individuals with expertise in governmental accounting and auditing from both the private sector and the Government to advise the Commissioner on financial management issues.

Effective date.—The House bill provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision. However, the conferees expect that the Chairman of the Oversight Board will consider establishing a financial management subcommittee to advise the Commissioner on financial management issues.

D. Tax Law Complexity Analysis (sec. 421 and 422 of the House bill, sec. 4002 of the Senate amendment)

Present Law

Present law does not require a formal complexity analysis with respect to changes to the tax laws.

House Bill

Role of the IRS.—The House bill provides that it is the sense of the Congress that the IRS should provide the Congress with an

independent view of tax administration and that the tax-writing committees should hear from front-line technical experts at the IRS during the legislative process with respect to the administrability of pending amendments to the Internal Revenue Code.

Complexity analysis.—The House bill requires the staff of the Joint Committee on Taxation to provide a "Tax Complexity Analysis" for legislation reported by the Senate Committee on Finance and the House Committee on Ways and Means and conference reports amending the tax laws. The Tax Complexity Analysis is to identify those provisions in the bill or conference report that, as determined by the staff of the Joint Committee, add significant complexity to the tax laws, or provide significant simplification. The Complexity Analysis is required to include a discussion of the basis for the determination by the staff of the Joint Committee. It is expected that, in general, the Complexity Analysis will be limited to no more than 20 provisions. If the staff of the Joint Committee determines that a bill or conference report does not contain any provisions that add significant complexity or simplification to the tax laws, then the Complexity Analysis is to contain a statement to that effect.

Factors that may be taken into account by the staff of the Joint Committee in preparing the Complexity Analysis include the following: (1) whether the provision is new, modifies or replaces existing law, and whether hearings were held to discuss the proposal and whether the IRS provided input as to its administrability; (2) when the provision becomes effective and corresponding compliance requirements on taxpayers; (3) whether new IRS forms or worksheets are needed, whether existing forms or worksheets must be modified, and whether the effective date allows sufficient time for the IRS to prepare such forms and educate taxpayers; (4) necessity of additional interpretive guidance (e.g., regulations, rulings, notices); (5) the extent to which the proposal relies on concepts contained in existing law, including definitions; (6) effect on existing record keeping requirements and the activities of taxpayers, complexity of calculations and likely behavioral response, and standard business practices and resource requirements; (7) number, type, and sophistication of affected taxpayers; and (8) whether the proposal requires the IRS to assume responsibilities not directly related to raising revenue which could be handled through another Federal agency.

The House bill requires the Commissioner to provide the Joint Committee with such information as is necessary to prepare each required Tax Complexity Analysis.

A point of order arises with respect to the floor consideration of a bill or conference report that does not contain the required Complexity Analysis. The point of order may be waived by a majority vote.

Effective date.—The requirement of the House bill for a Tax Complexity Analysis is effective with respect to legislation considered on or after January 1, 1998.

Senate Amendment

Role of the IRS.—The IRS is to report to the House Ways and Means Committee and the Senate Finance Committee annually re-

garding sources of complexity in the administration of the Federal tax laws. Factors the IRS may take into account include: (1) frequently asked questions by taxpayers; (2) common errors made by taxpayers in filling out returns; (3) areas of the law that frequently result in disagreements between taxpayers and the IRS; (4) major areas in which there is no or incomplete published guidance or in which the law is uncertain; (5) areas in which revenue agents make frequent errors in interpreting or applying the law; (6) impact of recent legislation on complexity; (7) information regarding forms, including a listing of IRS forms, the time it takes for taxpayers to complete and review forms, the number of taxpayers who use each form, and how the time required changed as a result of recently enacted legislation; and (8) recommendations for reducing complexity in the administration of the Federal tax system.

Complexity analysis with respect to current legislation.—The Senate amendment requires the Joint Committee on Taxation (in consultation with the IRS and Treasury) to provide an analysis of complexity or administrability concerns raised by tax provisions of widespread applicability to individuals or small businesses. The analysis is to be included in any Committee Report of the House Ways and Means Committee or Senate Finance Committee or Conference Report containing tax provisions, or provided to the Members of the relevant Committee or Committees as soon as practicable after the report is filed. The analysis is to include: (1) an estimate of the number and type of taxpayers affected; and (2) if applicable, the income level of affected individual taxpayers. In addition, such analysis should include, if determinable, the following: (1) the extent to which existing tax forms would require revision and whether a new form or forms would be required; (2) whether and to what extent taxpayers would be required to keep additional records; (3) the estimated cost to taxpayers to comply with the provision; (4) the extent to which enactment of the provision would require the IRS to develop or modify regulatory guidance; (5) whether and to what extent the provision can be expected to lead to disputes between taxpayers and the IRS; and (6) how the IRS can be expected to respond to the provision (including the impact on internal training, whether the Internal Revenue Manual would require revision, whether the change would require reprogramming of computers, and the extent to which the IRS would be required to divert or redirect resources in response to the provision).

Effective date.—The provision of the Senate amendment requiring the Joint Committee on Taxation to provide a complexity analysis is effective with respect to legislation considered on or after January 1, 1999. The provision requiring the IRS to report on sources of complexity is effective on the date of enactment.

Conference Agreement

Role of the IRS.—The conference agreement follows the House bill and the Senate amendment. Under the conference agreement, the Commissioner's report on complexity is to be transmitted to the Congress not later than March 1 of each year.

Complexity analysis.—The conference agreement follows the Senate amendment with a modification to provide that a point of order arises in the House of Representatives with respect to the

floor consideration of a bill or conference report if the required complexity analysis has not been completed. The point of order may be waived by a majority vote. The point of order is subject to the Constitutional right of each House of the Congress to establish its own rules and procedures; thus, such point of order may be changed at any time pursuant to the procedures of the House of Representatives.

The conferees intend that the complexity analysis be prepared by the staff of the Joint Committee on Taxation, and that it shall, to the extent feasible, be included in committee or conference committee reports.

Effective date.—The provisions of the conference agreement are effective for calendar years after 1998.

TITLE V. ADDITIONAL PROVISIONS

A. Elimination of 18-Month Holding Period for Capital Gains

Present Law

The Taxpayer Relief Act of 1997 Act ("the 1997 Act") provided lower capital gains rates for individuals. Generally, the 1997 Act reduced the maximum rate on the adjusted net capital gain of an individual from 28 percent to 20 percent and provided a 10-percent rate for the adjusted net capital gain otherwise taxed at a 15-percent rate. The "adjusted net capital gain" is the net capital gain determined without regard to certain gain for which the 1997 Act provided a higher maximum rate of tax. The 1997 Act retained the prior-law 28-percent maximum rate for net long-term capital gain attributable to the sale or exchange of collectibles, certain small business stock to the extent the gain is included in income, and property held more than one year but not more than 18 months. In addition, the 1997 Act provided a maximum rate of 25 percent for the long-term capital gain attributable to depreciation from real estate held more than 18 months. Beginning in 2001, lower rates of 8 and 18 percent will apply to the gain from certain property held more than five years.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, property held more than one year (rather than more than 18 months) will be eligible for the 10-, 20-, and 25-percent capital gain rates provided by the 1997 Act.

Effective date.—The conference agreement applies to amounts properly taken into account on or after January 1, 1998.

B. Deductibility of Meals Provided for the Convenience of the Employer

Present Law

In general, subject to several exceptions, only 50 percent of business meals and entertainment expenses are allowed as a deduction (sec. 274(n)). Under one exception, meals that are excludable from employees' incomes as a de minimis fringe benefit (sec. 132) are fully deductible by the employer.

In addition, the courts that have considered the issue have held that if substantially all of the meals are provided for the convenience of the employer pursuant to section 119, the cost of such meals is fully deductible because the employer is treated as operating a de minimis eating facility within the meaning of section 132(e)(2) (*Boyd Gaming Corp.* v. *Commissioner*[1] and *Gold Coast Hotel & Casino* v. *I.R.S.*[2]).

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The bill provides that all meals furnished to employees at a place of business for the convenience of the employer are treated as provided for the convenience of the employer under section 119 if more than one-half of employees to whom such meals are furnished on the premises are furnished such meals for the convenience of the employer under section 119. If these conditions are satisfied, the value of all such meals would be excludable from the employee's income and fully deductible to the employer. No inference is intended as to whether such meals are fully deductible under present law.

Effective date.—The provision is effective for taxable years beginning before, on, or after the date of enactment.

C. Normal Trade Relations

Present Law

In the context of U.S. tariff legislation, section 251 of the Trade Expansion Act of 1962 states the principle of "most-favored-nation" (MFN) treatment, requiring tariff treatment to be applied to all countries equally. Specifically, the products of a country given MFN treatment are subject to rates of duty found in column 1 of the Harmonized Tariff Schedule (HTS) of the United States. Products from countries not eligible for MFN treatment under U.S. law are subject to higher rates of duty (found in column 2 of the HTS). Under current U.S. law, only six countries are subject to column 2 treatment: Afghanistan, Cuba, Laos, North Korea, Serbia and

[1] 106 T.C. No. 19 (May 23, 1996).
[2] U.S. D.C. Nev. CV–5–94–1146–HDM(LRL) (September 26, 1996).

Montenegro, and Vietnam. The remaining U.S. trading partners are subject to either conditional or unconditional MFN treatment, or to even more preferential rates than MFN under free trade agreements (Israel, Canada, and Mexico) and under unilateral grants of tariff preference (the Generalized System of Preferences, the Caribbean Basin Initiative, and the Andean Trade Preferences Act).

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The provision would change the terminology used in U.S. trade statutes from "most-favored-nation" (MFN) to "normal trade relations" (NTR) in order to reflect more accurately the nature of the trade relationship in question. The legislation would not change the tariff treatment received by any country.

The Committee has long been concerned that the term "most-favored-nation" is a misnomer and does not accurately reflect the nature of the trading relationship in question. The terminology implies that a country receiving MFN is somehow receiving treatment that is special or better than what a country would normally receive. In reality, however, a country receiving MFN receives nothing more than ordinary or normal treatment. Only six countries receive treatment that is less favorable than this normal treatment. In addition, three countries actually receive tariff treatment that is better than MFN because they participate in a free trade agreement with the United States and numerous others receive treatment more favorable than MFN under unilateral grants of trade preference signifying that the "most" favored terminology is misleading.

The Committee believes that the MFN terminology has led to confusion and a misunderstanding of Congressional and Presidential action concerning the trade statutes. Accordingly, the Subcommittee strongly believes that the terminology should be changed to reflect the true nature of the trading relationship: merely normal relations.

The Committee does not intend that the change in terminology from MFN to NTR have any affect whatsoever on the meaning of any existing U.S. law or practice. It would not change any procedures under existing law for granting or removing MFN status. Rather, the new term is to have the same meaning as MFN as is currently defined in domestic legislation and international agreements and would not change the tariff treatment granted by the United States to any of its trading partners.

TITLE VI. TAX TECHNICAL CORRECTIONS

House Bill

The House bill contains technical, clerical and conforming amendments to the Taxpayer Relief Act of 1997 (the "1997 Act") and other recently enacted legislation. The provisions generally are effective as if enacted in the original legislation to which each provision relates.[1]

Senate Amendment

The Senate amendment is the same as the House bill, with the following modifications, additions, and deletion:

1. Child Tax Credit Provisions of the 1997 Act

Treatment of a portion of the child credit as a supplemental child credit.—The Senate amendment modifies the provision of the House bill intended to clarify the treatment of a portion of the child credit as a supplemental child credit under the earned income credit and an offsetting reduction of the child credit. Specifically, the Senate amendment clarifies the computation of the amount of the child credit that is treated as a supplemental child credit. Both the House bill and the Senate amendment clarify that such treatment does not affect the total tax credits allowed to the taxpayer or any other tax credit available to the taxpayer.

2. Education Incentives of the 1997 Act

Education IRAs.—The Senate amendment adds provisions to: (1) provide that the excise tax of section 4973 applies to each year that an excess contribution remains in an education IRA; (2) clarify that a beneficiary of an education IRA must be a life-in-being; (3) clarify that the 10-percent excise tax provided under section 530(d)(4) will not be imposed in cases where a distribution from an education IRA is includable in gross income solely because the taxpayer elects the HOPE or Lifetime Learning credit with respect to the beneficiary; (4) clarify that, in the event of the death of the designated beneficiary, the balance remaining in an education IRA may be distributed to any other beneficiary or to the estate of the deceased designated beneficiary, and a tax-free rollover of the account will be allowed if any member of the family becomes the new beneficiary; and (5) provide that if expenses are taken into account in determining the amount of the exclusion under section 530 for a distribution from an education IRA, then no deduction, exclusion, or credit is allowed under the Code with respect to such expenses.

Student loan interest.—The Senate amendment adds a provision to clarify that only a taxpayer who is required to make interest payments under the terms of the loan may deduct such payments as student loan interest.

Enhanced deduction for corporate donations of computers.—The Senate amendment adds a provision to clarify the require-

[1] For a description of the House provisions, see H. Rept. 105–356 (H.R. 2645), October 29, 1997. The provisions of H.R. 2645, as reported by the House Committee on Ways and Means, were included as an amendment (Title VI) to H.R. 2676, as passed by the House on November 5, 1997.

ments applicable to entities and organizations to which computers may be donated for purposes of the enhanced deduction.

Qualified State tuition programs.—The Senate amendment adds a provision that includes the original beneficiary's spouse within the definition of "member of the family."

Qualified zone academy bonds.—The Senate amendment adds a provision that clarifies the treatment of the credit for purposes of the estimated tax and overpayment rules.

3. Savings Incentives of the 1997 Act

Conversion of IRAs into Roth IRAs.—Under the Senate amendment, in the case of conversions of IRAs into Roth IRAs, the taxpayer is able to elect to have the amount converted includable in income in the year of the conversion (or the year of withdrawal if the conversion is accomplished through a rollover) rather than ratably over 4 years. The Senate amendment does not include the additional 10-percent recapture tax applicable to premature withdrawals of amounts to which the 4-year spread applies. Instead, under the Senate amendment, if an individual elects application of the 4-year spread and withdraws amounts before the entire amount of the conversion has been included in income, the amount withdrawn is includable in income (in addition to any amount required to be included under the 4-year spread). In no case will the amount includable under this provision exceed the amount converted. The Senate amendment does not include the rules in the House bill regarding separate accounts for converted amounts and instead includes ordering rules for determining the character of withdrawals from Roth IRAs.

Under the Senate amendment, a new 5-year holding period for determining whether distributions from a Roth IRA are qualified distributions does not apply to converted amounts. Thus, the 5-year holding period begins with the year for which a contribution (including a rollover contribution) was made.

The Senate amendment also clarifies calculation of adjusted gross income for purposes of applying the $100,000 adjusted gross income ("AGI") limit on individuals eligible to convert IRAs to Roth IRAs. Under the Senate amendment, the applicable AGI is AGI for the year of the distribution to which the conversion relates. In addition, under the Senate amendment, it is intended that in determining AGI, the conversion amount (to the extent otherwise includable in AGI) is subtracted from AGI for the year of the distribution.

Penalty-free distributions for education expenses and purchase of first homes.—The Senate amendment modifies the provision in the House bill intended to prevent avoidance of the 10-percent early withdrawal tax by providing that hardship distributions from qualified cash or deferred arrangements and tax-sheltered annuities are not eligible rollover distributions (and not subject to 20-percent withholding). The Senate amendment also modifies the effective date of the House bill provision. The Senate amendment is effective for distributions after December 31, 1998.

4. Capital Gains Provisions of the 1997 Act

The Senate amendment modifies two provisions of the House bill to: (1) clarify the provision relating to the holding period of po-

sitions in certain short sales and straddles; and (2) provide that new section 1045 (relating to rollovers of small business stock) applies to stock held by certain partnerships with trusts as partners. The Senate amendment adds a provision to clarify the amount of exclusion applicable to the sale of a principal residence by a married couple filing a joint return who do not qualify for the full $500,000 exclusion.

5. Alternative Minimum Tax Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) conform the regular-tax election to use AMT depreciation to the changes made to AMT depreciation by the 1997 Act; and (2) clarify the eligibility of the small corporation exemption.

6. Estate and Gift Tax Provisions of the 1997 Act

The Senate amendment modifies the provisions of the House bill to: (1) clarify the effective date for the generation-skipping exemption; (2) coordinate the unified credit and the qualified family-owned business exclusion; and (3) clarify the rules governing revaluation of gifts. The Senate amendment also adds provisions that: (1) clarify the phaseout range for the 5-percent surtax to phase out the benefits of the unified credit and graduated rates; (2) clarify that interests eligible for the family-owned business exclusion must be passed to a qualified heir; (3) clarify the "trade or business" requirement for the family-owned business exclusion; (4) convert the family-owned business exclusion into a deduction; (5) make other technical changes to items cross-referenced in the family-owned business provision; and (6) clarify the treatment of post-mortem conservation contributions.

7. D.C. Zone Incentives of the 1997 Act

The Senate amendment adds provisions that clarify the definitions of businesses and property eligible for special incentives available with respect to the D.C. Zone. In addition, the Senate amendment provides that the income phase-out rules applicable to the D.C. first-time homebuyer credit apply only in the year the credit is generated and not in subsequent carryover years.

8. Miscellaneous Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) clarify the qualification of the reduced rate of tax on hard ciders; (2) clarify the treatment of the tax paid by electing publicly treated partnerships; (3) modify the depreciation limitation of electric vehicles; and (4) modify the definition of "non-Amtrak State" for purposes of the Amtrak net operating loss provision.

9. Revenue-Increase Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) clarify that the exception to the constructive sales rules for positions with respect to straight debt instruments does not apply to positions that are convertible into stock; (2) provide coordination between the basis adjustment rules relating to extraordinary dividends and similar rules applicable to consolidated returns; (3) clarify the interaction of section 355 and rules relating to certain divisive

transactions involving asset contributions to a subsidiary; (4) clarify the application of section 304 to certain international transactions; (5) clarify the treatment of prepaid telephone cards for telephone excise tax purposes; (6) modify the unrelated business income tax rules applicable to second-tier subsidiaries; (7) modify the interaction between section 901(k) and the foreign tax credit flow-through rules for RICs; (8) clarify the treatment of additional covered lives under a master contract for purposes of the effective date of the provision relating to company owned life insurance; (9) make a clerical amendment to the definition of wages under the earned income credit; and (10) clarify the allocation of basis of properties distributed by a partnership.

10. Foreign Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) clarify the treatment of PFIC option holders; (2) clarify the application of PFIC mark-to-market rules to RICs; and (3) clarify the interaction between the PFIC and other mark-to-market regimes.

11. Simplification Provisions of the 1997 Act

The Senate amendment adds a provision that provides that distributions from a REIT are deemed to first come from any non-REIT earnings.

12. Estate, Gift, and Trust Simplification Provisions of the 1997 Act

The Senate amendment adds provisions that: (1) clarify the treatment of revocable trusts for purposes of the generation-skipping transfer tax; and (2) provide regulatory authority for simplified reporting of funeral trusts terminated during the taxable year.

13. Excise Tax Simplification Provisions of the 1997 Act

The Senate amendment clarifies that the 1997 Act's provision liberalizing rules for bulk importation of wine applies only to alcohol that would qualify as a natural wine if produced in the United States.

14. Pension and Employee Benefits Provisions of the 1997 Act

The Senate amendment adds a clarification to the scope of the provision relating to the treatment of disability payments made to public safety employees.

15. Technical Corrections Relating to Other Legislation

Adoption credit.—The Senate amendment adds a provision that provides that the phaseout rules applicable to the adoption credit are not applicable to credit carryovers.

Disclosure requirements of apostolic organizations.—The Senate amendment adds a provision that provides that section 501(d) apostolic organizations are not required to disclose Schedules K-1.

Earned income credit qualification.—The Senate amendment adds provisions that clarify the application of the taxpayer identi-

fication number rules for purposes of determining eligibility for the earned income credit.

Stapled REIT grandfather rule.—The Senate amendment does not include the provision of the House bill relating to the grandfather rule applicable to stapled REITs.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications, additions, and deletions.

1. Education Incentives of the 1997 Act

Education IRAs.—The conference agreement clarifies that for purposes of the special rules regarding tax-free rollovers and changes of designated beneficiaries, the new beneficiary must be under the age of 30.

Deduction for student loan interest.—The conference agreement clarifies that a "qualified education loan" means any indebtedness incurred solely to pay qualified higher education expenses. Thus, revolving lines of credit generally would not constitute qualified education loans unless the borrower agreed to use the line of credit to pay only qualifying education expenses. The conference agreement further provides Treasury with authority to issue regulations regarding the calculation of the 60-month period in the case of consolidated loans, collapsed loans, and loans made before the date of enactment of the Taxpayer Relief Act of 1997 (August 5, 1997) for purposes of determining the deductibility of interest paid on such loans. In this regard, the conferees expect that such regulations would mirror the guidance contained in Notice 98–7 issued regarding the establishment of the 60-month period with respect to such loans for reporting purposes. The provision is effective for interest payments due and paid after December 31, 1997, on any qualified education loan.

2. Savings and Investment Incentives of the 1997 Act

Conversion of IRAs into Roth IRAs.—The conferees wish to clarify that for purposes of determining the $100,000 adjusted gross income ("AGI") limit on IRA conversions to Roth IRAs, the conversion amount is not taken into account. Thus, for this purpose, AGI (and all AGI-based phaseouts) are to be determined without taking into account the conversion amount. For purposes of computing taxable income, the conversion amount (to the extent otherwise includible in AGI) is to be taken into account in computing the AGI-based phaseout amounts. The conferees wish to clarify that the language of the Senate Finance committee report (appearing in connection with section 6005(b) of the Senate amendment) relating to calculation of AGI limit for conversions is superceded.

Small business stock rollover.—The conference agreement provides that rules similar to the rules contained in subsections (f) through (k) of section 1202 will apply for purposes of the rollover provision (sec. 1045). Under these rules, for example, the benefit of a tax-free rollover with respect to the sale of small business stock by a partnership will flow through to a partner who is not a corporation if the partner held its partnership interest at all times the partnership held the small business stock. A similar rule applies to

S corporations. The conference agreement does not contain any provision limiting the types of partners or shareholders that a partnership or S corporation may have in order for the benefits of section 1045 to apply to a noncorporate partner or shareholder.

3. Estate and Gift Tax Provisions of the 1997 Act

Phaseout range for the 5-percent surtax to phase out the benefits of the unified credit and graduated rates.—The conference agreement does not include the provision in the Senate amendment clarifying the phaseout range for the 5-percent surtax to phase out the benefits of the unified credit and graduated rates.

Qualification for an estate tax deduction for qualified family-owned business interest in the case of cash leases by decedent to family member.—The conference agreement clarifies that an interest in property will not be disqualified, in whole or in part, as an interest in a family-owned business where the decedent leases that interest on a net cash basis to a member of the decedent's family who uses the leased property in an active business. The rental income derived by the decedent from the net cash lease in those circumstances is not treated as personal holding company income for purposes of Code section 2057.

4. Miscellaneous Provisions of the 1997 Act

Fuel excise tax provisions.—The conference agreement does not include the provisions in the Senate amendment relating to fuel excise taxes that were enacted in the Transportation Equity Act for the 21st Century.

5. Revenue Increase Provisions of the 1997 Act

Coordination between basis adjustment rules relating to extraordinary dividends and similar rules applicable to consolidated returns.—With respect to the Senate amendment regarding gain recognition for certain extraordinary dividends, the conference agreement clarifies that Congress intends that, except as provided in regulations to be issued, section 1059 does not cause current gain recognition to the extent that the consolidated return regulations require the creation or increase of an excess loss account with respect to a distribution. Thus, current Treas. Reg. sec. 1.1059(e)–1(a) does not result in gain recognition with respect to distributions within a consolidated group to the extent such distribution results in the creation or increase of an excess loss account under the consolidated return regulations.

Holding period requirement for claiming foreign tax credits with respect to dividends.—The 1997 Act added section 901(k), which denies a shareholder foreign tax credits normally available with respect to a dividend if the shareholder has not held the stock for a minimum period during which it is not protected from risk of loss. Section 901(k)(4), "Exception for certain taxes paid by securities dealers," provides an exception for foreign tax credits with respect to certain dividends received on stock held in the active conduct of a securities business in a foreign country. The Ways and Means and Finance committee reports provide that the exception is available only for dividends received on "stock which the shareholder holds in its capacity as a dealer in securities." H. Rept. 105–

148, 105th Cong., 1st Sess. 546 (1997); S. Rept. 105–33, 105th Cong., 1st Sess 176 (1997). The conference agreement clarifies that the exception of section 901(k)(4) is available only for dividends received on stock that the shareholder holds in its capacity as a dealer in securities.

Extension of diesel fuel excise taxes to kerosene.—The conference agreement includes clarifications of the rules under which aviation grade kerosene may be removed for use as aviation fuel without payment of the highway excise taxes.

6. Individual and Business Simplification Provisions of the 1997 Act

Magnetic media returns for partnerships having more than 100 partners.—Present law, as amended by the 1997 Act, provides that the Treasury Secretary is to require partnerships with more than 100 partners to file returns on magnetic media (sec. 6011(e)). Present law also imposes a penalty in the case of failure to meet magnetic media requirements. The conference agreement clarifies that the penalty under section 6724(c) for failure to comply with the requirement of filing returns on magnetic media applies to the extent such a failure occurs with respect to more than 100 information returns, in the case of a partnership with more than 100 partners.

7. Foreign Tax Provisions of the 1997 Act

Information reporting with respect to certain foreign corporations and partnerships.—Present law, as amended by the 1997 Act, provides that reporting rules apply to controlled foreign corporations and foreign partnerships (sec. 6038). The conference agreement clarifies that guidance relating to the furnishing of required information is to be provided by the Secretary of the Treasury (not specifically through regulations), and conforms the use of the defined term, foreign business entity.

8. Excise Tax and Other Simplification Provisions of the 1997 Act

Refunds when wine returned to wineries or beer returned to breweries.—The 1997 Act added a provision that tax is refunded when tax-paid wine is returned to a winery or tax-paid beer is returned to a brewery (secs. 5044 and 5056). The Code provisions allowing these refunds speak of beverages produced in the United States. A separate provision of the 1997 Act provided that beer and wine imported "in bulk" would be taxed under the rules for domestically produced beverages. The conference agreement provides that the refund provisions are coordinated with the provision on tax treatment of bulk imports.

Transfers of bulk imports of wine to wineries or beer to breweries.—Prior to the 1997 Act, imported beer and wine always were taxed upon importation (secs. 5043 and 5054). The 1997 Act added provisions for non-tax-paid transfers of bulk imports to breweries and wineries (secs. 5364 and 5418). The conference agreement conforms the provisions imposing tax in all cases on importation to recognize these allowed transfers. Under the conference agreement, liability for tax payment shifts to the brewery or winery when bulk

imports are transferred with payment of tax, just as those parties are liable for payment of tax on domestically produced beer and wine.

9. Taxpayer Bill of Rights 2 (1996)

Disclosure of returns and return information.—The rules regarding disclosure of returns and return information were amended in 1996 to permit certain disclosures in two additional circumstances. Present law provides that, in the case of a deficiency with respect to a joint return of individuals who are no longer married or no longer residing in the same household, the Treasury Secretary is permitted to disclose to one such individual whether there has been an attempt to collect the deficiency from the other individual, the general nature of such collection activities, and the amount collected (sec. 6103(e)(8)). Present law also provides that if the Treasury Secretary determines that a person is liable for a penalty for failure to collect and pay over tax, the Secretary is permitted to disclose to that person the name of any other person liable for that penalty, and whether there has been an attempt to collect the deficiency from the other individual, the general nature of such collection activities, and the amount collected (sec. 6103(e)(9)). The conference agreement clarifies that these disclosures, like certain other disclosures permitted under present law, may be made under section 6103(e)(6) to the duly authorized attorney in fact of the person making the disclosure request. The provision takes effect on date of enactment.

10. Transportation Equity Act for the 21st Century ("TEA 21") (1998)

Simplified refund provisions for tax on gasoline, diesel fuel and kerosene.—TEA 21 included a provision combining the Code refund provisions for gasoline, diesel fuel, and kerosene and reducing the minimum claim amount. Under TEA 21, claims may be filed once a $750 threshold is reached for gasoline, diesel fuel, and kerosene combined, and overpayments attributable to multiple calendar quarters may be aggregated in determining whether this threshold is met (rather than claims being filed only with respect to a single calendar quarter). The conference agreement adds a provision conforming a current Code timing provision to reflect the portion of the TEA 21 provision that allows aggregation of multiple calendar quarters into a single refund claim.

TITLE VII. REVENUE OFFSETS

A. Employer Deductions for Vacation and Severance Pay (sec. 501 of the House Bill and sec. 5001 of the Senate Amendment)

Present Law

For deduction purposes, any method or arrangement that has the effect of a plan deferring the receipt of compensation or other benefits for employees is treated as a deferred compensation plan (sec 404(b)). In general, contributions under a deferred compensation plan (other than certain pension, profit-sharing and similar

plans) are deductible in the taxable year in which an amount attributable to the contribution is includible in income of the employee. However, vacation pay which is treated as deferred compensation is deductible for the taxable year of the employer in which the vacation pay is paid to the employee (sec. 404(a)(5)).

Temporary Treasury regulations provide that a plan, method, or arrangement defers the receipt of compensation or benefits to the extent it is one under which an employee receives compensation or benefits more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. A plan, method or arrangement is presumed to defer the receipt of compensation for more than a brief period of time after the end of an employer's taxable year to the extent that compensation is received after the 15th day of the 3rd calendar month after the end of the employer's taxable year in which the related services are rendered (the "2½ month" period). A plan, method or arrangement is not considered to defer the receipt of compensation or benefits for more than a brief period of time after the end of the employer's taxable year to the extent that compensation or benefits are received by the employee on or before the end of the applicable 2½ month period. (Temp. Treas. Reg. Sec. 1.404(b)–1T A–2).

The Tax Court recently addressed the issue of when vacation pay and severance pay are considered deferred compensation in *Schmidt Baking Co., Inc.*, 107 T.C. 271 (1996). In *Schmidt Baking*, the taxpayer was an accrual basis taxpayer with a fiscal year that ended December 28, 1991. The taxpayer funded its accrued vacation and severance pay liabilities for 1991 by purchasing an irrevocable letter of credit on March 13, 1992. The parties stipulated that the letter of credit represented a transfer of substantially vested interest in property to employees for purposes of section 83, and that the fair market value of such interest was includible in the employees' gross incomes for 1992 as a result of the transfer.[1] The Tax Court held that the purchase of the letter of credit, and the resulting income inclusion, constituted payment of the vacation and severance pay within the 2½ month period. Thus, the vacation and severance pay were treated as received by the employees within the 2½ month period and were not treated as deferred compensation. The vacation pay and severance pay were deductible by the taxpayer for its 1991 fiscal year pursuant to its normal accrual method of accounting.

House Bill

The House bill provides that, for purposes of determining whether an item of compensation (other than severance pay), is deferred compensation (under Code sec. 404), the compensation is not considered to be paid or received until actually received by the employee. In addition, an item of deferred compensation is not considered paid to an employee until actually received by the employee. The House bill is intended to overrule the result in *Schmidt Baking*. For example, with respect to the determination of whether va-

[1] While the rules of section 83 may govern the income inclusion, section 404 governs the deduction if the amount involved is deferred compensation.

cation pay is deferred compensation, the fact that the value of the vacation pay is includible in the income of employees within the applicable 2½ month period is not relevant. Rather, the vacation pay must have been actually received by employees within the 2½ month period in order for the compensation not to be treated as deferred compensation.

It is intended that similar arrangements, in addition to the letter of credit approach used in *Schmidt Baking*, do not constitute actual receipt by the employee, even if there is an income inclusion. Thus, for example, actual receipt does not include the furnishing of a note or letter or other evidence of indebtedness of the taxpayer, whether or not the evidence is guaranteed by any other instrument or by any third party. As a further example, actual receipt does not include a promise of the taxpayer to provide service or property in the future (whether or not the promise is evidenced by a contract or other written agreement). In addition, actual receipt does not include an amount transferred as a loan, refundable deposit, or contingent payment. Amounts set aside in a trust for employees generally are not considered to be actually received by the employee.

Under the House bill, sick pay that is deferred compensation is treated the same as vacation pay that is deferred compensation, and is not deductible until paid to employees. The bill does not change the rule under which deferred compensation (other than vacation pay and sick pay and deferred compensation under qualified plans) is deductible in the year includible in the gross income of employees participating in the plan if separate accounts are maintained for each employee.

While *Schmidt Baking* involved only vacation pay and severance pay, there is concern that this type of arrangement may be tried to circumvent other provisions of the Code where payment is required in order for a deduction to occur. Thus, it is intended that the Secretary will prevent the use of similar arrangements. No inference is intended that the result in *Schmidt Baking* is present law beyond its immediate facts or that the use of similar arrangements is permitted under present law.

Effective date.—The provision is effective for taxable years ending after October 8, 1997. Any change in method of accounting required by the provision will be treated as initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment required by section 481 as a result of the change will be taken into account in the year of the change.

Senate Amendment

The Senate amendment is the same as the House bill, except that the provision also applies to severance pay as well as other types of compensation.

Effective date.—The provision is effective for taxable years ending after the date of enactment. With respect to the change in method of accounting, the Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment. As under the Senate amendment, the fact that an item of compensation is includible in employees' incomes or wages within the applicable 2½ month period is not relevant to determining whether an item of compensation is deferred compensation.

As under the Senate amendment, many arrangements in addition to the letter of credit approach used in *Schmidt Baking* do not constitute actual receipt by employees. For example, actual receipt does not include the furnishing of a note or letter or other evidence of indebtedness of the taxpayer, whether or not the evidence is guaranteed by any other instrument or by any third party. As a further example, actual receipt does not include a promise of the taxpayer to provide service or property in the future (whether or not the promise is evidenced by a contract or other written agreement). In addition, actual receipt does not include an amount transferred as a loan, refundable deposit, or contingent payment. Further, amounts set aside in a trust for employees are not considered to be actually received by the employee.

In light of the change being made and its effect on all cases involving this issue, the conferees ask the Secretary to consider whether, on a case-by-case basis, continued challenge of these arrangements for prior years represents the best use of litigation resources.

Effective date.—The provision is effective for taxable years ending after the date of enactment. Any change in method of accounting required by the provision will be treated as initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment required by section 481 as a result of the change will be taken into account over a three-year period beginning with the first year for which the provision is effective.

B. Modify Foreign Tax Credit Carryover Rules (sec. 5002 of the Senate amendment)

Present Law

U.S. persons may credit foreign taxes against U.S. tax on foreign-source income. The amount of foreign tax credits that can be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S.-source income. Separate foreign tax credit limitations are applied to specific categories of income.

The amount of creditable taxes paid or accrued (or deemed paid) in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back two years and forward five years. The amount carried over may be used as a credit in a carryover year to the extent the taxpayer otherwise has excess foreign tax credit limitation for such year. The separate foreign tax credit limitations apply for purposes of the carryover rules.

House Bill

No provision.

Senate Amendment

The Senate amendment reduces the carryback period for excess foreign tax credits from two years to one year. The Senate amendment also extends the excess foreign tax credit carryforward period from five years to seven years.

Effective date.—The provision applies to foreign tax credits arising in taxable years beginning after December 31, 1998.

Conference Agreement

The conference agreement does not include the Senate amendment.

C. Clarify and Expand Mathematical Error Procedures (sec. 5003 of the Senate amendment)

Present Law

Taxpayer identification numbers ("TINs")

The IRS may deny a personal exemption for a taxpayer, the taxpayer's spouse or the taxpayer's dependents if the taxpayer fails to provide a correct TIN for each person for whom the taxpayer claims an exemption. This TIN requirement also indirectly effects other tax benefits currently conditioned on a taxpayer being able to claim a personal exemption for a dependent (e.g., head-of-household filing status and the dependent care credit). Other tax benefits, including the adoption credit, the child tax credit, the Hope Scholarship credit and Lifetime Learning credit, and the earned income credit also have TIN requirements. For most individuals, their TIN is their Social Security Number ("SSN"). The mathematical and clerical error procedure currently applies to the omission of a correct TIN for purposes of personal exemptions and all of the credits listed above except for the adoption credit.

Mathematical or clerical errors

The IRS may summarily assess additional tax due as a result of a mathematical or clerical error without sending the taxpayer a notice of deficiency and giving the taxpayer an opportunity to petition the Tax Court. Where the IRS uses the summary assessment procedure for mathematical or clerical errors, the taxpayer must be given an explanation of the asserted error and a period of 60 days to request that the IRS abate its assessment. The IRS may not proceed to collect the amount of the assessment until the taxpayer has agreed to it or has allowed the 60-day period for objecting to expire. If the taxpayer files a request for abatement of the assessment specified in the notice, the IRS must abate the assessment. Any reassessment of the abated amount is subject to the ordinary deficiency procedures. The request for abatement of the assessment is the only procedure a taxpayer may use prior to paying the assessed amount in order to contest an assessment arising out of a mathematical or clerical error. Once the assessment is satisfied, however, the taxpayer may file a claim for refund if he or she believes the assessment was made in error.

House Bill

No provision.

Senate Amendment

The Senate amendment provides in the application of the mathematical and clerical error procedure that a correct TIN is a TIN that was assigned by the Social Security Administration (or in certain limited cases, the IRS) to the individual identified on the return. For this purpose the IRS is authorized to determine that the individual identified on the tax return corresponds in every aspect (including, name, age, date of birth, and SSN) to the individual to whom the TIN is issued. The IRS also is authorized to use the mathematical and clerical error procedure to deny eligibility for the dependent care tax credit, the child tax credit, and the earned income credit even though a correct TIN has been supplied if the IRS determines that the statutory age restrictions for eligibility for any of the respective credits is not satisfied (e.g., the TIN issued for the child claimed as the basis of the child tax credit identifies the child as over the age of 17 at the end of the taxable year).

Effective date.—The provision is effective for taxable years ending after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

D. Freeze Grandfather Status of Stapled REITs (sec. 5004 of the Senate amendment)

Present Law

A real estate investment trust ("REIT") is an entity that receives most of its income from passive real estate related investments and that essentially receives pass-through treatment for income that is distributed to shareholders. If an electing entity meets the qualifications for REIT status, the portion of its income that is distributed to the investors each year generally is taxed to the investors without being subjected to a tax at the REIT level. In general, a REIT must derive its income from passive sources and not engage in any active trade or business.

A REIT must satisfy a number of tests on a year-by-year basis that relate to the entity's: (1) organizational structure; (2) source of income; (3) nature of assets; and (4) distribution of income. Under the source-of-income tests, at least 95 percent of its gross income generally must be derived from rents, dividends, interest and certain other passive sources (the "95-percent test"). In addition, at least 75 percent of its income generally must be from real estate sources, including rents from real property and interest on mortgages secured by real property (the "75-percent test").

A REIT is permitted to have a wholly-owned subsidiary subject to certain restrictions (a "qualified REIT subsidiary"). All of the assets, liabilities, income, deductions and credits of a qualified REIT subsidiary are treated as attributes of the REIT.

In a stapled REIT structure, both the shares of a REIT and a C corporation may be traded, but are subject to a provision that they may not be sold separately. In the Deficit Reduction Act of 1984 (the "1984 Act"), Congress required that, in applying the tests for REIT status, all stapled entities are treated as one entity (sec. 269B(a)(3)). The 1984 Act included grandfather rules, one of which provided that certain then-existing stapled REITs were not subject to the new provision (sec. 136(c)(3) of the 1984 Act). That grandfather rule provided that the new provision did not apply to a REIT that was a part of a group of stapled entities if the group of entities was stapled on June 30, 1983, and included a REIT on that date.

House Bill

No provision.

Senate Amendment

The Senate amendment treats activities and gross income of a stapled REIT group with respect to real property interests acquired after March 26, 1998, by any member of a stapled REIT group (and not grandfathered under the rules described below) as activities and income of the REIT for certain purposes, including the 75-percent and 95-percent tests for REIT qualification. The stapled REIT group includes the existing stapled REIT, a stapled entity, or a subsidiary or partnership in which a 10-percent-or-greater interest is owned by an existing stapled REIT or stapled entity.

Under the Senate amendment, there is an exception to this treatment for certain grandfathered real property interests. Grandfathered interests include interests that had been acquired by a member of the REIT group on or before March 26, 1998. In addition, grandfathered real property interests include interests acquired by a member of the REIT group after March 26, 1998, pursuant to a binding written agreement in effect on March 26, 1998, or which were described in a public announcement or in a filing with the Securities and Exchange Commission ("SEC") on or before March 26, 1998.

In general, a grandfathered real property interest does not lose its grandfathered status by reason of a repair to, an improvement of, or a lease of, a grandfathered property. Thus, if a REIT owns a grandfathered real property interest that it leases to a stapled entity, the interest remains a grandfathered interest. Similarly, a renewal of the lease to the stapled entity would not cause the real property interest to lose its grandfather status, whether the renewal is pursuant to the terms of the lease or otherwise. However, an improvement of a grandfathered real property interest causes loss of grandfathered status and become a nonqualified real property interest in certain circumstances. Any expansion beyond the boundaries of the land of the otherwise grandfathered interest occurring after March 26, 1998, is treated as a non-qualified real property interest to the extent of such expansion. Moreover, any improvement of an otherwise grandfathered real property interest (within its land boundaries) that is placed in service after December 31, 1999, is treated as a separate nonqualified real property interest in certain circumstances. There is an exception for improve-

ments placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

If a REIT or stapled entity owns, directly or indirectly, a 10-percent-or-greater interest in a corporate subsidiary or partnership (or other entity described below) that owns a real property interest, the above rules apply with respect to a proportionate part of the entity's real property interest, activities and gross income. Similar rules attributing the proportionate part of the subsidiary's or partnership's real property interests and gross income apply when a REIT or stapled entity acquires a 10-percent-or-greater interest (or in the case of a previously-owned entity, acquires an additional interest) after March 26, 1998, with exceptions for interests acquired pursuant to binding written agreements, public announcements, or SEC filings described above.

Special rules apply where a member of the stapled REIT group holds a mortgage (that is not an existing obligation under the rules described below) that is secured by an interest in real property, where either the REIT or a stapled entity engages in certain activities with respect to that property. In such cases, all interest on the mortgage and all gross income received by a member of the REIT group from the activity is treated as income of the REIT that is not qualifying income under the 75-percent or 95-percent tests, with the result that REIT status might be lost. An exception to these rules is provided for certain mortgages the interest on which does not exceed an arm's-length rate and which would be treated as interest for purposes of the REIT rules. An exception is also available for certain mortgages that are held on March 26, 1998. The exception for existing mortgages ceases to apply if the mortgage is refinanced and the principal amount is increased in such refinancing.

For a corporate subsidiary owned by a stapled entity, the 10-percent ownership test is met if a stapled entity owns, directly or indirectly, 10 percent or more of the corporation's stock, by either vote or value. For interests in partnerships, the ownership test is met if either the REIT or a stapled entity owns, directly or indirectly, a 10-percent or greater interest in the partnership's assets or net profits.

Effective date.—The Senate amendment is effective for taxable years ending after March 26, 1998.

Conference Agreement

The conference agreement generally follows the Senate amendment with the following technical modifications. The conference agreement clarifies that a real property interest acquired pursuant to the exercise of a put option, buy-sell agreement or an agreement relating to a third party default that was binding on March 26, 1998, and at all times thereafter, is generally treated as a grandfathered real property interest. It is the intention of the conferees that this rule apply only to substantive economic arrangements that are outside of the control of the stapled REIT group. The conference agreement clarifies that a renewal of a lease of property from a third party to a member of the stapled REIT group, like a lease or renewal between group members, does not generally terminate grandfather status, whether the renewal is pursuant to the

terms of the lease or otherwise.[2] However, renewal of a lease can cause loss of grandfather status if the property is improved to the extent that grandfather status would be lost under the improvement rules described above. Moreover, the conference agreement provides that, for leases and renewals entered into after March 26, 1998 (whether from members of the stapled REIT group or third parties), grandfather status is lost if the rent on the lease or renewal exceeds an arm's length rate.

The conference agreement makes certain changes to the rule attributing ownership of real property interests, mortgages and other items from a partnership or subsidiary in which the REIT or a stapled entity owns a 10-percent-or-greater interest, directly or indirectly. Under the conference agreement, the percentage ownership interest in a partnership is to be determined by the owner's share of capital or profits, whichever is larger. The conference agreement clarifies that an interest in real property acquired by a 10-percent-or-greater partnership or subsidiary pursuant to a binding written agreement, public announcement, SEC filing, put option, buy-sell agreement or agreement relating to a third-party default (a "qualified transaction") is treated as grandfathered if such interest would be a grandfathered interest if acquired directly by the REIT or stapled entity. The conference agreement also provides that the exception for 10-percent-or-greater interests in partnerships or subsidiaries acquired pursuant to a qualified transaction applies to interests acquired by any member of the stapled REIT group. The conferees also wish to clarify that all real property interests, mortgages, activities and gross income of a qualified REIT subsidiary are treated as attributes of the REIT for purposes of the provision.

The conference agreement adds a rule that provides that a transfer, direct or indirect, of a grandfathered real property interest between members of a stapled REIT group does not result in a loss of grandfather status if the total direct and indirect interests of both the exempt REIT and stapled entity in the real property interest does not increase as a result of the transfer. If the total direct and indirect interest of the exempt REIT and stapled entity increases, the transferred real property interest will be deemed to lose grandfather status only to the extent of such increase. The provision applies to all types of transfers of real property interests among group members, such as sales, contributions and distributions, whether taxable or tax-free. Moreover, the provision applies both to direct transfers of real property interests and transfers of such interests indirectly through transfer of interests in 10-percent-or-greater owned partnerships and subsidiaries. The application of the new provision is illustrated by the following examples. First, assume that an exempt REIT sells a portion of a grandfathered real property interest to a stapled entity. The real property interest remains grandfathered because there is no increase in the total interests of the REIT and the stapled entity (100 percent both before and after the transfer). Second, assume that a grandfathered real property interest is contributed by a stapled entity to a partnership

[2] In the case of a lease from a third party, a renewal will not qualify if there is a significant time period between the two tenancies.

or subsidiary in which the stapled entity owns a 10-percent-or-greater interest (either prior to, or as a result of, the contribution). The real property interest remains grandfathered because the previous total interests of the exempt REIT and stapled entity (the stapled entity's 100-percent interest) are not increased by the transfer.[3] Third, assume a REIT owns a 50-percent interest in a partnership that distributes a grandfathered real property interest to the REIT in complete liquidation of its interest. The 50-percent interest that was previously deemed owned by the REIT will continue to be grandfathered; the remaining 50-percent interest will become a non-grandfathered interest because it represents an increase in the total direct and indirect interests of the REIT and stapled entity in the real property interest. Fourth, assume that a partnership in which an exempt REIT or stapled entity owns a 10-percent or greater interest terminates as a result of a sale of 50 percent or more of the total partnership interests during a 12-month period that does not involve the REIT or a stapled entity (sec. 708(b)(1)(B)). Grandfather status of real property interests owned by the partnership is not lost in the transfer because, as a result of the termination, the partnership's assets are deemed contributed to a new partnership and interests in that partnership are deemed distributed to the purchasing and other partners in proportion to their interests (Treas. reg. sec. 1.708–1(b)(1)(iv)). Thus, there is no change in the total interest of the REIT and stapled entity in the partnership's assets.

The conference agreement adds a provision intended to deal with the special situation of so-called "UPREIT" partnerships (see Treas. reg. 1.701–2(d)(example 4)), which generally treats 100 percent of the real property interests, mortgages, activities and gross income of such partnerships as interests, activities and gross income of the REIT or stapled entity that owns a partnership interest. The provision applies where (i) an exempt REIT or stapled entity owned directly or indirectly) at least a 60-percent interest in a partnership as of March 26, 1998, (ii) 90 percent or more of the interests in the partnership (other than those held by the exempt REIT or stapled entity) are or will be redeemable or exchangeable for consideration with a value determined with reference to the stock of the REIT or stapled entity or both. The provision also applies to an interest in a partnership formed after March 26, 1998, which meets the provision's other requirements, where the partnership was formed to mirror the stapling of an exempt REIT and a stapled entity in connection with an acquisition agreed to or announced on or before March 26, 1998. If, as of January 1, 1999, more than one partnership owned (directly or indirectly) by either an exempt REIT or stapled entity meets the requirements of the provision, only the largest such partnership (determined by aggregate asset bases) is treated as meeting such requirements.

The conference agreement provides that, for purposes of the exception to the mortgage rules for mortgages held on March 26, 1998, an increase in interest payable on a mortgage (except pursu-

[3] Nevertheless, if the REIT's interest in the partnership or subsidirary increases as a result of the contribution, a portion of each of the entity's real property interests other than the interest contributed, reflecting the proportionate increase in the REIT's interest in the entity, will be treated as a non-grandfathered real property interest.

ant to an interest arrangement, such as variable interest, under the mortgage's terms as of March 26, 1998), or an increase in interest payable as a result of a refinancing, causes the mortgage to cease to qualify for the exception unless the new interest rate meets an arm's-length standard.

The conferees also wish to clarify that in the event that a stapled REIT group ceases to be stapled, the rules treating assets, activities and gross income of members or the stapled REIT group as attributes of the REIT apply only to the portion of the year in which the group was a stapled REIT group. Similarly, where a REIT's or stapled entity's interest in a partnership or subsidiary changes during the year, the rules treating a proportionate part of the assets, activities and gross income of the partnership or subsidiary as attributes of the REIT or stapled entity also apply on a partial-year basis.

E. Make Certain Trade Receivables Ineligible for Mark-to-Market Treatment (sec. 5005 of the Senate amendment)

Present Law

In general, a dealer in securities is required to use a mark-to-market method of accounting for securities (sec. 475). A dealer in securities is a taxpayer who regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business, or who regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in certain types of securities with customers in the ordinary course of a trade or business. A security includes an evidence of indebtedness.

Treasury regulations provide that if a taxpayer would be a dealer in securities only because of its purchases and sales of debt instruments that, at the time of purchase or sale, are customer paper with respect to either the taxpayer or a corporation that is a member of the same consolidated group, the taxpayer will not normally be treated as a dealer in securities. However, the regulations allow such a taxpayer to elect out of this exception to dealer status.[4] For this purpose, a debt instrument is customer paper with respect to a person if: (1) the person's principal activity is selling nonfinancial goods or providing nonfinancial services; (2) the debt instrument was issued by the purchaser of the goods or services at the time of the purchase of those goods and services in order to finance the purchase; and (3) at all times since the debt instrument was issued, it has been held either by the person selling those goods or services or by a corporation that is a member of the same consolidated group as that person.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that certain trade receivables are not eligible for mark-to-market treatment. A trade receivable is

[4] Treas. reg. sec. 1.475(c)–1(b), issued December 23, 1996; the "customer paper election."

subject to the provision if it is a note, bond, debenture, or other evidence of indebtedness arising out of the sale of goods or services by a person the principal activity of which is selling or providing non-financial goods and services and it is held by such person (or a related person) at all times since it was issued.

Under the Senate amendment, a receivable meeting the above definition is not treated as a security for purposes of the mark-to-market rules (sec. 475). Thus, such a receivable is not marked-to-market, even if the taxpayer qualifies as a dealer in other securities. Because trade receivables cease to meet the above definition when they are disposed of (other than to a related person), a taxpayer who regularly sells trade receivables is treated as a dealer in securities as under present law, with the result that the taxpayer's other securities would be subject to mark-to-market treatment unless an exception applies.

Effective date.—The Senate amendment generally is effective for taxable years ending after the date of enactment. Adjustments required under section 481 as a result of the change in method of accounting generally are required to be taken into account ratably over the four-year period beginning in the first taxable year for which the provision is in effect. However, where the taxpayer terminates its existence or ceases to engage in the trade or business that generated the receivables (except as a result of a tax-free transfer), any remaining balance of the section 481 adjustment is taken into account entirely in the year of such cessation or termination (see sec. 5.04(3)(c) of Rev. Proc. 97–37, 1997–33 I.R.B. 18).

Conference Agreement

The conference agreement follows the Senate amendment with modifications. The conferees wish to clarify that the new provision applies to trade receivables arising from services performed by independent contractors, as well as employees. Thus, for example, if a taxpayer's principal activity is selling non-financial services and some or all of such services are performed by independent contractors, no receivables that the taxpayer accepts for services can be marked-to-market under the new provision. The conferees intend that, pursuant to the authority granted by section 475(g)(1), the Secretary of the Treasury is authorized to issue regulations to prevent abuse of the new exception, including through independent contractor arrangements.

The conference agreement provides that, to the extent provided in Treasury regulations, trade receivables that are held for sale to customers by the taxpayer or a related person may be treated as "securities" for purposes of the mark-to-market rules, and transactions in such receivables could result in a taxpayer being treated as a dealer in securities (sec. 475(c)(1)). It is the intention of the conferees that, unlike the Senate amendment, a taxpayer will not be treated as a dealer in securities based on sales to unrelated persons of receivables subject to the new provision unless the regulatory exception for receivables held for sale to customers applies.

It is the intention of the conferees that, for trade receivables that are excepted from the statutory mark-to-market rules (sec. 475) under the new provision, mark-to-market or lower-of-cost-or-

market will not be treated as methods of accounting that clearly reflect income under general tax principles (see sec. 446(b)).

F. Add Vaccines Against Rotavirus Gastroenteritis to the List of Taxable Vaccines (sec. 5006 of the Senate amendment)

Present Law

A manufacturer's excise tax is imposed at the rate of 75 cents per dose on the following vaccines routinely recommended for administration to children: diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, and varicella (chicken pox). Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund.

House Bill

No provision.

Senate Amendment

The Senate amendment adds any vaccine against rotavirus gastroenteritis to the list of taxable vaccines.

Effective date.—The provision is effective for vaccines sold by a manufacturer or importer after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

G. Restrict Special Net Operating Loss Carryback Rules for Specified Liability Losses (sec. 5007 of the Senate amendment)

Present Law

Under present law, that portion of a net operating loss that qualifies as a "specified liability loss" may be carried back 10 years rather than being limited to the general two-year carryback period. A specified liability loss includes amounts allowable as a deduction with respect to product liability, and also certain liabilities that arise under Federal or State law or out of any tort of the taxpayer. In the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to the liability must occur at least 3 years before the beginning of the taxable year. In the case of a liability arising out of a tort, the liability must arise out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurred at least three years before the beginning of the taxable year. A specified liability loss cannot exceed the amount of the net operating loss, and is only available to taxpayers that used an accrual method of accounting throughout the period that the acts (or failures to act) occurred.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, specified liability losses are defined and limited to include (in addition to product liability losses) only amounts allowable as a deduction that are attributable to a liability under a Federal or State law requiring the reclamation of land, decommissioning of a nuclear power plant (or any unit thereof), dismantlement of an offshore drilling platform, remediation of environmental contamination, or payment of workers' compensation, if the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year. As under current law, the redefined specified liability loss cannot exceed the amount of the net operating loss and is only available to taxpayers that used an accrual method of accounting throughout the period that the acts (or failures to act) giving rise to the liability occurred. No inference regarding the interpretation of the specified liability loss carryback rules under present law is intended.

Effective date.—The provision is effective for net operating losses arising in taxable years beginning after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

H. Exclusion of Minimum Required Distributions from AGI for Roth IRA Conversions (Sec. 5008 of the Senate Amendment)

Present Law

Under present law, uniform minimum distribution rules generally apply to all types of tax-favored retirement vehicles, including qualified retirement plans and annuities, individual retirement arrangements ("IRAs") other than Roth IRAs, and tax-sheltered annuities (sec 403(b)).

Under present law, distributions are required to begin no later than the individual's required beginning date (sec. 401(a)(9)). In the case of an IRA, the required beginning date, means the April 1 of the calendar year following the calendar year in which the IRA owner attains age 70½. The Internal Revenue Service has issued extensive Regulations for purposes of calculating minimum distributions. In general, minimum distributions are includible in gross income in the year of distribution. An excise tax equal to 50 percent of the required distribution applies to the extent a required distribution is not made.

Under present law, all or any part of amounts in a deductible or nondeductible IRA may be converted into a Roth IRA. Only taxpayers with adjusted gross income ("AGI") of $100,000 or less are eligible to convert an IRA into a Roth IRA. In the case of a married taxpayer, AGI is the combined AGI of the couple. Married tax-

payers filing a separate return are not eligible to make a conversion.

House Bill

No provision.

Senate Amendment

The Senate amendment excludes minimum required distributions from IRAs from the definition of AGI solely for purposes of determining eligibility to convert from an IRA to a Roth IRA. As under present law, the required minimum distribution would not be eligible for conversion and would be includible in gross income.

Effective date.—The provision is effective for taxable years beginning after December 31, 2004.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—Same as Senate amendment.

I. Extension of IRS User Fees (sec. 5009 of the Senate amendment)

Present Law

The IRS provides written responses to questions of individuals, corporations, and organizations relating to their tax status or the effects of particular transactions for tax purposes in the form of ruling letters, determination letters, opinion letters, and other similar rulings or determinations. The IRS is directed by statute to establish a user fee program with respect to such rulings and determinations. Pursuant to this statutory authorization, the IRS establishes a schedule of user fees. The statutory authorization for the IRS user fee program is in effect for requests made before October 1, 2003 (P.L. 104–117).

House Bill

No provision.

Senate Amendment

The Senate amendment extends the IRS user fee program for requests made before October 1, 2007.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

J. Clarify Definition of "Subject to" Liabilities Under Section 357(c) (sec. 3301A of the Senate amendment)

Present Law

Present law provides that the transferor of property recognizes no gain or loss if the property is exchanged solely for qualified stock in a controlled corporation (sec. 351). Code section 357(c) provides that the transferor generally recognizes gain to the extent that the sum of the liabilities assumed by the controlled corporation and the liabilities to which the transferred property is subject exceeds the transferor's basis in the transferred property. If the transferred property is "subject to" a liability, Treasury regulations have indicated that the amount of the liability is included in the calculation regardless of whether the underlying liability is assumed by the controlled corporation. Treas. Reg. sec. 1.357–2(a).

The gain recognition rule of section 357(c) is applied separately to each transferor in a section 351 exchange.

The basis of the property in the hands of the controlled corporation equals the transferor's basis in such property, increased by the amount of gain recognized by the transferor, including section 357(c) gain.

Section 357(c) also applies to reorganizations described in section 368(a)(1)(D).

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the distinction between the assumption of a liability and the acquisition of an asset subject to a liability is eliminated. A liability is treated as having been assumed to the extent that, as determined on the basis of facts and circumstances, the transferor is relieved of such liability or any portion thereof (including through an indemnity agreement or other similar arrangement). In the case of the transfer of any property subject to a nonrecourse liability, unless the facts and circumstances indicate otherwise, the transferee is treated as assuming with respect to such property a ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all assets subject to such liability. No inference regarding the tax treatment under present law is intended.

Effective date.—The provision is effective for transfers after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

TITLE VIII. LIMITED TAX BENEFITS UNDER THE LINE ITEM VETO ACT

Present Law

The Line Item Veto Act amended the Congressional Budget and Impoundment Act of 1974 to grant the President the limited authority to cancel specific dollar amounts of discretionary budget authority, certain new direct spending, and limited tax benefits. The Line Item Veto Act provides that the Joint Committee on Taxation is required to examine any revenue or reconciliation bill or joint resolution that amends the Internal Revenue Code of 1986 prior to its filing by a conference committee in order to determine whether or not the bill or joint resolution contains any "limited tax benefits," and to provide a statement to the conference committee that either (1) identifies each limited tax benefit contained in the bill or resolution, or (2) states that the bill or resolution contains no limited tax benefits. The conferees determine whether or not to include the Joint Committee on Taxation statement in the conference report. If the conference report includes the information from the Joint Committee on Taxation identifying provisions that are limited tax benefits, then the President may cancel one or more of those, but only those, provisions that have been identified. If such a conference report contains a statement from the Joint Committee on Taxation that none of the provisions in the conference report are limited tax benefits, then the President has no authority to cancel any of the specific tax provisions, because there are no tax provisions that are eligible for cancellation under the Line Item Veto Act. If the conference report contains no statement with respect to limited tax benefits, then the President may cancel any revenue provision in the conference report that he determines to be a limited tax benefit.

Conference Statement

The Joint Committee on Taxation has determined that H.R. 2676 contains the following provisions that constitute limited tax benefits within the meaning of the Line Item Veto Act:

Section 3105 (relating to administrative appeal of adverse IRS determination of tax-exempt status of bond issue)

Section 3445(c) (relating to State fish and wildlife permits)

TITLE IX. CORRECTIONS TO THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY

The conference agreement includes corrections to the Transportation Equity Act for the 21st Century.

ESTIMATED BUDGET EFFECTS OF TITLES I—VIII OF THE CONFERENCE AGREEMENT RELATING TO H.R. 2676, THE "INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998"

[Fiscal years 1998–2007, in millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2002	2003–2007	1998–2007
Title I. Reorganization of Structure and Management of the Internal Revenue Service.								*No Revenue Effect*						
Title II. Electronic Filing								*No Revenue Effect*						
Title III. Taxpayer Protection and Rights:														
A. Burden of Proof—apply to only income, estate and gift taxes (permanent).	eca DOE	(1)	−231	−256	−269	−278	−297	−311	−327	−344	−360	−1,035	−1,639	−2,674
B. Proceedings by Taxpayers:														
1. Expansion of authority to award costs and certain fees at prevailing rate and rule 68 provision with net worth limitation (includes outlay effects); with modified hourly cap.	180da DOE	.....	−11	−12	−13	−14	−16	−18	−19	−20	−22	−51	−95	−145
2. Civil damages with respect to unauthorized collection actions (includes outlay effects).	aoa DOE	−2	−15	−25	−50	−30	−25	−25	−25	−25	−25	−122	−125	−247
3. Increase size of cases permitted on small case calendar to $50,000.	pca DOE							*No Revenue Effect*						
4. Actions for refund with respect to certain estates which have elected the installment method of payment.	rfa DOE							*Negligible Revenue Effect*						
5. Extend IRS administrative appeals right to issuers of tax-exempt bonds.	DOE	(1)	−5	−2	−2	−2	−2	−2	−2	−2	−2	−11	−10	−21
6. Civil action for release of erroneous lien.	DOE							*Negligible Revenue Effect*						

ESTIMATED BUDGET EFFECTS OF TITLES I—VIII OF THE CONFERENCE AGREEMENT RELATING TO H.R. 2676, THE ''INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998''—Continued

[Fiscal years 1998–2007, in millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2002	2003–2007	1998–2007
C. Relief for Innocent Spouses and for Taxpayers Unable to Manage Their Financial Affairs Due to Disabilities:														
1. Relief for innocent spouses who are no longer married, legally separated, or living apart for 12 consecutive months; House relief for other cases; Secretary of Treasury has authority to reach equitable result.	Iaa & ulb DOE	−10	−131	−92	−74	−86	−121	−157	−204	−243	−288	−393	−1,013	−1,406
2. Suspension of statute of limitations on filing refund claims during periods of disability.	tyoo/a DOE	−10	−70	−35	−15	−16	−17	−18	−19	−20	−21	−146	−95	−241
D. Provisions Relating to Interest and Penalties:														
1. Elimination of interest rate differential on overlapping periods of interest on income tax overpayments and underpayments.	tyoo/a DOE	−26	−68	−58	−61	−56	−59	−62	−65	−68	−72	−267	−326	−593
2. Increase refund interest rate of Applicable Federal Rate (''AFR'') +3 for individual's taxpayers [2].	2nd & scaqa DOE	.....	−36	−54	−56	−59	−62	−65	−69	−72	−76	−205	−344	−549
3. Reduced penalty on individual's failure to pay during installment agreements.	iapma 12/31/99	.....	.....	−108	−136	−143	−152	−159	−167	−175	−185	−387	−838	−1,225
4. Mitigation of failure to deposit penalty.	drma 180da DOE	.....	−47	−64	−64	−65	−66	−66	−67	−68	−68	−240	−335	−575

5. Suspend accrual of interest and penalties if IRS fails to contact taxpayer within 12 months after a timely-filed return (except for fraud and criminal penalties); (1) for first 5 years, time period is 18 months (instead of 12 months); and (2) provide that termination with respect to specific additional tax liability occurs on earliest notice of such liability.	tyea DOE	.....	.....	−146	−174	−196	−209	−248	−431	−435	−439	−516	−1,762	−2,278
6. Procedural requirements for imposition of penalties and additions to tax.	nia & paa 12/31/00	*Negligible Revenue Effect*												
7. Permit personal delivery of section 6672 notices.	DOE	*No Revenue Effect*												
8. Notice of interest charges	nia 12/31/00	*No Revenue Effect*												
E. Protections for Taxpayers Subject to Audit or Collection Activities:														
1. Due process for IRS collection actions.	caia 180da DOE	.....	−11	−7	−7	−7	−7	−7	−8	−8	−8	−32	−38	−70
2. Examination activities:														
a. Extend the attorney client privilege to accountants and other tax practitioners; with exception from both attorney/client privilege and tax practitioner/ client privilege for communications relating to corporate tax shelters.	cmo/a DOE	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(4)	(4)	(5)
b. Limitation on financial status audits.	DOE	*No Revenue Effect*												
c. Limitation on IRS authority to require production of computer source code and protections against improper disclosure.	sia & saa DOE	.....	−13	−16	−20	−22	−26	−30	−33	−36	−37	−71	−162	−233

ESTIMATED BUDGET EFFECTS OF TITLES I—VIII OF THE CONFERENCE AGREEMENT RELATING TO H.R. 2676, THE ''INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998''—Continued

[Fiscal years 1998–2007, in millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2002	2003–2007	1998–2007
d. Prohibition on improper threat of audit activity for tip reporting.	DOE	*No Revenue Effect*												
e. Allow taxpayers to quash all third-party summonses.	ssa DOE	*Negligible Revenue Effect*												
f. Permit service of summonses by mail or in person.	ssa DOE	*No Revenue Effect*												
g. IRS must provide general notice and periodic reports to taxpayers before contacting third parties regarding IRS examination or collection activities with respect to the taxpayer.	180da DOE	.....	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(4)	(4)	(5)
3. Collection activities:														
a. Approval process—IRS to implement approval process for liens, levies, or seizures; clarification of ''appropriate''.	(6)	*Negligible Revenue Effect*												
b. Increase the amount exempt from levy to $6,250 for personal property and $3,125 for books and tools of trade, indexed for inflation.	Lia DOE	(1)	−1	−1	−1	−1	−2	−2	−2	−2	−2	−6	−8	−13
c. Require the IRS to release a levy upon agreement that the amount is not collectible.	lia 12/31/99	*Negligible Revenue Effect*												
d. Suspend collection by levy during refund suit.	tyba 12/31/98	*Negligible Revenue Effect*												
e. Require District Counsel review of jeopardy and termination assessments and jeopardy levies.	taa & lma DOE	*Negligible Revenue Effect*												

f. Increase in amount of certain property on which lien not valid.	DOE	*Negligible Revenue Effect*												
g. Waive the 10% early withdrawal tax when IRA or qualified plan is levied.	wa 12/31/99	.....	.....	−1	−3	−4	−4	−5	−5	−5	−5	−9	−24	−33
h. Prohibit the IRS from selling taxpayer's property for less than the minimum bid.	Soa DOE	*No Revenue Effect*												
i. Require the IRS to provide an accounting and receipt to the taxpayer (including the amount credited to the taxpayer's account) for property seized and sold.	soa DOE	*Negligible Revenue Effect*												
j. Require the IRS to study and implement a uniform asset disposal mechanism for sales of seized property to prevent revenue officers from conducting sales.	DOE & 2 years	*No Revenue Effect*												
k. Codify IRS administrative procedures for seizure of taxpayer's property.	DOE	*No Revenue Effect*												
l. Procedures for seizure of residences and businesses.	DOE	(1)	−3	−3	−3	−3	−3	−3	−3	−3	−3	−12	−15	−27
4. Provisions relating to examination and collection activities:														
a. Prohibition on extension of statute of limitations for collection beyond 10 years with installment payment exception.	(7)	.....	.....	−9	−13	−16	−18	−19	−19	−21	−24	−38	−101	−139
b. Offers-in- compromise	generally DOE	−1	.....	9	4	4	4	4	4	4	4	17	21	38
c. Notice of deficiency to specify deadlines for filing Tax Court petition.	nma12/13/98	*Negligile Revenue Effect*												
d. Refund or credit of overpayments before final determination.	DOE	*Negligible Revenue Effect)*												

ESTIMATED BUDGET EFFECTS OF TITLES I—VIII OF THE CONFERENCE AGREEMENT RELATING TO H.R. 2676, THE "INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998"—Continued

[Fiscal years 1998–2007, in millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2002	2003–2007	1998–2007
e. IRS procedures relating to appeal of examination and collections.	DOE							*No Revenue Effect*						
f. Codify certain fair debt collection procedures.	DOE							*No Revenue Effect*						
g. Ensure availability of installment agreements.	DOE							*No Revenue Effect*						
h. Prohibit Federal Government officers and employees from requesting taxpayers to give up their rights to sue.	DOE							*No Revenue Effect*						
F. Disclosures to Taxpayers:														
1. Explanation of joint and several liability.	180da DOE							*No Revenue Effect*						
2. Explanation of taxpayers' rights in interviews with IRS.	180da DOE	.....	−13	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(4)	(3)	(4)
3. Disclosure of criteria for examination selection.	180da DOE							*No Revenue Effect*						
4. Explanations of appeals and collection process.	180da DOE							*No Revenue Effect*						
5. Require IRS to explain reason for denial for refund.	180da DOE							*No Revenue Effect*						
Statement to taxpayers with installation agreements.	7/1/00							*No Revenue Effect*						
7. Require IRS to notify all partners of any resignation of the tax matters partner that is required by the IRS, and of the identity of any successor tax matters partnership who was appointed to fill the vacancy created by such resignation.	sotmpa DOE	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	(8)	−1	−1	−2

8. Require information to taxpayers concerning disclosure of their income tax return information to parties outside the IRS.	DOE						*No Revenue Effect*						
9. Disclosure of Chief Counsel advice	ai 90da DOE						*No Revenue Effect*						
G. Low-Income Taxpayer Clinics	DOE						*No Revenue Effect*						
H. Other Provisions:													
1. Cataloging complaints of IRS employee misconduct.	1/1/00						*No Revenue Effect*						
2. Archive of records of Internal Revenue Service.	DOE						*No Revenue Effect*						
3. Payment of taxes to the U.S. Treasury [2].	DOE						*No Revenue Effect*						
4. Clarification of authority of Secretary relating to the making of elections.	DOE						*No Revenue Effect*						
5. IRS employee contracts	6ma DOE						*No Revenue Effect*						
6. Require approval of use of pseudonyms by IRS employees.	DOE						*No Revenue Effect*						
7. Require the IRS to end the use of the illegal tax protestor label.	DOE & rdnrb 1/1/99						*No Revenue Effect*						
8. Modify section 6103 to allow the tax-writing committees to obtain data from IRS employees regarding employee and taxpayer abuse.	DOE						*No Revenue Effect*						
9. Publish telephone numbers for local IRS offices.	DOE						*No Revenue Effect*						
10. Alternative to Social Security numbers for tax return preparers.	DOE						*No Revenue Effect*						
11. Authorize the Federal government to offset a Federal income tax refund to satisfy a past-due, legally owing State income tax debt.	rpa 12/31/99	....	2	3	3	3	3	4	4	4	8	18	26

ESTIMATED BUDGET EFFECTS OF TITLES I—VIII OF THE CONFERENCE AGREEMENT RELATING TO H.R. 2676, THE ''INTERNAL REVENUE SERVICE RESTRUCTURING AND REFORM ACT OF 1998''—Continued

[Fiscal years 1998–2007, in millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2002	2003–2007	1998–2007
12. Modify section 6050S to require educational institutions to report grant amounts processed through and refunds made by the institution; with clarifications regarding the definition of ''qualified tuition and related expenses'' and certain other educational institution reporting requirements.	tyba 12/31/98							*Negligible Revenue Effect*						
I. Studies:														
1. Administration of penalties and interest.	1ya DOE							*No Revenue Effect*						
2. Confidentiality of tax return information.	18ma DOE							*No Revenue Effect*						
3. Noncompliance with internal revenue laws by taxpayers.	1ya DOE							*No Revenue Effect*						
4. Payments for informants	1ya DOE							*No Revenue Effect*						
Subtotal, Taxpayer Protections and Rights.		−53	−661	−885	−961	−998	−1,085	−1,196	−1,463	−1,545	−1,635	−3,559	−6,925	−10,483
Title IV. Congressional Accountability for the Internal Revenue Service.								*No Revenue Effect*						
Title V. Additional Provisions:														
A. Change the Holding Period for Long-Term Capital Gains to 12 months.	aptiao/a 1/1/98	35	611	−312	−335	−335	−337	−341	−347	−354	−362	−336	−1,741	−2,077
B. Deductibility of Meals Provided for the Convenience of Employer on Employer's Premises.	tybbo/a DOE	.....	−20	−33	−34	−35	−36	−38	−39	−40	−41	−122	−194	−316
C. Instead of Most Favored Nation Status Use Normal Trade Relations Terminology [2].								*No Revenue Effect*						
Subtotal, Additional Provisions		35	591	−345	−369	−370	−373	−379	−386	−394	−403	−458	−1,935	−2,393

Title VI. Tax Technical Corrections		*No Revenue Effect*												
Title VII. Revenue Offsets:														
A. Overrule *Schmidt Baking* with Respect to Vacation Pay and Severance and Other Types of Compensation With Spread.	tyea DOE	593	839	997	456	308	156	163	172	180	189	3,193	860	4,053
B. Freeze Grandfathered Status of Stapled or Paired—Share REITs.	tyea 3/26/98	([9])	1	3	6	10	14	19	26	35	45	20	139	159
C. Make Certain Trade Receivables Ineligible for Mark-to-Market Treatment.	tyea DOE	33	317	500	333	117	70	73	77	81	85	1,300	386	1,686
D. Disregard Minimum Distributions in Determining AGI for IRA Conversions to a Roth IRA.	tyba 12/31/04	.....	.....	.....	.....	.....	.....	.....	2,362	2,854	2,812	.....	8,028	8,028
Subtotal, Revenue Offsets		626	1,157	1,500	795	435	240	255	2,637	3,150	3,131	4,513	9,413	13,926
Title VIII. Limited Tax Benefits Under the Line Veto Act.		*No Revenue Effect*												
Net Total (Reserved for Future Tax Reduction).		608	1,087	270	−535	−933	−1,218	−1,320	788	1,211	1,093	496	553	1,050
Revenue Effect From Emergency Legislation Per Section 252(e) of the Balanced Budget and Emergency Deficit Control Act:														
1. Abate interest on underpayments by taxpayers in Presidentially declared disaster areas.	dda 12/31/97	−8	−25	−25	−25	−25	−25	−25	−25	−25	−25	−108	−126	−234

[1] Loss of less than $1 million.
[2] Estimate provided by the Congressional Budget Office.
[3] Loss of less than $5 million.
[4] Loss of less than $25 million.
[5] Loss of less than $50 million.
[6] Generally effective for collection actions commencing after the date of enactment; collections at ACS sites effective for levies imposed after 12/31/00.
[7] Effective for requests to extend the statute of limitations made after 12/31/99 and to all extensions of the statute of limitations on collections that are open after 12/31/99.
[8] Loss of less than $500,000.
[9] Gain of less than $500,000.

Legend for ''Effective'' column: ai=advice issued; aoa=actions occurring after; aptiao/a=amounts properly taken into account on or after; caia=collection actions initiated after; cmo/a=communications made on or after; dda=disasters declared after; DOE=date of enactment; drma=deposits required to be made after; eca=examinations commencing after; iapma=installment agreement payments made after; laa=liability arising after; lia=levies imposed after; Lia=levies issued after; lma=levies made after; nia=notices issued after; nma=notices mailed after; paa=penalties assessed after; pca=proceedings commencing after; rdnrb=removal designation not required before; rfa=refunds filed after; rpa=refunds payable after; saa=software acquired after; scqa=succeeding calendar quarters beginning after; sia=summonses issued after; soa=seizures occurring after; Soa=sales occurring after; sotmpa=selections of tax matters partners after; ssa=summonses served after; taa=taxes assessed after; tyba=taxable years beginning after; tyea=taxable years ending after; tybbo/a=taxable years beginning before, on, or after; tyoo/a=taxable years open on or after; ulb=unpaid liability before; wa=withdrawals after; 1ya=1 year after; 6ma=6 months after; 18ma=18 months after; 60da=60 days after; 90da=90 days after; and 180da=180 days after.

Note.—Details may not add to totals due to rounding.
Source: Joint Committee on Taxation.

BILL ARCHER,
NANCY L. JOHNSON,
ROB PORTMAN,
CHARLES B. RANGEL,
WILLIAM J. COYNE,
Managers on the Part of the House.

BILL ROTH,
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FRANK H. MURKOWSKI,
DON NICKLES,
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DANIEL P. MOYNIHAN,
MAX BAUCUS,
BOB GRAHAM,
JOHN BREAUX,
BOB KERREY,
From the Committee on Governmental Affairs:
FRED THOMPSON,
SAM BROWNBACK,
THAD COCHRAN,
Managers on the Part of the Senate.

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