Public Law 100-203
Omnibus Budget Reconciliation Act of 1987
and Conference Report

Internal Revenue cumulative bulletin 1987—3

Department of the Treasury
Internal Revenue Service

In This Issue

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenues at the least cost to the public, and in a manner that warrants the highest degree of public confidence in our integrity, efficiency and fairness. To achieve that purpose, we will:

—Encourage and achieve the highest possible degree of voluntary compliance in accordance with the tax law and regulations;

—Advise the public of their rights and responsibilities;

—Determine the extent of compliance and the causes of noncompliance;

—Do all things needed for the proper administration and enforcement of the tax laws;

—Continually search for and implement new, more efficient and effective ways of accomplishing our Mission.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts.

Part IV.—Items of General Interest.
With the exception of the disbarment and suspension list included in this part, none of these announcements is consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

The Bulletin Index-Digest System, a research and reference service supplementing the Bulletin, may be obtained from the Superintendent of Documents on a subscription basis. It consists of four Services: Service No. 1, Income Tax; Service No. 2, Estate and Gift Taxes; Service No. 3, Employment Taxes; Service No. 4, Excise Taxes. Each Service consists of a basic volume and a cumulative supplement that provides (1) finding lists of items published in the Bulletin, (2) digests of revenue rulings, revenue procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

1986 Code Sections Added, Amended, or Repealed by Public Law 100-203

The following sections of the Internal Revenue Code of 1986 are affected by Public Law 100-203. New sections added to the Code and repealed sections are noted as such.

1986 Code Sections	Act Sections
11(b)	10224
15	10000
21(a)	10101
21(b)(2)(A)	10101
40(c)	10502
51(c)	10601
56(a)(6)	10202
56(f)(2)	10243
58(b)(3)	10212
67(c)	10104
81(Repealed)	10201
90(New)	10611
141	10631
146(f)(5)(A)	10631
163(d)(4)(E)	10212
163(h)	10103
163(h)(3)	10102
170(c)(2)(D)	10711
219(a)	10103
219(g)	10103
243	10221
243(a)(1)	10221
244(a)(3)	10221
244(b)(2)	10221
245(c)(1)(B)	10221
246(b)	10202
246A(a)(1)	10202
263A	10204
280H	10206
301(f)(1)	10222
304(b)	10223
337(c)	10223
355(b)(2)(D)	10223
381(c)(8)	10202
382(g)(4)	10225
382(h)(2)(B)	10225
384(New)	10226
401(a)	9341
404(a)(1)	9307
404(a)(1)(A)(iii)	9307
404(a)(5)	10201
404(b)(2)(B)	10201
411(c)(2)	9346
412	9303, 9304
412(b)(2)	9303
412(b)(2)(B)(iv)	9307
412(b)(2)(B)(v)	9307
412(b)(2)(C)	9307
412(b)(3)(A)	9305
412(b)(3)(B)(ii)	9307
412(b)(3)(B)(iii)	9307
412(b)(5)	9307
412(c)	9305
412(c)(2)	9303
412(c)(2)(B)	9303
412(c)(3)	9307
412(c)(7)	9301
412(c)(10)	9304
412(d)	9306
412(d)(1)	9306
412(e)	9306
412(f)(3)(C)	9306
412(f)(4)(A)	9306
412(l)	9304, 9307
412(m)	9304
412(n)	9304
414(b)	9304
414(c)	9304, 9305, 9306
414(f)	9304
414(m)	9305, 9306
414(o)	9304, 9305, 9306
419(e)(2)	10201
444	10206
447	10205
447(e)	10205
447(h)(1)	10205
453	10202
453(b)(2)(A)	10202
453A	10202
453C (Repealed)	10202
460	10204
460(a)	10203
461(h)(5)	10201
463 (Repealed)	10201
469	10212
481	10201
501(c)(3)	10711
504	10711
504(a)(2)	10711
512(c)	10213
514(c)(9)	10214
514(c)(9)(B)(vi)	10214
585(c)(3)(C)	10301
691(a)(4)	10202
691(a)(5)	10202
805(a)(4)(B)	10221
807(d)(2)(B)	10241
807(d)(4)	10241
842	10242
854(b)(1)(A)	10221
861(a)(2)	10221
864(c)(4)(C)	10242
901(j)(1)	10231
901(j)(2)	10231
1274	9306
1363	10227
1402(a)	9022
1503	10222
2001(b)	10401
2001(c)	10401
2001(c)(2)	10401
2036	10402
2055(a)(2)	10711
2055(a)(3)	10711
2057	10411, 10412
2106(a)(2)(A)(ii)	10711

1986 Code Sections	Act Sections
2106(a)(2)(A)(iii)	10711
2502(a)	10401
2522(a)(2)	10711
2522(b)(2)	10711
2522(b)(3)	10711
3111(a)	9006
3111(b)	9006
3121(a)(2)(C)	9003
3121(a)(5)	9023
3121(a)(8)(B)	9002
3121(b)(3)	9004
3121(b)(3)(A)	9004, 9005
3121(b)(3)(B)	9005
3121(i)(2)	9001
3121(m)(1)	9001
3121(q)	9006
3121(t) (Repealed)	9006
3201(b)	9031
3221(b)	9032
3301	9153
3402(f)(3)(B)	10302
4041(a)(1)	10502
4041(c)(1)	10502
4041(d)	10502
4041(n) (Repealed)	10502
4068(c)	9304
4068(d)	9304
4068(e)	9304
4081(e)(2)(B)	10502
4091 (New)	10502
4092 (New)	10502
4093 (New)	10502
4101(a)	10502
4121(e)(2)(A)	10503
4131 (New)	9201, 9202
4132 (New)	9201
4132(b)	9202
4221(a)	9201, 10502
4251(b)(2)	10501
4912 (New)	10714
4955 (New)	10712
4962	10712
4962(a)	10712
4963(a)	10712
4963(b)	10712
4963(c)	10712
4971	9305
4971(a)	9304
4978	10413
4978(b)(2)	10413
4978A (New)	10413
4982(b)(1)	10104
5081 (New)	10512
5091	10512
5111(a)	10512
5111(b)	10512
5121(a)	10512
5121(b)	10512
5121(c) (Repealed)	10512
5131(b)	10512
5276 (New)	10512
5691	10512
5691(a)	10512
5731 (New)	10512

1986 Code Sections	Act Sections
5801 (New)	10512
5881 (New)	10228
6033(b)	10703
6091(b)(1)(B)(v)	10713
6104	10702
6113 (New)	10701
6154 (Repealed)	10301
6201(b)(1)	10301
6206	10502
6211(b)(1)	10713
6212(c)(1)	10713
6213(a)	10713
6213(e)	10712
6408 (New)	10621
6416	9202
6416(b)(2)	9201, 10502
6416(b)(3)(A)	10502
6416(b)(3)(B)	10502
6421(e)(2)(C)	10502
6421(j)	10502
6425(c)	10301
6427	10502
6427(b)(1)	10502
6427(e)(1)(B)	10502
6427(f)	10502
6427(i)(1)	10502
6427(i)(2)(A)(i)	10502
6427(o)	10502
6501(l)(1)	10712, 10714
6503(g)	10712
6601(h)	10301
6621(b)	9306
6651(e)	10301
6652	10502
6652(c)	10704
6655	10301
6684	10712
6685	10704
6710 (New)	10701
6711	10705
6852 (New)	10713
6863	10713
7207	10704
7409 (New)	10713
7422(g)(2)	10712
7422(g)(3)	10712
7429	10713
7454(b)	10712, 10714
7519	10206
7611(i)(3)	10713
7652(a)(3)	9201
7652(b)(3)	9201
7704 (New)	10211
7871	10632
7871(c)	10632
7871(c)(2)	10632
9502(b)	10502
9503(b)(1)	10502
9503(b)(4)	10502
9503(e)(2)	10502
9508(b)	10502
9508(c)(2)(A)	10502
9510 (New)	9202
9602(b)	9202

Index

The numbers in parentheses following the index entry refer to the specific Act sections; numbers following parentheses refer to the page number on which the respective sections appear.

OMNIBUS BUDGET RECONCILIATION ACT OF 1987

* * * * *

TITLE IX—INCOME SECURITY AND RELATED PROGRAMS

TABLE OF CONTENTS

[83] Copy read "family independence program.".
[84] Copy read "state."
[85] Copy read "commission on children.".

[86] Copy read "service".

* Sec. 9306. Funding Waivers.

Subtitle A—OASDI Provisions

PART 1—COVERAGE AND BENEFITS

SEC. 9001. COVERAGE OF INACTIVE DUTY MILITARY TRAINING.

(a) SOCIAL SECURITY ACT AMENDMENTS.—(1) Paragraph (1) of section 210(l) of the Social Security Act is amended to read as follows:

42 USC 410.

"(l)(1) Except as provided in paragraph (4), the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include—

"(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.".

(2) The second indented paragraph following subsection (s) in section 209 of such Act (relating to service in the uniformed services) is amended by striking "only his basic pay" and all that follows and inserting "only (1) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such section 210(l)(1) applies, or (2) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such section 210(l)(1) applies.".

42 USC 409.

(b) FICA AMENDMENTS.—(1) Paragraph (1) of section 3121(m) of the Internal Revenue Code of 1986 (relating to inclusion of service in the uniformed services) is amended to read as follows:

26 USC 3121.

"(1) INCLUSION OF SERVICE.—The term 'employment' shall, notwithstanding the provisions of subsection (b) of this section, include—

"(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed by an individual as a member of a uniformed service on inactive duty training.".

(2) Paragraph (2) of section 3121(i) of such Code (relating to computation of wages for individuals performing service in the uniformed services) is amended by striking "only his basic pay" and all that follows and inserting "only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such subsection (m)(1) applies, or (B) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies.".

(c) CONFORMING AMENDMENT.—Section 229(a) of the Social Security Act is amended by striking "section 210(l)" and inserting "210(l)(1)(A)".

42 USC 429.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

26 USC 3121 note.

SEC. 9002. COVERAGE OF ALL CASH PAY OF AGRICULTURAL EMPLOYEES WHOSE EMPLOYERS SPEND $2,500 OR MORE A YEAR FOR AGRICULTURAL LABOR.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (2) of section 209(h) of the Social Security Act is amended by striking clause (B) and inserting "(B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;". 42 USC 409.

(b) FICA AMENDMENT.—Subparagraph (B) of section 3121(a)(8) of the Internal Revenue Code of 1986 (relating to wages) is amended by striking clause (ii) and inserting "(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;". 26 USC 3121.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration for agricultural labor paid after December 31, 1987. 26 USC 3121 note.

SEC. 9003. COVERAGE OF THE EMPLOYER COST OF GROUP-TERM LIFE INSURANCE.

(a) COVERAGE UNDER OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.—

(1) SOCIAL SECURITY ACT AMENDMENT.—Clause (3) of section 209(b) of the Social Security Act is amended by striking "death" and inserting "death, except that this subsection does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986". 42 USC 409.

(2) FICA AMENDMENT.—Subparagraph (C) of section 3121(a)(2) of the Internal Revenue Code of 1986 (relating to wages) is amended by striking "death" and inserting "death, except that this paragraph does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee". 26 USC 3121.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to group-term life insurance coverage in effect after December 31, 1987. 26 USC 3121 note.

SEC. 9004. COVERAGE OF SERVICES PERFORMED BY ONE SPOUSE IN THE EMPLOY OF THE OTHER.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 210(a)(3) of the Social Security Act is amended by striking "performed by an individual in the employ of his spouse, and service". 42 USC 410.

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 210(a) of such Act is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(b) FICA AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 3121(b)(3) of the Internal Revenue Code of 1986 (relating to employment) is amended by striking "performed by an individual in the employ of his spouse, and service". 26 USC 3121.

26 USC 3121.

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 3121(b) of such Code (relating to employment) is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

26 USC 3121 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 9005. TREATMENT OF SERVICE PERFORMED BY AN INDIVIDUAL IN THE EMPLOY OF A PARENT.

42 USC 410.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 210(a)(3) of the Social Security Act (as amended by section 9004(a)(1) of this Act) is further amended by striking "twenty-one" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 210(a)(3) of such Act (as amended by section 9004(a)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(b) FICA AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 3121(b)(3) of the Internal Revenue Code of 1986 (as amended by section 9004(b)(1) of this Act) is further amended by striking "21" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 3121(b)(3) of such Code (as amended by section 9004(b)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

26 USC 3121 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration paid after December 31, 1987.

SEC. 9006. APPLICATION OF EMPLOYER TAXES TO EMPLOYEES' CASH TIPS.

26 USC 3121.

(a) APPLICATION OF TAX TO TIPS.—Section 3121(q) of the Internal Revenue Code of 1986 (relating to inclusion of tips for employee taxes) is amended—

(1) by striking "EMPLOYEE TAXES" in the heading and inserting "BOTH EMPLOYEE AND EMPLOYER TAXES";

(2) by striking "other than for purposes of the taxes imposed by section 3111";

(3) by striking "remuneration for employment" and inserting "remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111)"; and

(4) by inserting after "at the time received" the following: "; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary".

(b) CONFORMING AMENDMENTS.—(1) Subsections (a) and (b) of section 3111(a) of such Code (relating to rate of tax on employers) are each amended by striking "and (t)". 26 USC 3111.

(2) Section 3121(t) of such Code (relating to special rule) is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to tips received (and wages paid) on and after January 1, 1988. 26 USC 3111 note.

SEC. 9007. APPLICABILITY OF GOVERNMENT PENSION OFFSET TO CERTAIN FEDERAL EMPLOYEES.

(a) WIFE'S INSURANCE BENEFITS.—Paragraph (4) of section 202(b) of the Social Security Act is amended— 42 USC 402.

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a wife's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the wife (or divorced wife) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(b) HUSBAND'S INSURANCE BENEFITS.—Paragraph (2) of section 202(c) of such Act is amended— 42 USC 402.

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a husband's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the husband (or divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(c) WIDOW'S INSURANCE BENEFITS.—Paragraph (7) of section 202(e) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a widow's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k), paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or "(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the widow (or surviving divorced wife) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(d) WIDOWER'S INSURANCE BENEFITS.—Paragraph (2) of section 202(f) of such Act is amended— 42 USC 402.

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k), paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widower (or surviving divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the widower (or surviving divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.".

42 USC 202.

(e) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Paragraph (4) of section 202(g) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a mother's or father's insurance benefit for each month (as determined after application of the provisions of subsection (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the individual for such month which is based upon the individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day the individual was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210, or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

"(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

"(II) an election to become subject to chapter 84 of title 5, United States Code, made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the individual is eligible for benefits under this subsection and has made a valid application for such benefits.".

42 USC 402 note.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to benefits for months after December 1987; except that nothing in such amendments shall affect any exemption (from the application of the pension offset provisions contained in subsection (b)(4), (c)(2), (e)(7), (f)(2), or (g)(4) of section 202 of the Social Security Act) which any individual may have by reason of subsection (g) or (h) of section 334 of the Social Security Amendments of 1977.

42 USC 418 note.

SEC. 9008. MODIFICATION OF AGREEMENT WITH IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN.

(a) IN GENERAL.—Notwithstanding subsection (d)(5)(A) of section 218 of the Social Security Act and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by a retirement system pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of Iowa has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date).

(b) SERVICE TO BE COVERED.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act (as so redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986)), any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

(1) all services performed in any policemen's or firemen's position to which the modification relates on or after January 1, 1987, and

(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

(A) no refund of the sums so paid has been obtained, or

(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within 90 days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.

SEC. 9009. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act is amended— 42 USC 423.

(1) in paragraph (1)(iii), by striking "June 1988" and inserting "June 1989"; and

(2) in paragraph (3)(B), by striking "January 1, 1988" and inserting "January 1, 1989".

SEC. 9010. EXTENSION OF DISABILITY RE-ENTITLEMENT PERIOD FROM 15 MONTHS TO 36 MONTHS.

(a) DISABILITY INSURANCE BENEFITS.—Paragraph (1) of section 223(a) of the Social Security Act is amended by striking "15 months" and inserting "36 months".

(b) CHILD'S INSURANCE BENEFITS BASED ON DISABILITY.—Clause (i) of section 202(d)(1)(G) of such Act is amended by striking "15 months" and inserting "36 months". 42 USC 402.

(c) WIDOW'S INSURANCE BENEFITS BASED ON DISABILITY.—Paragraph (1) of section 202(e) of such Act is amended, in subclause (II) of the last sentence, by striking "15 months" and inserting "36 months".

(d) WIDOWER'S INSURANCE BENEFITS BASED ON DISABILITY.—Paragraph (1) of section 202(f) of such Act is amended, in subclause (II) of the last sentence, by striking "15 months" and inserting "36 months".

(e) CONFORMING AMENDMENTS.—

42 USC 416. (1) TERMINATION OF PERIOD OF DISABILITY.—Subparagraph (D) of section 216(i)(2) of such Act is amended by striking "15-month" and inserting "36-month".

42 USC 423. (2) TERMINATION OF BENEFITS DURING RE-ENTITLEMENT PERIOD.—Subsection (e) of section 223 of such Act is amended by striking "15-month" and inserting "36-month".

42 USC 426. (3) SPECIAL RULE FOR [87] DETERMINATION OF CONTINUED MEDICARE ELIGIBILITY BASED ON ENTITLEMENT TO DISABILITY BENEFITS.—Section 226(b) of such Act is amended by adding at the end the following new sentence: "In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the second sentence of section 223(a) shall be applied as though the term '36 months' (in such second sentence) read '15 months'.".

42 USC 402 note. (f) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1988, and shall apply with respect to—

(1) individuals who are entitled to benefits which are payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 of the Social Security Act or subsection (a)(1) of section 223 of such Act for any month after December 1987, and

(2) individuals who are entitled to benefits which are payable under any provision referred to in paragraph (1) for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by this section has not elapsed as of January 1, 1988.

PART 2—OTHER SOCIAL SECURITY PROVISIONS

SEC. 9021. MORATORIUM ON REDUCTIONS IN ATTORNEYS' FEES; STUDIES OF ATTORNEYS' FEE PAYMENT SYSTEM.

(a) MORATORIUM.—(1) The provisions of the memorandum of the Associate Commissioner of Social Security dated March 31, 1987 (relating to revised delegations of authority for administrative law judges to determine fees of representatives) which amend sections 1-220 through 1-226 of the Office of Hearings and Appeals Staff Guides and Programs Digest (commonly referred to as the OHA Handbook), and Interim Circular No. 122 (relating to the determination authority regarding fees for representation of claimants), are hereby declared to be null and void. The preceding sentence shall apply with respect to all attorneys' fees finally authorized in connection with claims for benefits under title II of the Social Security Act on and after the date of the enactment of this Act, regardless of when the legal services involved were performed; and no reconsideration of any such fee finally authorized prior to that date shall be required.

(2) Until July 1, 1989, neither the Secretary nor the Social Security Administration may modify any of the rules and regulations relating to attorneys' fees in connection with claims for benefits under title II of the Social Security Act.

[87] Copy read "FOR".

(b) STUDIES.—(1) The Secretary of Health and Human Services shall conduct a study of the attorneys' fee payment process under title II of the Social Security Act. Such study shall—

(A) assess the levels of reimbursement to attorneys, giving consideration to the contingent nature of most arrangements between claimants and their legal representatives, and propose alternative methods for establishing fees which take the nature of these arrangements into account, and

(B) suggest changes aimed at eliminating unnecessary delays in the approval and payment of attorneys' fees and thereby streamlining the payment process.

In conducting this study, the Secretary shall consult with individuals who represent the views of attorneys and with others who represent the views of claimants.

(2) At the same time, the Comptroller General shall conduct a study of the fee approval system, including at a minimum—

(A) a study of the impact of the current system on claimants and attorneys,

(B) an identification of obstacles to the timely payment of attorneys' fees under present law, and

(C) an assessment of the effect, if any, which the reduced limit on attorneys' fees in effect immediately prior to the enactment of this Act has had on access to legal representation by applicants for disability insurance benefits.

(3) The studies required by paragraphs (1) and (2), along with any recommendations resulting therefrom, shall be submitted to the Congress no later than July 1, 1988.

SEC. 9022. CORPORATE DIRECTORS.

(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph: 42 USC 411.

"Any income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income is actually paid to or received by such individual (unless it was actually paid and received prior to that year).".

(b) SECA AMENDMENT.—Section 1402(a) of the Internal Revenue Code of 1986 (relating to definition of net earnings from self-employment) is amended by adding at the end thereof the following new paragraph: 26 USC 1402.

"Any income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income is actually paid to or received by such individual (unless it was actually paid and received prior to that year).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services performed in taxable years beginning on or after January 1, 1988.

SEC. 9023. TECHNICAL CORRECTIONS.

(a) The heading of section 210(p) of the Social Security Act is amended to read as follows: 42 USC 410.

"Medicare Qualified Government Employment".

42 USC 411.

(b)(1) Section 211(a)(7) of such Act is amended—

(A) by inserting "and" before "section 911"; and

(B) by striking "and section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954".

(2) Section 211(a)(8) of such Act is amended to read as follows:

"(8) The exclusion from gross income provided by section 931 of the Internal Revenue Code of 1986 shall not apply;".

42 USC 418.

(c) Section 218(v) of such Act is amended—

(1) by striking "(v)" and inserting "(n)";

(2) by striking paragraph (3); and

(3) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

26 USC 3121.

(d) Section 3121(a)(5) of the Internal Revenue Code of 1986 is amended—

(1) by striking "; or" at the end of subparagraph (F) and inserting ", or"; and

(2) by striking the comma at the end of subparagraph (G) and inserting a semicolon.

PART 3—RAILROAD RETIREMENT PROGRAM

SEC. 9031. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYEES FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3201 of the Internal Revenue Code of 1986 (relating to tier 2 employee tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee.".

26 USC 3201 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to compensation received after December 31, 1987.

SEC. 9032. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYERS FOR 1988 AND THEREAFTER.

(a) IN GENERAL.—Subsection (b) of section 3221 of the Internal Revenue Code of 1986 (relating to tier 2 employer tax) is amended to read as follows:

"(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer.".

26 USC 3221 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to compensation paid after December 31, 1987.

45 USC 231n note.

SEC. 9033. COMMISSION ON RAILROAD RETIREMENT REFORM.

(a) COMMISSION ON RAILROAD RETIREMENT REFORM.—There is established a commission to be known as the Commission on Railroad Retirement Reform (in this section referred to as the "Commission").

(b) STUDY.—The Commission shall conduct a comprehensive study of the issues pertaining to the long-term financing of the railroad retirement system (in this section referred to as the "system") and the system's short-term and long-term solvency. The Commission shall submit a report containing a detailed statement of its findings and conclusions together with recommendations to the Congress for revisions in, or alternatives to, the current system to assure the provision of retirement benefits to former, present, and future railroad employees on an actuarially sound basis. The study will take into account— Reports.

(1) the possibility of restructuring the financing of railroad retirement benefits through increases in the tier 2 tax rate, increases in the tier 2 tax wage base, the imposition of a tax on operating revenues, revisions in the investment policy of the railroad retirement pension fund, and establishing a privately funded and administered railroad industry pension plan;

(2) the economic outlook for the railroad industry, and the nature of the relationships between the railroad retirement system, levels of railroad employment and compensation, and the performance of the rail sector;

(3) the ability of the system under current law to pay benefits to current and future retirees and other beneficiaries;

(4) the financial relationship of the system to the railroad unemployment insurance system, the social security system, and the General Fund; and

(5) any other matters which the Commission considers would be necessary, appropriate, or useful to the Congress in developing legislation to reform the system.

(c) MEMBERSHIP OF THE COMMISSION.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of seven members, as follows:

(A) four individuals appointed by the President— President of U.S.

(i) one of whom shall be appointed on the basis of recommendations made by representatives of employers (as defined in section 1(a) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employers concerned,

(ii) one of whom shall be appointed on the basis of recommendations made by representatives of employees (as defined in section 1(b) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employees concerned,

(iii) one of whom shall be appointed on the basis of recommendations made by representatives of commuter railroads, and

(iv) one of whom shall be appointed from members of the public;

(B) one individual appointed by the Speaker of the House of Representatives from among members of the public;

(C) one individual appointed by the President pro tempore of the Senate from among members of the public; and

(D) one individual appointed by the Comptroller General from among members of the public with expertise in the fields of retirement systems and pension plans.

All public members of the Commission shall be appointed from among individuals who are not in the employment of and are not pecuniarily or otherwise interested in any employer (as so

President of U.S.

defined) or organization of employees (as so defined). In making appointments under this section, the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall ensure that the members of the Commission, collectively, possess special knowledge of retirement income policy, social insurance, private pensions, taxation, and the structure of the transportation industry. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(2) PAY.—Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(3) QUORUM.—Five members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(4) CHAIRMAN.—The members of the Commission shall elect a Chairman [87a] from among the membership.

(d) STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.—

(1) STAFF.—Subject to such rules as may be prescribed by the Commission, the Chairman may appoint and fix the pay of such personnel as the Chairman considers appropriate.

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the Railroad Retirement Board and any other Federal agency may detail, on a reimbursable basis, any of the personnel thereof to the Commission to assist the Commission in carrying out its duties under this section.

(e) ACCESS TO OFFICIAL DATA AND SERVICES.—

(1) OFFICIAL DATA.—The Commission may, as appropriate, secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall, as appropriate, furnish such information to the Commission.

(2) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(3) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) REPORT.—The Commission shall transmit a report to the President and to each House of the Congress not later than October 1,

[87a] Copy read "chairman"

1989. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its legislative recommendations.

(g) TERMINATION.—The Commission shall cease to exist 60 days after submitting its report pursuant to subsection (f).

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the sum of $1,000,000 for purposes of this section, to remain available until expended but in no event beyond the date of termination provided in subsection (g).

SEC. 9034. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended— 45 USC 231n note.

(1) by inserting "(other than amounts described in subparagraph (B))" after "amounts";

(2) by striking "1988" and inserting "1989"; and

(3) by striking the last sentence.

Subtitle B—Provisions Relating to Public Assistance and Unemployment Compensation

PART 1—AFDC AND SSI AMENDMENTS

SEC. 9101. PERMANENT EXTENSION OF DISREGARD OF NONPROFIT ORGANIZATIONS' IN-KIND ASSISTANCE TO SSI AND AFDC RECIPIENTS.

Effective as of October 1, 1987, section 2639(d) of the Deficit Reduction Act of 1984 is amended by striking "; but" and all that follows and inserting a period. Effective date. 42 USC 602 note.

SEC. 9102. FRAUD CONTROL UNDER AFDC PROGRAM.

(a) IN GENERAL.—Part A of title IV of the Social Security Act is amended by adding at the end the following new section:

"FRAUD CONTROL

"SEC. 416. (a) Any State, in the administration of its State plan approved under section 402, may elect to establish and operate a fraud control program in accordance with this section. 42 USC 616.

"(b) Under any such program, if an individual who is a member of a family applying for or receiving aid under the State plan approved under section 402 is found by a Federal or State court or pursuant to an administrative hearing meeting requirements determined in regulations of the Secretary, on the basis of a plea of guilty or nolo contendere or otherwise, to have intentionally—

"(1) made a false or misleading statement or misrepresented, concealed, or withheld facts, or

"(2) committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity,

for the purpose of establishing or maintaining the family's eligibility for aid under such State plan or of increasing (or preventing a reduction in) the amount of such aid, then the needs of such individual shall not be taken into account in making the determination under section 402(a)(7) with respect to his or her family (A) for a period of 6 months upon the first occasion of any such offense, (B) for a period of 12 months upon the second occasion of any such offense, and (C) permanently upon the third or a subsequent occasion of any such offense.

"(c) The State agency involved shall proceed against any individual alleged to have committed an offense described in subsection (b) either by way of administrative hearing or by referring the matter to the appropriate authorities for civil or criminal action in a court of law. The State agency shall coordinate its actions under this section with any corresponding actions being taken under the food stamp program in any case where the factual issues involved arise from the same or related circumstances.

"(d) Any period for which sanctions are imposed under subsection (b) shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the sanctions were imposed is subsequently reversed by a court of appropriate jurisdiction; but in no event shall the duration of the period for which such sanctions are imposed be subject to review.

"(e) The sanctions provided under subsection (b) shall be in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses involved.

"(f) Each State which has elected to establish and operate a fraud control program under this section must provide all applicants for aid to families with dependent children under its approved State plan, at the time of their application for such aid, with a written notice of the penalties for fraud which are provided for under this section.".

42 USC 602.

(b) STATE PLAN REQUIREMENT.—Section 402(a) of such Act is amended—

(1) by striking "and" after the semicolon at the end of paragraph (38);

(2) by striking the period at the end of paragraph (39) and inserting "; and"; and

(3) by inserting immediately after paragraph (39) the following new paragraph:

"(40) provide, if the State has elected to establish and operate a fraud control program under section 416, that the State will submit to the Secretary (with such revisions as may from time to time be necessary) a description of and budget for such program, and will operate such program in full compliance with that section.".

42 USC 603.

(c) FEDERAL MATCHING.—Section 403(a)(3) of such Act is amended—

(1) by striking "and" after the final comma in subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D);

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

"(C) 75 percent of so much of such expenditures as are for the costs of carrying out a fraud control program under section 416, including costs related to the investigation, prosecution, and administrative hearing of fraudulent cases and the making of any resultant collections, and"; and

(4) by striking "(C)" in the matter following subparagraph (D) (as redesignated by paragraph (2) of this subsection) and inserting "(D)".

[88] (d) EFFECTIVE DATE.—The amendments made by this section shall become effective April 1, 1988. 42 USC 602 note.

SEC. 9103. EXCLUSION OF REAL PROPERTY WHEN IT CANNOT BE SOLD.

(a) IN GENERAL.—Section 1613(b) of the Social Security Act is amended— 42 USC 1382b.

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

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

"(2) Notwithstanding the provisions of paragraph (1), the Secretary shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Secretary, the owner's reasonable efforts to sell it have been unsuccessful.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988. 42 USC 1382b note.

SEC. 9104. ADJUSTMENT OF PENALTY WHERE ASSET IS TRANSFERRED FOR LESS THAN FAIR MARKET VALUE.

[89] (a) IN GENERAL.—Section 1613(c) of the Social Security Act is amended—

(1) by inserting immediately after "the exclusions under subsection (a)" in paragraph (1) the following: ", and subject to paragraph (4) of this subsection"; and

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

"(4) The Secretary shall by regulation provide for suspending the application of paragraph (1) to the extent (in any instance) that the Secretary determines that such suspension is necessary to avoid undue hardship.". Regulations.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988. 42 USC 1382b note.

SEC. 9105. EXCLUSION OF INTEREST ON BURIAL ACCOUNTS.

(a) IN GENERAL.—Section 1613(d) of the Social Security Act is amended—

(1) in paragraph (1), by striking "if the inclusion" and all that follows and inserting a period; and

(2) in paragraph (3), by striking "aside" and inserting "aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1611(a)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988. 42 USC 1382b note.

SEC. 9106. EXCEPTION FROM SSI RETROSPECTIVE ACCOUNTING FOR AFDC AND CERTAIN OTHER ASSISTANCE PAYMENTS.

(a) IN GENERAL.—Section 1611(c) of the Social Security Act is amended— 42 USC 1382.

(1) by striking "paragraphs (2), (3), and (4)" in paragraph (1) and inserting "paragraphs (2), (3), (4), and (5)";

(2) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

---

[88] Copy read "EFFECTIVE DATE.—".
[89] Copy read "IN GENERAL.—".

(3) by inserting after paragraph (4) the following new paragraph:

"(5) Notwithstanding paragraphs (1) and (2), any income which is paid to or on behalf of an individual in any month pursuant to (A) a State plan approved under part A of title IV of this Act (relating to aid to families with dependent children), (B) section 472 of this Act (relating to foster care assistance), (C) section 412(e) of the Immigration and Nationality Act (relating to assistance for refugees), (D) section 501(a) of Public Law 96-422 (relating to assistance for Cuban and Haitian entrants), or (E) the Act of November 2, 1921 (42 Stat. 208), as amended (relating to assistance furnished by the Bureau of Indian Affairs), shall be taken into account in determining the amount of the benefit under this title of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.".

42 USC 1382 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9107. TECHNICAL AMENDMENT RELATING TO 1986 AMENDMENT CONCERNING THE TREATMENT OF CERTAIN COUPLES IN MEDICAL INSTITUTIONS.

Effective date. 42 USC 1382.

Effective November 10, 1986, section 1611(e)(5) of the Social Security Act is amended—

(1) by striking "sharing a room or comparable accommodation in a hospital, home, or facility" and inserting "living in the same hospital, home, or facility"; and

(2) by striking "shared such a room or accommodation" and inserting "lived in the same such hospital, home, or facility".

SEC. 9108. EXTENSION OF DEADLINE FOR DISABLED WIDOWS TO APPLY FOR MEDICAID PROTECTION UNDER 1984 AMENDMENTS.

Effective date. 42 USC 1383c.

Effective July 1, 1987, section 1634(b)(3) of the Social Security Act is amended by striking "during the 15-month period beginning with the month in which this subsection is enacted" and inserting "no later than July 1, 1988".

SEC. 9109. INCREASE IN SSI EMERGENCY ADVANCE PAYMENTS.

42 USC 1383.

(a) IN GENERAL.—Section 1631(a)(4)(A) of the Social Security Act is amended by striking "a cash advance against such benefits in an amount not exceeding $100" and inserting "a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility".

42 USC 1383 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 9110. MODIFICATION OF INTERIM ASSISTANCE REIMBURSEMENT PROGRAM.

(a) IN GENERAL.—The first sentence of section 1631(g)(2) of the Social Security Act is amended by striking "at the time the Secretary makes the first payment of benefits" and inserting "at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3)".

(b) DEFINITION OF INTERIM ASSISTANCE.—Section 1631(g)(3) of such Act is amended—

(1) by inserting "(A)" after "basic needs"; and

(2) by inserting before the period at the end the following: ", or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective with the 13th month following the month in which this Act is enacted, or, if sooner, with the first month for which the Secretary of Health and Human Services determines that it is administratively feasible. 42 USC 1383 note.

SEC. 9111. SPECIAL NOTICE TO BLIND RECIPIENTS.

(a) IN GENERAL.—(1) Section 1631 of the Social Security Act is amended by adding at the end the following new subsection: 42 USC 1383.

"Special Notice to Blind Individuals with Respect to Hearings and Other Official Actions

"(l)(1) In any case where an individual who is applying for or receiving benefits under this title on the basis of blindness is entitled (under subsection (c) or otherwise) to receive notice from the Secretary of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this title, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Secretary and agreed to by the individual.

"(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this title on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this title until such time as it is revoked or changed.".

(2) Not later than one year after the date on which the amendment made by paragraph (1) becomes effective, the Secretary of Health and Human Services shall provide every individual receiving benefits under title XVI of the Social Security Act on the basis of blindness an opportunity to make an election under section 1631(l)(1) of such Act (as added by such amendment). 42 USC 1383 note.

(b) STUDY.—The Secretary of Health and Human Services shall study the desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by section 1631(l) of the Social Security Act (as added by subsection (a) of this section) to other individuals who may lack the ability to read and comprehend regular written notices, and shall report the results of such study to the Congress, along with such recommendations as may be appropriate, within 12 months after the date of the enactment of this Act. Reports. 42 USC 1383 note.

42 USC 1383 note.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective July 1, 1988.

SEC. 9112. REHABILITATION SERVICES FOR BLIND SSI RECIPIENTS.

42 USC 1383.

(a) IN GENERAL.—Section 1631(a)(6) of the Social Security Act is amended—

(1) by inserting "blindness (as determined under section 1614(a)(2)) or" before "disability (as determined under section 1614(a)(3))";

(2) by inserting "blindness or other" before "physical or mental impairment"; and

(3) by inserting "blindness and" before "disability benefit rolls" in subparagraph (B).

42 USC 1383 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

SEC. 9113. EXTENDING THE NUMBER OF MONTHS THAT AN INDIVIDUAL IN A PUBLIC EMERGENCY SHELTER CAN BE ELIGIBLE FOR SSI.

42 USC 1382.

(a) IN GENERAL.—Section 1611(e)(1)(D) of the Social Security Act is amended by striking "three months in any 12-month period" and inserting "6 months in any 9-month period".

42 USC 1382 note.

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a) shall become effective January 1, 1988.

(2) In the application of section 1611(e)(1)(D) of the Social Security Act on and after the effective date of such amendment, months before January 1988 in which a person was an eligible individual or eligible spouse by reason of such section shall not be taken into account.

SEC. 9114. EXCLUSION OF UNDERPAYMENTS FROM RESOURCES.

42 USC 1382b.

(a) IN GENERAL.—Section 1613(a)(7) of the Social Security Act is amended by inserting after "shall be limited to the first 6 months following the month in which such amount is received" the following: "(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)".

42 USC 1382b note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective January 1, 1988.

SEC. 9115. CONTINUATION OF FULL BENEFIT STANDARD FOR INDIVIDUALS TEMPORARILY INSTITUTIONALIZED.

(a) IN GENERAL.—Section 1611(e)(1) of the Social Security Act is amended—

(1) in subparagraph (A), by striking "and (E)" and inserting "(E), and (G)";

(2) in subparagraph (B), by inserting "(subject to subparagraph (G))" after "throughout any month"; and

(3) by adding at the end the following new subparagraphs:

"(G) A person may be an eligible individual or eligible spouse for purposes of this title, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or which is a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX, if it is determined in accordance with subparagraph (H) that—

"(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely (as certified by a physician) not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

"(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this title (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

"(H) The Secretary shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.". Contracts.

(b) CONFORMING AMENDMENT.—Section 1902(l) of such Act is amended by striking "section 1611(e)(1)(E)" and inserting "subparagraph (E) or (G) of section 1611(e)(1)". 42 USC 1396a.

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective July 1, 1988. 42 USC 1382 note.

SEC. 9116. RETENTION OF MEDICAID WHEN SSI BENEFITS ARE LOST UPON ENTITLEMENT TO EARLY WIDOW'S OR WIDOWER'S INSURANCE BENEFITS.

(a) IN GENERAL.—Section 1634 of the Social Security Act is amended by adding at the end the following new subsection: 42 USC 1383c.

"(d) If any person—

"(1) applies for and obtains benefits under subsection (e) or (f) of section 202 (or under any other subsection of section 202 if such person is also eligible for benefits under such subsection (e) or (f)) as required by section 1611(e)(2), being then at least 60 years of age but not entitled to hospital insurance benefits under part A of title XVIII, and

"(2) is determined to be ineligible (by reason of the receipt of such benefits under section 202) for supplemental security income benefits under this title or for State supplementary payments of the type described in section 1616(a),

such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this title for purposes of title XIX, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 202, and (B) is not entitled to hospital insurance benefits under part A of title XVIII.".

42 USC 1383c note.

(b) NOTICE.—The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act) issue a notice to all individuals who will have attained age 60 but not age 65 as of April 1, 1988, and who received supplemental security income benefits under title XVI of the Social Security Act prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act as added by subsection (a) of this section) under title II of that Act. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX.

42 USC 1383c note.

(c) STATE DETERMINATIONS.—Any determination required under section 1634(d) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act (or State supplementary payments) in the absence of benefits under section 202 shall be made by the appropriate State agency.

42 USC 1396s.

(d) CONFORMING AMENDMENTS.—Section 1922(a)(2) of the Social Security Act is amended—

(1) by striking "1634 (b)" in subparagraph (B) and inserting "1634 (b) and (c)"; and

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

"(C) Section 1634(d) of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 202 (e) or (f) of this Act).".

42 USC 1383c note.

(e) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act[90] (as described in section 1634(d)(2) of such Act) occurred before, on, or after the date of the enactment of this Act; but no individual shall be eligible for assistance under title XIX of such Act by reason of such amendments for any period before July 1, 1988.

42 USC 1383 note.

SEC. 9117. DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS.

Grants.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") is authorized to make grants to States for projects designed to demonstrate and test the feasibility of special procedures and services to ensure that homeless individuals are provided SSI and other benefits under the Social Security Act to which they are entitled and receive assistance in using such benefits to obtain permanent housing, food, and health care. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary shall prescribe.

Grants.

(b) SCOPE OF PROJECTS.—Projects for which grants are made under this section shall include, more specifically, procedures and services to overcome barriers which prevent homeless individuals (particu-

[90] Copy read "Social Security (as".

larly the chronically mentally ill) from receiving and appropriately using benefits, including—

(1) the creation of cooperative approaches between the Social Security Administration, State and local governments, shelters for the homeless, and other providers of services to the homeless;

(2) the establishment, where appropriate, of multi-agency SSI Outreach Teams (as described in subsection (c)), to facilitate communication between the agencies and staff involved in taking and processing claims for SSI and other benefits by the homeless who use shelters;

(3) special efforts to identify homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(4) the provision of special assistance to the homeless in applying for benefits, including assistance in obtaining and developing evidence of disability and supporting documentation for nondisability-related eligibility requirements;

(5) the provision of special training and assistance to public and private agency staff, including shelter employees, on disability eligibility procedures and evidentiary requirements;

(6) the provision of ongoing assistance to formerly homeless individuals to ensure their responding to information requests related to periodic redeterminations of eligibility for SSI and other benefits;

(7) the provision of assistance in ensuring appropriate use of benefit funds for the purpose of enabling homeless individuals to obtain permanent housing, nutrition, and physical and mental health care, including the use, where appropriate, of the disabled individual's representative payee for case management services; and

(8) such other procedures and services as the Secretary may approve.

(c) SSI OUTREACH TEAM PROJECTS.—(1) If a State applies for funds under this section for the purpose of establishing a multi-agency SSI Outreach Team, the membership and functions of such Team [91] shall be as follows (except as provided in paragraph (2)):

(A) The membership of the Team shall include a social services case worker (or case workers, if necessary); a consultative medical examiner who is qualified to provide consultative examinations for the Disability Determination Service of the State; a disability examiner, from the State Disability Determination Service; and a claims representative from an office of the Social Security Administration.

(B) The Team shall have designated members responsible for—

(i) identification of homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(ii) ensuring that such individuals understand their rights under the programs;

(iii) assisting such individuals in applying for benefits, including assistance in obtaining and developing evidence

[91] Copy read "team".

and supporting documentation relating to disability- and nondisability-related eligibility requirements;

(iv) arranging transportation and accompanying applicants to necessary examinations, if needed; and

(v) providing for the tracking and monitoring of all claims for benefits by individuals under the project.

(2) If the Secretary determines that an application by a State for an SSI Outreach Team Project under this section which proposes a membership and functions for such Team different from those prescribed in paragraph (1) but which is expected to be as effective, the Secretary may waive the requirements of such paragraph.

(d) INFORMATION AND REPORTS; EVALUATION.—(1) Each State having an approved SSI Outreach Team Project shall periodically submit to the Secretary such information (with respect to the project) as may be necessary to enable the Secretary to evaluate such project in particular and the demonstration program under this section in general.

(2)(A) The Secretary shall from time to time (but not less often than annually) submit to the Congress a full and complete report on the program under this section, together with a detailed evaluation of such program and of the projects thereunder along with such recommendations as may be deemed appropriate. Such evaluation and such recommendations shall be designed to serve as a basis for determining whether (and to what extent) the activities and procedures included in the demonstration program under this section should be continued, expanded, or modified, or converted (with or without changes) into a regular feature of permanent law.

(B) The criteria used by the Secretary in evaluating the program and the projects thereunder shall not be limited to those which would normally be used in evaluating programs and activities of the kind involved, but shall fully take into account the special circumstances of the homeless and their need for personalized attention and follow-through assistance, and shall emphasize the extent to which the procedures and assistance made available to applicants under such projects are recognizing those circumstances and meeting that need.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

(A) the sum of $1,250,000 for the fiscal year 1988;

(B) the sum of $2,500,000 for the fiscal year 1989; and

(C) such sums as may be necessary for each fiscal year thereafter.

SEC. 9118. ASSISTANCE TO HOMELESS AFDC FAMILIES.

Federal Register, publication.

The Secretary of Health and Human Services may not take any action, prior to October 1, 1988, that would have the effect of implementing in whole or in part the proposed regulation published in the Federal Register on December 14, 1987, with respect to emergency assistance and the need for and amount of assistance under the program of aid to families with dependent children, or that would change current policy with respect to any of the matters addressed in such proposed regulation.

SEC. 9119. INCREASE IN PERSONAL NEEDS ALLOWANCE FOR SSI RECIPIENTS.

42 USC 1382.

(a) INCREASE IN STANDARD.—Section 1611(e)(1)(B) of the Social Security Act is amended—

(1) by striking "$300 per year" in clauses (i) and (ii)(I) and inserting "$360 per year"; and

(2) by striking "$600 per year" in clause (iii) and inserting "$720 per year".

(b) MANDATORY PASS-THROUGH OF INCREASED PERSONAL NEEDS ALLOWANCE.—Section 1618 of such Act is amended by adding at the end the following new subsection: 42 USC 1382g.

"(g) In order for any State which makes supplementary payments of the type described in section 1616(a) (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66) to recipients of benefits determined under section 1611(e)(1)(B), on or after October 1, 1987, to be eligible for payments pursuant to title XIX with respect to any calendar quarter which begins—

"(1) after October 1, 1987, or, if later

"(2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined,

such State must have in effect an agreement with the Secretary whereby the State will—

"(3) continue to make such supplementary payments to recipients of benefits so determined, and

"(4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with the month in which this subsection is first effective) that—

"(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for that particular month,

is not less than—

"(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1611(e)(1)(B) for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

"(i) in a case to which clause (i) of such section 1611(e)(1)(B) applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by $5, and

"(ii) in a case to which clause (iii) of such section 1611(e)(1)(B) applies, by $10.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective July 1, 1988. 42 USC 1382 note.

SEC. 9120. EXCLUSION OF DEATH BENEFITS TO THE EXTENT SPENT ON LAST ILLNESS AND BURIAL.

(a) IN GENERAL.—Subparagraphs (D) and (E) of section 1612(a)(2) of the Social Security Act are amended to read as follows: 42 USC 1382a.

"(D) payments to the individual occasioned by the death of another person, to the extent that the total of such payments exceeds the amount expended by such individual for purposes of the deceased person's last illness and burial;

"(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances; and".

42 USC 1382a note. (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective April 1, 1988.

42 USC 602 note. **SEC. 9121. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.**

(a) IN GENERAL.—Upon application of the State of Washington and approval by the Secretary of Health and Human Services, the State of Washington (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing whether the operation of its Family Independence Program enacted in May 1987 (in this section referred to as the "Program"), as an alternative to the AFDC program under title IV of the Social Security Act, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning.

(b) NATURE OF PROJECT.—Under the demonstration project conducted under this section—

(1) every individual eligible for aid under the State plan approved under section 402(a) of the Social Security Act shall be eligible to enroll in the Program, which shall operate simultaneously with the AFDC program so long as there are individuals who qualify for the latter;

(2) cash assistance shall be furnished in a timely manner to all eligible individuals under the Program (and the State may not make expenditures for services under the Program until it has paid all necessary cash assistance), with no family receiving less in cash benefits than it would have received under the AFDC program;

(3) individuals may be required to register, undergo assessment, and participate in work, education, or training under the Program, except that—

(A) work or training may not be required in the case of—

(i) a single parent of a child under six months of age, or more than one parent of such a child in a two-parent family,

(ii) a single parent with a child of any age who has received assistance for less than six months,

(iii) a single parent with a child under three years of age who has received assistance for less than three years,

(iv) an individual under 16 years of age or over 64 years of age,

(v) an individual who is incapacitated, temporarily ill, or needed at home to care for an impaired person, or

(vi) an individual who has not yet been individually notified in writing of such requirement or of the expiration of his or her exempt status under this subparagraph;

(B) participation in work or training shall in any case be voluntary during the first two years of the Program, and may thereafter be made mandatory only in counties where more than 50 percent of the enrollees can be placed in employment within three months after they are job ready;

(C) in no case shall the work and training aspect of the Program be mandated in any county where the unemployment level is at least twice the State average; and

(D) mandated work shall not include work in any position created by a reduction in the work force, a bona fide labor dispute, the decertification of a bargaining unit, or a new job classification which subverts the intention of the Program;

(4) there shall be no change in existing State law which would eliminate guaranteed benefits or reduce the rights of applicants or enrollees; and

(5) the Program shall include due process guarantees and procedures no less than those which are available to participants in the AFDC program under Federal law and regulation and under State law.

(c) WAIVERS.—The Secretary shall (with respect to the project under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the project or effectively achieving its purpose, or with the requirements of sections 1902(a)(1), 1902(e)(1), and 1916 of that Act (but only to the extent necessary to enable the State to carry out the Program [92] as enacted by the State in April 1987).

(d) FUNDING.—

(1) The Secretary, under section 403(b) or 1903(d) of the Social Security Act, shall reimburse the State for its expenditures under the Program—

(A) at a rate equal to the Federal matching rate applicable to the State under section 403(a)(1) (or 1118) of the Social Security Act, for cash assistance, medical assistance, and child care provided to enrollees;

(B) at a rate equal to the applicable Federal matching rate under section 403(a)(3) of such Act, for administrative expenses; and

(C) at the rate of 75 percent for an evaluation plan approved by the Secretary.

(2) As a condition of approval of the project under this section, the State must provide assurances satisfactory to the Secretary that the total amount of Federal reimbursement over the period of the project will not exceed the anticipated Federal reimbursements (over that period) under the AFDC and Medicaid programs; but this paragraph shall not prevent the State from claiming reimbursement for additional persons who would qualify for assistance under the AFDC program, for costs attributable to increases in the State's payment standard, or for any other federally-matched benefits or services.

(e) EVALUATION.—The State must satisfy the Secretary that the Program [93] will be evaluated using a reasonable methodology.

(f) DURATION OF PROJECT.—

(1) The project under this section shall begin on the date on which the first individual is enrolled in the Program and (subject to paragraph (2)) shall end five years after that date.

(2) The project may be terminated at any time, on six months written notice, by the State or (upon a finding that the State has materially failed to comply with this section) by the Secretary.

[92] Copy read "program".
[93] Copy read "program".

42 USC 602 note.

SEC. 9122. CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE.

(a) IN GENERAL.—Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this section referred to as the "Secretary"), the State of New York (in this section referred to as the "State") may conduct a demonstration program in accordance with this section for the purpose of testing a State program as an alternative to the program of Aid to Families with Dependent Children under title IV of the Social Security Act.

(b) NATURE OF PROGRAM.—Under the demonstration program conducted under this section—

(1) all custodial parents of dependent children who are eligible for supplements under the State plan approved under section 402(a) of the Social Security Act (and such other types or classes of such parents as the State may specify) may elect to receive benefits under the State's Child Support Supplement Program in lieu of supplements under such plan; and

(2) the Federal Government will pay to the State with respect to families receiving benefits under the State's Child Support Supplement Program the same amounts as would have been payable with respect to such families under sections 403 and 1903 of the Social Security Act as if the families were receiving aid and medical assistance under the State plans in effect with respect to such sections.

(c) WAIVERS.—The Secretary shall (with respect to the program under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the program or effectively achieving its purpose.

(d) CONDITIONS OF APPROVAL.—As a condition of approval of the program under this section, the State shall—

(1) provide assurances satisfactory to the Secretary that the State—

(A) will continue to make assistance available to all eligible children in the State who are in need of financial support, and

(B) will continue to operate an effective child support enforcement program;

(2) agree—

(A) to have the program evaluated, and

Reports.

(B) to report interim findings to the Secretary at such times as the Secretary shall provide; and

(3) satisfy the Secretary that the program will be evaluated using a reasonable methodology that can determine whether changes in work behavior and changes in earnings are attributable to participation in the program.

(e) APPLICATION PROCESS.—In order to participate in the program under this section, the State must submit an application under this section not later than two years after the date of enactment of this Act. The Secretary shall approve or disapprove the application of the State not later than 90 days after the date of its submission. If the application is disapproved, the Secretary shall provide to the State a statement of the reasons for such disapproval, of the changes needed to obtain approval, and of the date by which the State may resubmit the application.

(f) EFFECTIVE DATE.—The program under this section shall commence not later than the first day of the third calendar quarter beginning on or after the date on which the application of the State is approved in accordance with subsection (e).

(g) DURATION OF PROGRAM.—

(1) Except as provided in paragraph (2), if the Secretary approves the application of the State, the demonstration program under this section shall be conducted for a period not to exceed five years.

(2)(A) The Governor of the State may before the end of the period described in paragraph (1) terminate the demonstration program under this section if the Governor finds that the program is not successful in testing the State's Child Support Supplement Program as an alternative to the program under title IV of the Social Security Act. The Governor shall notify the Secretary of the decision to terminate the program not less than three months prior to the date of such termination.

(B) The Secretary may terminate the program before the end of such period if the Secretary finds that the program is not in compliance with the terms of the application. The Secretary shall notify the Governor of the decision to terminate the program not less than three months prior to the date of such termination.

SEC. 9123. TECHNICAL CORRECTION.

The subsection of section 1631 of the Social Security Act which was added as subsection (j) by section 11006 of the Anti-Drug Abuse Act of 1986 is redesignated as subsection (m) and is moved to the end of such section 1631 so that it appears immediately after subsection (l) thereof (as added by section 9111(a) of this Act); and the heading of such subsection is amended to read as follows: 42 USC 1383.

"Pre-Release Procedures for Institutionalized Persons".

PART 2—SOCIAL SERVICES, CHILD WELFARE SERVICES, AND OTHER PROVISIONS RELATING TO CHILDREN

SEC. 9131. PERMANENT EXTENSION OF AUTHORITY FOR VOLUNTARY FOSTER CARE PLACEMENTS.

(a) IN GENERAL.—Section 102 of the Adoption Assistance and Child Welfare Act of 1980 is amended— 42 USC 672 note.

(1) in subsection (a)(1) (in the matter preceding subparagraph (A)), by striking "and before October 1, 1987,";

(2) in subsection (c), by striking all that follows "September 30, 1979" and inserting a period; and

(3) in subsection (e), by striking "with respect to which the amendments made by this section are in effect".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective October 1, 1987. 42 USC 672 note.

SEC. 9132. 2-YEAR EXTENSION OF FOSTER CARE CEILING AND OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS TO CHILD WELFARE SERVICES.

(a) IN GENERAL.—Section 474 of the Social Security Act is amended— 42 USC 674.

(1) in paragraphs (1), (2)(A)(iii), (2)(B), (4)(B), and (5)(A)(ii) of subsection (b), by striking "through 1987" and inserting "through 1989";

(2) in paragraph (5)(A) of subsection (b) (in the matter preceding clause (i)), by striking "October 1, 1987" and inserting "October 1, 1989"; and

(3) in paragraphs (1) and (2) of subsection (c), by striking "through 1987" and inserting "through 1989".

42 USC 674 note. (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective October 1, 1987.

SEC. 9133. MOTHER/INFANT FOSTER CARE.

42 USC 675. (a) IN GENERAL.—Section 475(4) of the Social Security Act is amended—

(1) by inserting "(A)" after "(4)"; and

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

"(B) In cases where—

"(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

"(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.".

(b) CONFORMING AMENDMENTS RELATING TO ELIGIBILITY UNDER

42 USC 602. OTHER PROGRAMS.—(1) Section 402(a)(24) of such Act is amended by striking "if an individual is receiving benefits under title XVI, then, for the period for which such benefits are received," and inserting the following: "if an individual is receiving benefits under title XVI or his costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made to his or her minor parent as provided in section 475(4)(B), then, for the period for which such benefits are received or such costs are so covered,".

42 USC 672. (2) Section 472(h) of such Act is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are made under this section.".

42 USC 673. (3)(A) Section 473(a)(2)(A) of such Act is amended—

(i) by striking "or" at the end of clause (i);

(ii) by adding "or" at the end of clause (ii); and

(iii) by adding after clause (ii) the following new clause:

"(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B),".

(B) Section 473(a)(2)(B)(iii) of such Act is amended by inserting "or (A)(iii)" after "(A)(ii)".

(4) Section 473(b) of such Act is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution

are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are being made under section 472.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective April 1, 1988. 42 USC 602 note.

SEC. 9134. INCREASED FUNDING FOR SOCIAL SERVICES BLOCK GRANTS.

(a) INCREASE IN FUNDING.—Section 2003(c) of the Social Security Act is amended— 42 USC 1397b.

(A) by striking "and" at the end of paragraph (2);

(B) in paragraph (3), by striking "year" the first place it appears and all that follows through the period and inserting "years 1984, 1985, 1986, and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and"; and

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

"(4) $2,750,000,000 for the fiscal year 1988.".

(b) REQUIREMENT THAT ADDITIONAL FUNDS SUPPLEMENT AND NOT SUPPLANT FUNDS AVAILABLE FROM OTHER SOURCES.—The additional $50,000,000 made available to the States for the fiscal year 1988 pursuant to the amendments made by subsection (a) shall— 42 USC 1397b note.

(A) be used only for the purpose of providing additional services under title XX of the Social Security Act; and

(B) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated pursuant to such amendments, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to such amendments) for services in accordance with such title, and shall in no case supplant such funds from other sources or reduce the level thereof.

SEC. 9135. EXTENSION OF SOCIAL SERVICES BLOCK GRANT AND CHILD WELFARE SERVICES PROGRAMS TO AMERICAN SAMOA.

(a) SOCIAL SERVICES BLOCK GRANT PROGRAM.—(1) Section 1101(a)(1) of the Social Security Act is amended by inserting "American Samoa," after "Guam," in the last sentence. 42 USC 1301.

(2)(A) Section 2003(a) of such Act is amended by adding at the end the following new sentence: "The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.".

(B) Section 2003(b) of such Act is amended by inserting "American Samoa," after "the Virgin Islands," each place it appears.

(b) CHILD WELFARE SERVICES PROGRAM.—(1) Section 1101(a)(1) of such Act is amended by adding at the end thereof the following new sentence: "Such term when used in part B of title IV also includes American Samoa.".

(2) Section 421(b) of such Act is amended by striking "and Guam" and inserting "Guam, and American Samoa". 42 USC 621.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1988. 42 USC 621 note.

Establishment. SEC. 9136. NATIONAL COMMISSION ON CHILDREN.

Part A of title XI of the Social Security Act is amended by adding at the end the following new section:

"NATIONAL COMMISSION ON CHILDREN

42 USC 1320b-9. "SEC. 1139. (a)(1) There is hereby established a commission to be known as the National Commission on Children (in this section referred to as the 'Commission').

"(b)(1) The Commission shall consist of—

"(A) 12 members to be appointed by the President,

"(B) 12 members to be appointed by the Speaker of the House of Representatives, and

"(C) 12 members to be appointed by the President pro tempore of the Senate.

President of U.S. "(2) The President, the Speaker, and the President pro tempore shall each appoint as members of the Commission—

"(A) 4 individuals who—

"(i) are representatives of organizations providing services to children,

"(ii) are involved in activities on behalf of children, or

"(iii) have engaged in academic research with respect to the problems and needs of children,

"(B) 4 individuals who are elected or appointed public officials (at the Federal, State, or local level) involved in issues and programs relating to children, and

"(C) 4 individuals who are parents or representatives of parents or parents' organizations.

"(3) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal programs.

Reports. "(c)(1) It shall be the duty and function of the Commission to serve as a forum on behalf of the children of the Nation and to conduct the studies and issue the report required by subsection (d).

"(2) The Commission (and any committees that it may form) shall conduct public hearings in different geographic areas of the country, both urban and rural, in order to receive the views of a broad spectrum of the public on the status of the Nation's children and on ways to safeguard and enhance the physical, mental, and emotional well-being of all of the children of the Nation, including those with physical or mental disabilities, and others whose circumstances deny them a full share of the opportunities that parents of the Nation may rightfully expect for their children.

"(3) The Commission shall receive testimony from individuals, and from representatives of public and private organizations and institutions with an interest in the welfare of children, including educators, health care professionals, religious leaders, providers of social services, representatives of organizations with children as members, elected and appointed public officials, and from parents and children speaking in their own behalf.

Reports. "(d) The Commission shall submit to the President, and to the Committees on Finance and Labor and Human Resources of the Senate and the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives, an interim report no later than September 30, 1988, and a final report no later than March 31, 1989, setting forth recommendations with respect to the following subjects:

"(1) Questions relating to the health of children that the Commission shall address include—

"(A) how to reduce infant mortality,

"(B) how to reduce the number of low-birth-weight babies,

"(C) how to reduce the number of children with chronic illnesses and disabilities,

"(D) how to improve the nutrition of children,

"(E) how to promote the physical fitness of children,

"(F) how to ensure that pregnant women receive adequate prenatal care,

"(G) how to ensure that all children have access to both preventive and acute care health services, and

"(H) how to improve the quality and availability of health care for children.

"(2) Questions relating to social and support services for children and their parents that the Commission shall address include—

"(A) how to prevent and treat child neglect and abuse,

"(B) how to provide help to parents who seek assistance in meeting the problems of their children,

"(C) how to provide counseling services for children,

"(D) how to strengthen the family unit,

"(E) how children can be assured of adequate care while their parents are working or participating in education or training programs,

"(F) how to improve foster care and adoption services,

"(G) how to reduce drug and alcohol abuse by children and youths, and

"(H) how to reduce the incidence of teenage pregnancy.

"(3) Questions relating to education that the Commission shall address include—

"(A) how to encourage academic excellence for all children at all levels of education,

"(B) how to use preschool experiences to enhance educational achievement,

"(C) how to improve the qualifications of teachers,

"(D) how schools can better prepare the Nation's youth to compete in the labor market,

"(E) how parents and schools can work together to help children achieve success at each step of the academic ladder,

"(F) how to encourage teenagers to complete high school and remain in school to fulfill their academic potential,

"(G) how to address the problems of drug and alcohol abuse by young people,

"(H) how schools might lend support to efforts aimed at reducing the incidence of teenage pregnancy, and

"(I) how schools might better meet the special needs of children who have physical or mental handicaps.

"(4) Questions relating to income security that the Commission shall address include—

"(A) how to reduce poverty among children,

"(B) how to ensure that parents support their cnildren to the fullest extent possible through improved child support collection services, including services on behalf of children whose parents are unmarried, and

"(C) how to ensure that cash assistance to needy children is adequate.

"(5) Questions relating to tax policy that the Commission shall address include—

"(A) how to assure the equitable tax treatment of families with children,

"(B) the effect of existing tax provisions, including the dependent care tax credit, the earned income tax credit, and the targeted jobs tax credit, on children living in poverty,

"(C) whether the dependent care tax credit should be refundable and the effect of such a policy,

"(D) whether the earned income tax credit should be adjusted for family size and the effect of such a policy, and

"(E) whether there are other tax-related policies which would reduce poverty among children.

"(6) In addition to addressing the questions specified in paragraphs (1) through (5), the Commission shall—

"(A) seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all available resources, in a coordinated and comprehensive manner, and

"(B) assess the existing capacities of agencies to collect and analyze data on the status of children and on relevant programs, identify gaps in the data collection system, and recommend ways to improve the collection of data and the coordination among agencies in the collection and utilization of data.

The reports required by this subsection shall be based upon the testimony received in the hearings conducted pursuant to subsection (c), and upon other data and findings developed by the Commission.

"(e)(1)(A) Members of the Commission shall first be appointed not later than 60 days after the date of the enactment of this section, for terms ending on March 31, 1989.

"(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

"(2) The Commission shall elect one of its members to serve as Chairman of the Commission. The Chairman shall be a nonvoting member of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

"(4)(A) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission.

"(B) The Commission shall meet not less than 4 times during the period beginning with the date of the enactment of this section and ending with March 31, 1989.

"(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

"(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

"(f)(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

"(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(g) In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

"(h)(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

"(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

"(i) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

"(j) There are authorized to be appropriated such sums as may be necessary to carry out this section.".

SEC. 9137. BOARDER BABIES DEMONSTRATION PROJECT.

Section 426 of the Social Security Act is amended— 42 USC 626.

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting immediately after subsection (a) the following new subsection:

"(b)(1) There are authorized to be appropriated $4,000,000 for each of the fiscal years 1988, 1989, and 1990 for grants by the Secretary to public or private nonprofit entities submitting applications under this subsection for the purpose of conducting demonstration projects under this subsection to develop alternative care arrangements for infants who do not have health conditions that require hospitalization and who would otherwise remain in inappropriate hospital settings.

"(2) The demonstration projects conducted under this section may include—

"(A) multidisciplinary projects designed to prevent the inappropriate hospitalization of infants and to allow infants described in paragraph (1) to remain with or return to a parent in a residential setting, where appropriate care for the infant and suitable treatment for the parent (including treatment for drug or alcohol addiction) may be assured, with the goal (where possible) of rehabilitating the parent and eliminating the need for such care for the infant;

"(B) multidisciplinary projects that assure appropriate, individualized care for such infants in a foster home or other non-medical residential setting in cases where such infant does not require hospitalization and would otherwise remain in inappropriate hospital settings, including projects to demonstrate methods to recruit, train, and retain foster care families; and

"(C) such other projects as the Secretary determines will best serve the interests of such infants and will serve as models for projects that agencies or organizations in other communities may wish to develop.

"(3) In the case of any project which includes the use of funds authorized under this subsection for the care of infants in foster homes or other non-medical residential settings away from their parents, there shall be developed for each such infant a case plan of the type described in section 475(1) (to the extent that such infant is not otherwise covered by such a plan), and each such project shall include a case review system of the type described in section 475(5) (covering each such infant who is not otherwise subject to such a system).

"(4) In evaluating applications from entities proposing to conduct demonstration projects under this subsection, the Secretary shall give priority to those projects that serve areas most in need of alternative care arrangements for infants described in paragraph (1).

"(5) No project may be funded unless the application therefor contains assurances that it will—

"(A) provide for adequate evaluation;

"(B) provide for coordination with local governments;

"(C) provide for community education regarding the inappropriate hospitalization of infants;

"(D) use, to the extent practical, other available private, local, State, and Federal sources for the provision of direct services; and

"(E) meet such other criteria as the Secretary may prescribe.

Grants.

"(6) Grants may be used to pay the costs of maintenance and of necessary medical and social services (to the extent that these costs are not otherwise paid for under other titles of this Act), and for such other purposes as the Secretary may allow.

"(7) The Secretary shall provide training and technical assistance to grantees, as requested.".

SEC. 9138. STUDY OF INFANTS AND CHILDREN WITH AIDS IN FOSTER CARE.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct (or arrange for) a survey to determine—

(1) the total number of infants and children in the United States who have been diagnosed as having acquired immune deficiency syndrome and who have been placed in foster care;

(2) the problems encountered by social service agencies in placing infants and children with such syndrome in foster care; and

(3) the potential increase (over the five-year period beginning on the date of the enactment of this Act) in the number of infants and children with such syndrome who will require foster care.

For purposes of this section, an infant or child with acquired immune deficiency syndrome includes an infant or child who is infected with the virus associated with such syndrome.

(b) RESTRICTION ON SCOPE OF SURVEY.—In conducting (or arranging for) the survey under subsection (a), the Secretary shall assure that survey activities do not duplicate research activities conducted by the Centers for Disease Control.

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall report to the Congress on the results of the survey conducted under subsection (a) and shall make recommendations to the Congress with respect to improving the care of infants and children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

SEC. 9139. TECHNICAL CORRECTIONS.

(a) The last sentence of section 472(a) of the Social Security Act is amended by striking out "473(a)(1)(B)" and inserting in lieu thereof "473(a)(2)(B)". 42 USC 672.

(b) Section 201(b)(2)(B) of the Immigration Reform and Control Act of 1986 is amended by striking out "Section 473(a)(1) of such Act" and inserting in lieu thereof "Section 473(a)(2) of such Act (as amended by section 1711(a) of the Tax Reform Act of 1986)". 42 USC 673.

PART 3—CHILD SUPPORT ENFORCEMENT AMENDMENTS

SEC. 9141. CONTINUATION OF CHILD SUPPORT ENFORCEMENT SERVICES TO FAMILIES NO LONGER RECEIVING AFDC.

(a) IN GENERAL.—(1) Section 457(c) of the Social Security Act is amended to read as follows: 42 USC 657.

"(c) Whenever a family with respect to which child support enforcement services have been provided pursuant to section 454(4) ceases to receive assistance under part A of this title, the State shall provide appropriate notice to the family and continue to provide such services, and pay any amount of support collected, subject to the same conditions and on the same basis as in the case of the individuals to whom services are furnished pursuant to section 454(6), except that no application or other request to continue services shall be required of a family to which this subsection applies, and the provisions of section 454(6)(B) may not be applied.".

(2) Section 454(5) of such Act is amended by striking "(except as provided in section 457(c))". 42 USC 654.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective upon enactment. 42 USC 654 note.

SEC. 9142. CHILD SUPPORT ENFORCEMENT SERVICES REQUIRED FOR CERTAIN FAMILIES RECEIVING MEDICAID.

(a) IN GENERAL.—Section 454 of the Social Security Act is amended—

(1)(A) by striking "an assignment under section 402(a)(26) of this title" in paragraph (4)(A) and inserting "an assignment under section 402(a)(26) or section 1912";

(B) by striking ", and" at the end of paragraph (4)(A) and inserting ", or, in the case of such a child with respect to whom an assignment under section 1912 is in effect, the State agency administering the plan approved under title XIX determines pursuant to section 1912(a)(1)(B) that it is against the best interests of the child to do so, and"; and

(C) by inserting "or medical assistance under a State plan approved under title XIX" immediately after "aid to families with dependent children" in paragraph (4)(B); and

(2)(A) by striking "provide that," and inserting "provide that (A)" in paragraph (5); and

(B) by striking the semicolon at the end of paragraph (5) and inserting "; and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1912, such payments shall be made to the State for distribution pursuant to section 1912, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;".

42 USC 654 note. (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on July 1, 1988.

SEC. 9143. REPEAL OF UNNECESSARY CHILD SUPPORT REVOLVING FUND.

42 USC 652. (a) IN GENERAL.—Section 452(c) of the Social Security Act is amended to read as follows:

"(c) The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 457 the amount of each collection made on behalf of such State pursuant to subsection (b).".

42 USC 652 note. (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts collected after the date of the enactment of this Act.

PART 4—UNEMPLOYMENT COMPENSATION

26 USC 3304 note.

SEC. 9151. DETERMINATION OF AMOUNT OF FEDERAL SHARE WITH RESPECT TO CERTAIN EXTENDED BENEFITS PAYMENTS.

For the purpose of determining the amount of the Federal payment to any State under section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 with respect to the implementation of paragraph (3) of section 202 (a) of such Act (as added by section 1024(a) of the Omnibus Reconciliation Act of 1980), such paragraph shall be considered to apply only with respect to weeks of unemployment beginning after October 31, 1981, except that for any State in which the State legislature did not meet in 1981, it shall be considered to apply for such purpose only with respect to weeks of unemployment beginning after October 31, 1982.

Contracts.
26 USC 3304 note.

SEC. 9152. DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCES FOR ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

(1) apply to participate in such program, and

(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

(b) SELECTION OF STATES.—(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

(B) existing local market conditions and the business climate for new, small business enterprises in the State;

(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

(E) the design of the evaluation to be applied by the State to the program; and

(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed.

(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

(c) PROVISIONS OF AGREEMENTS.—Any agreement entered into with a State under this section shall provide that—

(1) each individual who is an eligible individual with respect to any benefit year beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation, as long as the individual meets the requirements applicable under this section to such individual;

(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

(5) the State shall implement a program that—

(A) is approved by the Secretary;

(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

(D) otherwise meets the requirements of this section; and

(6) the State, from its general revenue funds, shall—

(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

(d) EVALUATION.—(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on an experimental design with random assignment between a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

Reports.

(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under this section, to formulate the reports under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

(e) FINANCING.—(1) Notwithstanding section 303(a)(5) of the Social Security Act and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensation Act of 1970, payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

(g) REPORT TO CONGRESS.—(1) Not later than two years after the date of the enactment of this Act, the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

(A) information on the extent to which this section has been utilized;

(B) an analysis of any barriers to such utilization; and

(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

(2) Not later than four years after the date of the enactment of this Act, the Secretary shall submit a final report to the Congress on such program.

(h) FRAUD AND OVERPAYMENTS.—(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

(A) ineligible for further assistance under this section; and

(B) subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

(ii) such repayment would be contrary to equity and good conscience.

(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(i) DEFINITIONS.—For purposes of this section—

(1) the term "eligible individual" means, with respect to any benefit year, an individual who—

(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

(C) submits an application to the State agency for a self-employment allowance under this section; and

(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive regular compensation in a State at the beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

(2) the term "self-employment allowance" means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

(3) the terms "compensation", "extended compensation", "regular compensation", "benefit year", "State", and "State law", have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

SEC. 9153. EXTENSION OF FUTA TAX.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 3301 of the Federal Unemployment Tax Act (26 U.S.C. 3301) are amended to read as follows:

"(1) 6.2 percent in the case of calendar years 1988, 1989, and 1990; or

"(2) 6.0 percent in the case of calendar year 1991 and each calendar year thereafter;".

26 USC 3301 note. (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wages paid on or after January 1, 1988.

SEC. 9154. TRANSFER OF FUNDS INTO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) IN GENERAL.—Section 901 of the Social Security Act (42 U.S.C. 1101) is amended by adding at the end the following new subsection:

"Transfers For Calendar Years 1988, 1989, and 1990

"(g)(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—

"(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1) of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

"(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

"(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) with respect to wages paid during such calendar years.".

(b) INCREASE IN THE LIMITATION ON THE AMOUNTS IN SUCH ACCOUNTS.—(1) Section 902(a)(2) of such Act (42 U.S.C. 1102(a)(2)) is amended by striking out "one-eighth" and inserting in lieu thereof "five-eighths".

(2) Section 905(b)(2)(B) of such Act (42 U.S.C. 1105(b)(2)(B)) is amended by striking out "one-eighth" and inserting in lieu thereof "three-eighths".

(c) CONFORMING AMENDMENTS.—(1) Section 905(b)(1) of such Act (42 U.S.C. 1105(b)(1)) is amended by striking out the last sentence thereof.

(2) Section 901(c)(3)(C) of such Act (42 U.S.C. 1101(c)(3)(C)) is amended by striking out "(i)" and all that follows through the period and inserting in lieu thereof "a tax rate of 0.6 percent.".

42 USC 1101 note. (d) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 9155. INTEREST ON ADVANCES TO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.—Section 905(d) of the Social Security Act (42 U.S.C. 1105(d)) is amended—

(1) by striking out "(without interest)" and ", without interest,"; and

(2) by adding the following new sentence at the end: "Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.".

(b) FEDERAL UNEMPLOYMENT ACCOUNT.—Section 1203 of such Act (42 U.S.C. 1323) is amended—

(1) by striking out "(without interest)" and ", without interest,"; and

(2) by adding the following new sentence at the end: "Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.".

(c) CONFORMING AMENDMENT.—Section 903(a)(1) of such Act (42 U.S.C. 1103(a)(1)) is amended by inserting "and interest" after "all advances".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to advances made on or after the date of the enactment of this Act. 42 USC 1103 note.

SEC. 9156. CREDITING TO THE FEDERAL UNEMPLOYMENT ACCOUNT OF INTEREST EARNED ON ADVANCES TO THE STATES.

(a) IN GENERAL.—Section 1202 of the Social Security Act is amended by adding at the end the following new subsection: 42 USC 1322.

"(c) Interest paid by States in accordance with this section shall be credited to the Federal unemployment account established by section 904(g) in the Unemployment Trust Fund.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest paid on advances made on or after the date of the enactment of this Act. 42 USC 1322 note.

Subtitle C—Manufacturers Excise Tax on Certain Vaccines

SEC. 9201. MANUFACTURERS EXCISE TAX ON CERTAIN VACCINES.

(a) IN GENERAL.—Chapter 32 of the Internal Revenue Code of 1986 (relating to manufacturers excise taxes) is amended by inserting after subchapter B the following new subchapter:

"Subchapter C—Certain Vaccines

26 USC 4131.

"SEC. 4131. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable vaccine sold by the manufacturer, producer, or importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"If the taxable vaccine is:	The tax per dose is:
DPT vaccine	$4.56
DT vaccine	0.06
MMR vaccine	4.44
Polio vaccine	0.29.

"(2) COMBINATIONS OF VACCINES.—If any taxable vaccine is included in more than 1 category of vaccines in the table contained in paragraph (1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts determined under such table for each category in which such vaccine is so included.

"(c) TERMINATION OF TAX IF AMOUNTS COLLECTED EXCEED PROJECTED FUND LIABILITY.—

"(1) IN GENERAL.—If the Secretary estimates under paragraph (3) that the Vaccine Injury Compensation Trust Fund would not have a negative projected balance were the tax imposed by this section to terminate as of the close of any applicable date, no tax shall be imposed by this section after such date.

"(2) APPLICABLE DATE.—For purposes of paragraph (1), the term 'applicable date' means—

"(A) the close of any calendar quarter ending on or after December 31, 1992, and

"(B) the 1st date on which petitions may not be filed under section 2111 and 2111(a) of the Public Health Service Act by reason of section 2134 of such Act and each date thereafter.

"(3) ESTIMATES BY SECRETARY.—

"(A) IN GENERAL.—The Secretary shall estimate the projected balance of the Vaccine Injury Compensation Trust Fund as of—

"(i) the close of each calendar quarter ending on or after December 31, 1992, and

"(ii) such other times as are appropriate in the case of applicable dates described in paragraph (2)(B).

"(B) DETERMINATION OF PROJECTED BALANCE.—In determining the projected balance of the Fund as of any date, the Secretary shall assume that—

"(i) the tax imposed by this section will not apply after such date, and

"(ii) there shall be paid from such Trust Fund all claims made or to be made against such Trust Fund—

"(I) with respect to vaccines administered before October 1, 1992, in the case of an applicable date described in paragraph (2)(A), or

"(II) with respect to petitions filed under section 2111 or section 2111(a) of the Public Health Service Act, in the case of an applicable date described in paragraph (2)(B).

"SEC. 4132. DEFINITIONS AND SPECIAL RULES. 26 USC 4132.

"(a) DEFINITIONS RELATING TO TAXABLE VACCINES.—For purposes of this subchapter—

"(1) TAXABLE VACCINE.—The term 'taxable vaccine' means any vaccine—

"(A) which is listed in the table contained in section 4131(b)(1), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) DPT VACCINE.—The term 'DPT vaccine' means any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.

"(3) DT VACCINE.—The term 'DT vaccine' means any vaccine (other than a DPT vaccine) containing diphtheria toxoid or tetanus toxoid.

"(4) MMR VACCINE.—The term "MMR vaccine' means any vaccine against measles, mumps, or rubella. Not more than 1 tax shall be imposed by section 4131 on any MMR vaccine by reason of being a vaccine against more than 1 of measles, mumps, or rubella.

"(5) POLIO VACCINE.—The term 'polio vaccine' means any vaccine containing polio virus.

"(6) VACCINE.—The term 'vaccine' means any substance designed to be administered to a human being for the prevention of 1 or more diseases.

"(7) UNITED STATES.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(8) IMPORTER.—The term 'importer' means the person entering the vaccine for consumption, use, or warehousing.

"(b) CREDIT OR REFUND WHERE VACCINE RETURNED TO MANUFACTURER, ETC., OR DESTROYED.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, whenever any vaccine on which tax was imposed by section 4131 is—

"(A) returned (other than for resale) to the person who paid such tax, or

"(B) destroyed,

the Secretary shall abate such tax or allow a credit, or pay a refund (without interest), to such person equal to the tax paid under section 4131 with respect to such vaccine.

"(2) CLAIM MUST BE FILED WITHIN 6 MONTHS.—Paragraph (1) shall apply to any returned or destroyed vaccine only with respect to claims filed within 6 months after the date the vaccine is returned or destroyed.

"(3) CONDITION OF ALLOWANCE OF CREDIT OR REFUND.—No credit or refund shall be allowed or made under paragraph (1) with respect to any vaccine unless the person who paid the tax establishes that he—

"(A) has repaid or agreed to repay the amount of the tax to the ultimate purchaser of the vaccine, or

"(B) has obtained the written consent of such purchaser to the allowance of the credit or the making of the refund.

"(4) TAX IMPOSED ONLY ONCE.—No tax shall be imposed by section 4131 on the sale of any vaccine if tax was imposed by section 4131 on any prior sale of such vaccine and such tax is not abated, credited, or refunded.

"(c) OTHER SPECIAL RULES.—

"(1) FRACTIONAL PART OF A DOSE.—In the case of a fraction of a dose, the tax imposed by section 4131 shall be the same fraction of the amount of such tax imposed by a whole dose.

"(2) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4131."

(b) CERTAIN PROVISIONS RELATING TO TAX-FREE SALES, ETC. NOT TO APPLY.—

26 USC 4221. (1) Subsection (a) of section 4221 of such Code (relating to certain tax-free sales) is amended by adding at the end thereof the following new sentence: "In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe."

(2) Paragraph (2) of section 6416(b) of such Code (relating to specified uses or resales) is amended by adding at the end thereof the following new sentence: "In the case of the tax imposed by section 4131, subparagraphs (B), (C), and (D) shall not apply and subparagraph (A) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe."

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 32 of such Code is amended by inserting after the item relating to subchapter B the following new item:

"SUBCHAPTER C. Certain vaccines."

26 USC 4131 note. (d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1988.

SEC. 9202. VACCINE INJURY COMPENSATION TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end thereof the following new section:

26 USC 9510. "SEC. 9510. VACCINE INJURY COMPENSATION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Vaccine Injury Compensation Trust Fund', consisting of such amounts as may be credited to such Trust Fund as provided in section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—

"(1) IN GENERAL.—There are hereby appropriated to the Vaccine Injury Compensation Trust Fund amounts equivalent to the net revenues received in the Treasury from the tax imposed by section 4131 (relating to tax on certain vaccines).

"(2) NET REVENUES.—For purposes of paragraph (1), the term 'net revenues' means the amount estimated by the Secretary based on the excess of—

"(A) the taxes received in the Treasury under section 4131 (relating to tax on certain vaccines), over

"(B) the decrease in the tax imposed by chapter 1 resulting from the tax imposed by section 4131.

"(c) EXPENDITURES FROM TRUST FUND.—

"(1) IN GENERAL.—Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on the date of the enactment of this section) for vaccine-related injury or death with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

"(2) TRANSFERS FOR CERTAIN REPAYMENTS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Vaccine Injury Compensation Trust Fund into the general fund of the Treasury amounts equivalent to amounts paid under section 4132(b) and section 6416 with respect to the taxes imposed by section 4131.

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Vaccine Injury Compensation Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the National Childhood Vaccine Injury Act of 1986 (or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Vaccine Injury Compensation Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS TO BE PAID.—If at any time the Vaccine Injury Compensation Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1) be paid in full in the order in which they are finally determined."

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

"Sec. 9510. Vaccine Injury Compensation Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1988. 26 USC 9510 note.

Subtitle D—Pension Provisions

PART I—FULL-FUNDING LIMITATIONS

SEC. 9301. FULL-FUNDING LIMITATION FOR DEDUCTIONS TO QUALIFIED PLANS.

(a) GENERAL RULE.—Paragraph (7) of section 412(c) of the Internal Revenue Code of 1986 (defining full-funding limitation) is amended to read as follows: 26 USC 412.

"(7) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) CURRENT LIABILITY.—For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (l)(7) (without regard to subparagraph (D) thereof).

"(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

"(D) REGULATORY AUTHORITY.—The Secretary may by regulations provide—

"(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants,

"(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i), and

"(iii) for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I)."

(b) AMENDMENT TO ERISA.—Paragraph (7) of section 302(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)) is amended to read as follows:

"(7) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of current liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) CURRENT LIABILITY.—For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (d)(7) (without regard to subparagraph (D) thereof).

"(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

"(D) REGULATORY AUTHORITY.—The Secretary of the Treasury may by regulations provide—

"(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants, "(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i), and

"(iii) for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I)."

(c) EFFECTIVE DATE.— 26 USC 412 note.

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning after December 31, 1987.

(2) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as are necessary to carry out the amendments made by this section no later than August 15, 1988.

(3) STUDY.—The Secretary of the Treasury or his delegate shall study the effect of the amendments made by this section on benefit security under defined benefit pension plans and shall report the results of such study to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate no later than August 15, 1988.

PART II—PENSION FUNDING AND TERMINATION REQUIREMENTS

Pension Protection Act.

SEC. 9302. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This part may be cited as the "Pension Protection Act". 26 USC 1 note.

(b) DEFINITIONS.—For purposes of this part—

(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) ERISA.—The term "ERISA" means the Employee Retirement Income Security Act of 1974.

Subpart A—Modifications of Minimum Funding Standard

SEC. 9303. ADDITIONAL FUNDING REQUIREMENTS.

(a) AMENDMENTS TO 1986 CODE.—

(1) IN GENERAL.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection: 26 USC 412.

"(l) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability determined without regard to such benefit increase.

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 multiplied by

"(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the applicable percentage of the product of—

"(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

"(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs).

"(B) APPLICABLE PERCENTAGE.—

"In the case of plan years beginning in:	The applicable percentage is:
1989 and 1990	5
1991	10
1992	15
1993	20
1994	30
1995	40
1996	50
1997	60
1998	70
1999	80
2000	90
2001 and thereafter	100.

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987.

"(D) SPECIAL RULE FOR FIRST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary).

"(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

"If the years of participation are:	The applicable percentage is:
1	20
2	40
3	60
4	80
5 or more	100.

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 412(b) of the 1986 Code is amended by adding at the end thereof the following new sentence: [94] "For additional requirements in the case of plans other than multiemployer plans, see subsection (l)." 26 USC 412.

(b) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Section 302 of ERISA (29 U.S.C. 1082) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

[94] Incorrect indention in copy.

"(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) which has an unfunded current liability for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

"(A) the excess (if any) of—

"(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

"(ii) the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus

"(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.

"(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

"(A) the unfunded old liability amount, plus

"(B) the unfunded new liability amount.

"(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

"(B) UNFUNDED OLD LIABILITY.—The term 'unfunded old liability' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

"(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

"(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 17, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

"(I) the plan year in which the benefit increase with respect to such liability occurs, or

"(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

"(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

"(I) by taking into account only liabilities attributable to such benefit increase, and

"(II) by reducing the amount determined under paragraph (8)(A)(ii) by the current liability determined without regard to such benefit increase.

"(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 16, 1987, shall not be taken into account.

"(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

"(B) UNFUNDED NEW LIABILITY.—The term 'unfunded new liability' means the unfunded current liability of the plan for the plan year determined without regard to—

"(i) the unamortized portion of the unfunded old liability, and

"(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

"(C) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, with respect to any plan year, 30 percent, reduced by the product of—

"(i) .25 multiplied by

"(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 35 percent.

"(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

"(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greater of—

"(i) the applicable percentage of the product of—

"(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

"(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits, or Contracts.

"(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs).

"(B) APPLICABLE PERCENTAGE.—

"In the case of plan years beginning in:	The applicable percentage is:
1989 and 1990	5
1991	10
1992	15
1993	20
1994	30
1995	40
1996	50
1997	60
1998	70
1999	80
2000	90
2001 and thereafter	100.

"(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before October 17, 1987.

"(D) SPECIAL RULE FOR FIRST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary of the Treasury to reflect the application of this subparagraph.

"(6) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

"(i) such increase determined without regard to this subparagraph, multiplied by

"(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(7) CURRENT LIABILITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'current liability' means all liabilities to participants and their beneficiaries under the plan.

"(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

"(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—

The term 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).

"(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).

"(D) CERTAIN SERVICE DISREGARDED.—

"(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

"If the years of participation are:	The applicable percentage is:
1	20
2	40
3	60
4	80
5 or more	100.

"(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

"(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member, and

"(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987.

"(8) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means, with respect to any plan year, the excess (if any) of—

"(i) the current liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term 'funded current liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the current liability under the plan.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections[94a] (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

"(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary of the Treasury shall provide such adjustments in the unfunded old liability amount, the un-

[94a] Copy read "subsection".

funded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits."

26 USC 412 note.

(c) REVISION OF VALUATION REGULATIONS.—Effective with respect to plan years beginning after December 31, 1987, the provisions of the regulations prescribed under section 412(c)(2) of the 1986 Code which permit asset valuations to be based on a range between 85 percent and 115 percent of average value shall have no force and effect with respect to plans other than multiemployer plans (as defined in section 414(f) of the 1986 Code). The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.

(d) VALUATION OF BONDS.—

Regulations. 26 USC 412.

(1) AMENDMENT TO 1986 CODE.—Subparagraph (B) of section 412(c)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5)."

Regulations. 29 USC 1082.

(2) AMENDMENT TO ERISA.—Subparagraph (B) of section 302(c)(2) of ERISA is amended by adding at the end thereof the following new sentence: "In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary of the Treasury may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5)."

26 USC 412 note.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply with respect to plan years beginning after December 31, 1988.

(2) SUBSECTIONS (C) AND (D).—The amendments made by subsections (c) and (d) shall apply with respect to years beginning after December 31, 1987.

(3) SPECIAL RULE FOR STEEL COMPANIES.—

(A) IN GENERAL.—For any plan year beginning before January 1, 1994, any increase in the funding standard account under section 412(l) of the 1986 Code or section 302(d) of ERISA (as added by this section) with respect to any steel employee plan shall not exceed the sum of—

(i) the required percentage of the current liability under such plan, plus

(ii) the amount determined under subparagraph (C)(i) for such plan year.

(B) REQUIRED PERCENTAGE.—For purposes of subparagraph (A), the term "required percentage" means, with respect to any plan year, the excess (if any) of—

(i) the sum of—

(I) the funded current liability percentage as of the beginning of the 1st plan year beginning after December 31, 1988 (determined without regard to any plan amendment adopted after June 30, 1987), plus

(II) 1 percentage point for the plan year for which the determination under this paragraph is being made and for each prior plan year beginning after December 31, 1988, over

(ii) the funded current liability percentage as of the beginning of the plan year for which such determination is being made.

(C) SPECIAL RULES FOR CONTINGENT EVENTS.—In the case of any unpredictable contingent event benefit with respect to which the event on which such benefits are contingent occurs after December 17, 1987—

(i) AMORTIZATION AMOUNT.—For purposes of subparagraph (A)(ii), the amount determined under this clause for any plan year is the amount which would be determined if the unpredictable contingent event benefit liability were amortized in equal annual installments over 10 plan years (beginning with the plan year in which such event occurs).

(ii) BENEFIT AND CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (B), in determining the funded current liability percentage for any plan year, there shall not be taken into account—

(I) the unpredictable contingent event benefit liability, or

(II) any amount contributed to the plan which is attributable to clause (i).

(D) STEEL EMPLOYEE PLAN.—For purposes of this paragraph, the term "steel employee plan" means any plan if—

(i) such plan is maintained by a steel company, and

(ii) substantially all of the employees covered by such plan are employees of such company.

(E) OTHER DEFINITIONS.—For purposes of this paragraph—

(i) STEEL COMPANY.—The term "steel company" means any corporation described in section 806(b) of the Steel Import Stabilization Act.

(ii) OTHER DEFINITIONS.—The terms "current liability", "funded current liability percentage", and "unpredictable contingent event benefit" have the meanings given such terms by section 412(l) of the 1986 Code (as added by this section).

(F)[95] SPECIAL RULE.—The provisions of this paragraph shall apply in the case of a company which was originally incorporated on April 25, 1927, in Michigan and reincorporated on June 3, 1968, in Delaware in the same manner as if such company were a steel company.

SEC. 9304. TIME FOR MAKING CONTRIBUTIONS.

(a) PERIOD DURING WHICH CONTRIBUTIONS MAY BE MADE AFTER CLOSE OF YEAR.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (10) of section 412(c) of the 1986 Code (relating to time when certain contributions deemed made) is amended to read as follows: 26 USC 412.

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section—

"(A) PLANS OTHER THAN MULTIEMPLOYER PLANS.—In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

[95] Copy read "(E)".

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the day which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) MULTIEMPLOYER PLANS.—In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary."

(2) AMENDMENT TO ERISA.—Paragraph (10) of section 302(c) of ERISA (relating to time when certain contributions deemed made) (29 U.S.C. 1082(c)(10))[96] is amended to read as follows:

"(10) For purposes of this section—

"(A) In the case of a plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

"(i) beginning on the day after the last day of such plan year, and

"(ii) ending on the date which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

"(B) In the case of a multiemployer plan, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day.

Regulations.

For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury."

26 USC 412 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987.

(b) QUARTERLY ESTIMATED PAYMENTS REQUIRED.—

26 USC 412.

(1) AMENDMENT TO 1986 CODE.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection:

"(m) QUARTERLY CONTRIBUTIONS REQUIRED.—

"(1) IN GENERAL.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.— For purposes of paragraph (1)—

"(A) AMOUNT.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

[96] Copy read "1082(c)(10)".

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) PERIOD OF UNDERPAYMENT.—The period for which interest is charged under this subsection with regard to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(10)).

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

"(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 (without regard to any waiver under subsection (c) thereof), or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

"For plan years beginning in:	The applicable percentage is:
1989	6.25
1990	12.5
1991	18.75
1992 and thereafter	25.

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and "(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (l)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (l)(5)(A)(ii) for the plan year.

"(5) FISCAL YEARS AND SHORT YEARS.—

"(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) SHORT PLAN YEAR.—This subsection shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(2) AMENDMENT TO ERISA.—Section 302 of ERISA (29 U.S.C. 1082) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) QUARTERLY CONTRIBUTIONS REQUIRED.—

"(1) IN GENERAL.—If a plan (other than a multiemployer plan) fails to pay the full amount of a required installment for any plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

"(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

"(B) the rate under subsection (b)(5).

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) AMOUNT.—The amount of the underpayment shall be the excess of—

"(i) the required installment, over

"(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(B) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this subsection with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(10)).

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

"(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 of the Internal Revenue Code of 1986 (without regard to any waiver under subsection (c) thereof), or

"(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

"For plan years beginning in:	The applicable percentage is:
1989	6.25
1990	12.5
1991	18.75
1992 and thereafter	25.

"(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan with any unpredictable contingent event benefit liabilities—

"(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

"(ii) each required installment shall be increased by the greater of—

"(I) the amount of benefits described in subsection (d)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

"(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year.

"(5) FISCAL YEARS AND SHORT YEARS.—

"(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

"(B) SHORT PLAN YEAR.—This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury." Regulations.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan years beginning after 1988. 26 USC 412 note.

(c) INCREASE IN EXCISE TAX FROM 5 PERCENT TO 10 PERCENT.—

26 USC 4971.

(1) IN GENERAL.—Section 4971(a) of the 1986 Code (relating to initial tax on failure to meet minimum funding standards) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent (5 percent in the case of a multiemployer plan)".

26 USC 4971 note.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after 1988.

(d) REQUIREMENT OF NOTICE.—Section 101 of ERISA (relating to duty of disclosure and reporting) (29 U.S.C. 1021) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) NOTICE OF FAILURE TO MEET MINIMUM FUNDING STANDARDS.—

"(1) IN GENERAL.—If an employer of a plan other than a multiemployer plan fails to make a required installment or other payment required to meet the minimum funding standard under section 302 to a plan before the 60th day following the due date for such installment or other payment, the employer shall notify each participant and beneficiary (including an alternate payee as defined in section 206(d)(3)(K)) of such plan of such failure. Such notice shall be made at such time and in such manner as the Secretary may prescribe.

"(2) SUBSECTION NOT TO APPLY IF WAIVER PENDING.—This subsection shall not apply to any failure if the employer has filed a waiver request under section 303 with respect to the plan year to which the required installment relates, except that if the waiver request is denied, notice under paragraph (1) shall be provided within 60 days after the date of such denial.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'required installment' and 'due date' have the same meanings given such terms by section 302(e)."

(e) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

(1) AMENDMENT TO 1986 CODE.—Section 412 of the 1986 Code (as amended by this subtitle) is amended by adding at the end thereof the following new subsection:

"(n) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—In the case of a plan to which this section applies, if—

"(A) any person fails to make a required installment under subsection (m) or any other payment required under this section before the due date for such installment or other payment, and

"(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (l)(8)(B)) of such plan is less than 100 percent.

"(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

"(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

"(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

"(i) for plan years beginning after 1987, and

"(ii) for which payment has not been made before the due date.

"(4) NOTICE OF FAILURE; LIEN.—

"(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the 60th day following the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

"(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

"(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (m), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section.[97]

"(B) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414."

(2) AMENDMENT TO ERISA.—Section 302 of ERISA (as amended by this subtitle) (29 U.S.C. 1082) is amended by redesignating subsection (f) as subsection (g) and by adding after subsection (e) the following new subsection:

"(f) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—In the case of a plan to which this section applies, if—

[97] Copy read "section." ".

"(A) any person fails to make a required installment under subsection (e) or any other payment required under this section before the due date for such installment or other payment, and

"(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (d)(8)(B)) of such plan is less than 100 percent.

"(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

"(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

"(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

"(i) for plan years beginning after 1987, and

"(ii) for which payment has not been made before the due date.

"(4) NOTICE OF FAILURE; LIEN.—

"(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the 60th day following the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

"(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

"(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (e), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section."

"(B) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1987. 26 USC 412 note.

SEC. 9305. LIABILITY OF MEMBERS OF CONTROLLED GROUP FOR TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS AND TO MAKE MINIMUM FUNDING CONTRIBUTIONS.

(a) EXCISE TAX.—

(1) IN GENERAL.—Section 4971 of the 1986 Code (relating to taxes on failure to meet minimum funding standards) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection: 26 USC 4971.

"(e) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the tax imposed by subsection (a) or (b) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a) or (b).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (a) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(B) Subsection (b) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(b) MINIMUM FUNDING CONTRIBUTIONS.—

(1) AMENDMENT TO 1986 CODE.—Section 412(c) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(11) LIABILITY FOR CONTRIBUTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (m) shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A).

"(B) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(i) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

"(ii) CONTROLLED GROUP.—For purposes of clause (i), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) AMENDMENT TO ERISA.—Section 302(c) of ERISA (29 U.S.C. 1082(c)) is amended by adding at the end thereof the following new paragraph:

"(11) LIABILITY FOR CONTRIBUTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (e) shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A).

"(B) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(i) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

"(ii) CONTROLLED GROUP.—For purposes of clause (i), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986." [98]

26 USC 414. (c) CONFORMING AMENDMENT.—Section 414(b) of the 1986 Code is amended by striking out "the minimum funding standard of section 412, the tax imposed by section 4971, and".

26 USC 412 note. (d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1987.

SEC. 9306. FUNDING WAIVERS.

(a) REQUIREMENTS FOR WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—Subsection (d) of section 412 of the 1986 Code (relating to variance from minimum funding standard) is amended by adding at the end thereof the following new paragraph:

"(4) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Subsection (d) of section 412 of the 1986 Code is amended—

(i) by striking out "substantial business hardship" in paragraphs (1) and (2) and inserting in lieu thereof "temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)", and

[98] Indention on paragraphs " '(11)", " '(A)", " '(B)", " '(i)", and " '(ii)", incorrect.

(ii) by striking out "SUBSTANTIAL" in the headings of paragraphs (1) and (2).

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 412 of the 1986 Code is amended by adding at the end thereof the following new paragraph: 26 USC 412.

"(5) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this subsection.

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) AMENDMENTS TO ERISA.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—Section 303 of ERISA (relating to variance from minimum funding standard) (29 U.S.C. 1083) is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsection:

"(d) SPECIAL RULES.—

"(1) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this section with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Section 303 of ERISA (29 U.S.C. 1083) is amended by striking out "substantial business hardship" in subsections (a) and (b) and inserting in lieu thereof "temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)".

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 303 of ERISA (as amended by subparagraph (A)) (29 U.S.C. 1083) is amended by adding at the end thereof the following new paragraph:

"(2) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of subsection (a) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this subsection.

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(b) FREQUENCY OF WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—The second sentence of section 412(d)(1) of the 1986 Code is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

26 USC 412.

(2) AMENDMENTS TO ERISA.—The second sentence of section 303(a) of ERISA (29 U.S.C. 1083(a)) is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)".

(c) INTEREST ON REPAYMENT OF WAIVED CONTRIBUTIONS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Paragraph (1) of section 412(d) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—

"(A) in the case of a plan other than a multiemployer plan, the greater of (i) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (ii) the rate of interest used under the plan in determining costs, and

"(B) in the case of a multiemployer plan, the rate determined under section 6621(b)."

(B) Subsection (e) of section 412 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621(b)."

(2) AMENDMENTS TO ERISA.—

(A) Subsection (a) of section 303 of ERISA (29 U.S.C. 1083(a)) is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—

"(A) in the case of a plan other than a multiemployer plan, the greater of (i) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (ii) the rate of interest used under the plan in determining costs, and

"(B) in the case of a multiemployer plan, the rate determined under section 6621(b)."

(B) Subsection (a) of section 304 of ERISA (29 U.S.C. 1084(a)) is amended by striking out the last sentence and inserting in lieu thereof the following new sentence:

"In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621(b) of such Code."

(d) NOTICE TO PARTICIPANTS OF APPLICATION FOR FUNDING WAIVERS.—

(1) AMENDMENT TO 1986 CODE.—Section 412 (f)(4)(A) of the 1986 Code (relating to advance notice) is amended by striking out "plan." and inserting in lieu thereof "plan, and each participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and the benefit liabilities.". 26 USC 412.

(2) AMENDMENT TO ERISA.—Section 303(e)(1) of ERISA (relating to advance notice) (29 U.S.C. 1083(e)(1)) is amended by striking out "plan." and inserting in lieu thereof "plan, and each affected party (as defined in section 4001(a)(21)) other than the Pension Benefit Guaranty Corporation. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and the benefit liabilities.".

(e) DECREASE IN AMOUNT OF DEFICIENCIES REQUIRED BEFORE SECURITY REQUIRED.—

(1) AMENDMENT TO 1986 CODE.—Subparagraph (C) of section 412 (f)(3) is amended by striking out "$2,000,000" and inserting in lieu thereof "$1,000,000".

(2) AMENDMENT TO ERISA.—Section 306(c)(1) of ERISA (29 U.S.C. 1085a(c)(1)) is amended by striking out "$2,000,000" and inserting in lieu thereof "$1,000,000".

(f) EFFECTIVE DATES.— 26 USC 412 note.

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply in the case of—

(A) any application submitted after December 17, 1987, and

(B) any waiver granted pursuant to such an application.

(2) SPECIAL RULE FOR APPLICATION REQUIREMENT.—

(A) IN GENERAL.—The amendments made by subsections (a)(1)(A) and (a)(2)(A) shall apply to plan years beginning after December 31, 1987.

(B) TRANSITIONAL RULE FOR YEARS BEGINNING IN 1988.—In the case of any plan year beginning during calendar 1988, section 412(d)(4) of the 1986 Code and section 303(d)(1) of ERISA (as added by subsection (a)(1)) shall be applied by substituting "6th month" for "3rd month".

(3) FREQUENCY OF WAIVERS.—In applying the second sentence of section 412(d) of the 1986 Code and section 303(a) of ERISA to plans other than multiemployer plans, the number of waivers which may be granted pursuant to applications submitted after December 17, 1987, shall be determined without regard to waivers granted with respect to plan years beginning before January 1, 1988.

(4) SUBSECTION (d).—The amendments made by subsection (d) shall apply to applications submitted more than 90 days after the date of the enactment of this Act.

SEC. 9307. OTHER FUNDING CHANGES.

(a) AMORTIZATION PERIODS.—

(1) AMENDMENTS TO 1986 CODE.—

26 USC 412.

(A) Paragraphs (2)(B)(iv), (2)(C), and (3)(B)(ii) of section 412(b) of the 1986 Code are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)".

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 412(b) of the 1986 Code are each amended by striking out "30 plan years" and inserting in lieu thereof "10 plan years (30 plan years in the case of a multiemployer plan)".

(2) AMENDMENTS TO ERISA.—

(A) Paragraphs (2)(B)(iv), (2)(C), and (3)(B)(ii) of section 302(b) of ERISA (29 U.S.C. 1082(b)) are each amended by striking out "15 plan years" and inserting in lieu thereof "5 plan years (15 plan years in the case of a multiemployer plan)".

(B) Paragraphs (2)(B)(v) and (3)(B)(iii) of section 302(b) of ERISA (29 U.S.C. 1082(b)) are each amended by striking out "30 plan years" and inserting in lieu thereof "10 plan years (30 plan years in the case of a multiemployer plan)".

(b) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (3) of section 412(c) of the 1986 Code is amended to read as follows:

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) in the case of—

"(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

"(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

'(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(2) AMENDMENT TO ERISA.—Paragraph (3) of section 302(c) of ERISA (29 U.S.C. 1082(c)(3)) is amended to read as follows:

"(3) For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) in the case of—

"(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

"(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(c) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS TO CERTAIN PLANS NOT LESS THAN UNFUNDED CURRENT LIABILITY.—Paragraph (1) of section 404(a) of the 1986 Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph: 26 USC 404.

"(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(l) (without regard to any reduction by the credit balance in the funding standard account). For purposes of this subparagraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(c))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account."

(d) LIMITATION ON AMORTIZATION OF PAST SERVICE CREDITS.—Clause (iii) of section 404(a)(1)(A) of the 1986 Code (relating to pension trusts) is amended by striking out "to amortize such credits" and inserting in lieu thereof "to amortize the unfunded costs attributable to such credits".

(e) LIMITATION ON INTEREST RATE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (5) of section 412(b) of the 1986 Code (relating to interest) is amended to read as follows:

"(5) INTEREST.—

"(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs. Regulations.

"(B) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 412(l) for any plan year—

"(i) IN GENERAL.—If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 10 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under subclause (I).

"(iii) ASSUMPTIONS.—Notwithstanding subsection (c)(3)(A)(i), for purposes of this section and for purposes of determining current liability, the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.".

(2) AMENDMENT TO ERISA.—Paragraph (5) of section 302(b) of ERISA (relating to interest) (29 U.S.C. 1082(b)(5)) is amended to read as follows:

"(5) INTEREST.—For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 412(l) for any plan year—

Regulations.

"(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(B) REQUIRED CHANGE OF INTEREST RATE.—

"(i) IN GENERAL.—If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 10 percent above, and not more than 10 percent below, the average rate of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under subclause (I).

"(iii) ASSUMPTIONS.—Notwithstanding subsection (c)(3)(A)(i), for purposes of this section and for purposes of determining current liability, the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.".[98a]

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1987. 26 USC 404 note.

Subpart B—Plan Terminations

SEC. 9311. LIMITATIONS ON EMPLOYER REVERSIONS UPON PLAN TERMINATION.

(a) RESTRICTIONS ON REVERSIONS PURSUANT TO RECENTLY AMENDED PLANS.—

(1) IN GENERAL.—Section 4044(d) of ERISA (29 U.S.C. 1344(d)) is amended—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following new paragraph:

"(2)(A) In determining the extent to which a plan provides for the distribution of plan assets to the employer for purposes of paragraph (1)(C), any such provision, and any amendment increasing the amount which may be distributed to the employer, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment.

"(B) A distribution to the employer from a plan shall not be treated as failing to satisfy the requirements of this paragraph if the plan has been in effect for fewer than 5 years and the plan has provided for such a distribution since the effective date of the plan.

"(C) Except as otherwise provided in regulations of the Secretary of the Treasury, in any case in which a transaction described in section 208 occurs, subparagraph (A) shall continue to apply separately with respect to the amount of any assets transferred in such transaction. Regulations.

"(D) For purposes of this subsection, the term 'employer' includes any member of the controlled group of which the employer is a member. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986."

(2) TRANSITIONAL RULE.—The amendments made by paragraph (1) shall apply, in the case of plans which, as of December 17, 1987, have no provision relating to the distribution of plan assets to the employer for purposes of section 4044(d)(1)(C) of the Employee Retirement Income Security Act of 1974, only with respect to plan amendments providing for the 29 USC 1344 note.

[98a] Copy read "plan."

distribution of plan assets to the employer which are adopted after 1 year after the effective date of such amendments made by paragraph (1). Such amendment shall not apply to any provision of the plan adopted on or before December 17, 1987, which provides for the distribution of plan assets to the employer.

(b) DISTRIBUTION OF ASSETS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—Section 4044(d) of ERISA (29 U.S.C. 1344(d)) is amended—

(1) in paragraph (1), by striking "Any" and inserting "Subject to paragraph (3), any"; and

(2) by striking paragraph (3) (as redesignated by subsection (c)(1)) and inserting the following new paragraph:

"(3)(A) Before any distribution from a plan pursuant to paragraph (1), if any assets of the plan attributable to employee contributions remain after satisfaction of all liabilities described in subsection (a), such remaining assets shall be equitably distributed to the participants who made such contributions or their beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)).

"(B) For purposes of subparagraph (A), the portion of the remaining assets which are attributable to employee contributions shall be an amount equal to the product derived by multiplying—

"(i) the market value of the total remaining assets, by

"(ii) a fraction—

"(I) the numerator of which is the present value of all portions of the accrued benefits with respect to participants which are derived from participants' mandatory contributions (referred to in subsection (a)(2)), and

"(II) the denominator of which is the present value of all benefits with respect to which assets are allocated under paragraphs (2) through (6) of subsection (a).

"(C) For purposes of this paragraph, each person who is, as of the termination date—

"(i) a participant under the plan, or

"(ii) an individual who has received, during the 3-year period ending with the termination date, a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution in accordance with section 203(e) or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit,

shall be treated as a participant with respect to the termination, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to participants' mandatory contributions (referred to in subsection (a)(2))."

(c) TECHNICAL AMENDMENT.—Section 4044(b)(4) of ERISA (29 U.S.C. 1344(b)(4)) is amended by striking "section 401(a), 403(a), or 405(a)" and inserting "section 401(a) or 403(a)".

29 USC 1344 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to—

(1) plan terminations under section 4041(c) of ERISA with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

(2) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA after December 17, 1987.

SEC. 9312. ELIMINATION OF SECTION 4049 TRUST; INCREASE IN LIABILITY TO PENSION BENEFIT GUARANTY CORPORATION AND IN PAYMENTS BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES.

(a) REPEAL.—Section 4049 of ERISA (29 U.S.C. 1349) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) ELIMINATION OF EMPLOYER LIABILITY TO SECTION 4049 TRUST.—

(A) REPEAL.—Subsection (c) of section 4062 of ERISA (29 U.S.C. 1362(c)) is repealed.

(B) CONFORMING AMENDMENTS.—Section 4062 of ERISA is further amended by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(2) INCREASE IN EMPLOYER LIABILITY TO THE CORPORATION.—

(A) IN GENERAL.—Subparagraph (A) of section 4062(b)(1) of ERISA (29 U.S.C. 1362(b)(1)(A)) is amended to read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) shall be the total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation." Regulations.

(B) LIEN LIMITED TO 30 PERCENT OF NET WORTH.—

(i) Subsection (a) of section 4068 of ERISA (29 U.S.C. 1368(a)) is amended by striking out "to the extent of an amount equal to the unpaid amount described in section 4062(b)(1)(A)(i)" each place it appears and inserting in lieu thereof "to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 4062(a)".

(ii) Title IV of ERISA (29 U.S.C. 4001 et seq.) is amended by transferring subsection (e) of section 4062 of ERISA (29 U.S.C. 1362(e)) to the end of section 4068 of ERISA (29 U.S.C. 1368) and by redesignating such subsection as subsection (f).

(C) TREATMENT OF MULTIPLE CONTROLLED GROUPS.—

(i) IN GENERAL.—So much of section 4064(b) of ERISA (29 U.S.C. 1364(b)) as precedes the second sentence is amended to read as follows:

"(b) The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 4062, except that the amount of liability determined under section 4062(b)(1) with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by a fraction—

"(1) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

"(2) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors, and clauses (i)(II) and (ii) of section 4062(b)(1)(A) shall be applied separately with respect to each controlled group."

(ii) CONFORMING AMENDMENTS.—Section 4068(a) of ERISA (29 U.S.C. 1368(a)) is amended by adding at the end thereof the following new sentence: "The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 4064(d) relating to treatment of multiple controlled groups."

(3) PAYMENT BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES OF RECOVERY PERCENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LIABILITIES.—

(A) IN GENERAL.—Section 4022 of ERISA (29 U.S.C. 1322) is amended—

(i) by redesignating subsections (c) and (d) as subsections (d) and (e); and

(ii) by inserting after subsection (b) the following new subsection:

"(c)(1) In addition to benefits paid under the preceding provisions of this section with respect to a terminated plan, the corporation shall pay the portion of the amount determined under paragraph (2) which is allocated with respect to each participant under section 4044(a), to such participant or (in the case of a deceased participant) to such participant's beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)).

"(2) The amount determined under this paragraph is an amount equal to the product derived by multiplying—

"(A) the outstanding amount of benefit liabilities under the plan (including interest calculated from the termination date), by

"(B) the applicable recovery ratio.

"(3)(A) Except as provided in subparagraph (C), for purposes of this subsection, the term 'recovery ratio' means the average ratio, with respect to prior plan terminations described in subparagraph (B), of—

"(i) the value of the recovery of the corporation under section 4062, 4063, or 4064 in connection with such prior terminations, to

"(ii) the amount of unfunded benefit liabilities under such plans as of the termination date in connection with such prior terminations.

"(B) A plan termination described in this subparagraph is a termination with respect to which—

"(i) the corporation has determined the value of recoveries under section 4062, 4063, or 4064, and

"(ii) notices of intent to terminate were provided after December 17, 1987.

"(C) In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds $20,000,000, for purposes of this section, the term 'recovery ratio' means, with respect to the termination of such plan, the ratio of—

"(i) the value of the recoveries of the corporation under section 4062, 4063, or 4064 in connection with such plan, to

"(ii) the amount of unfunded benefit liabilities under such plan as of the termination date.

"(4) Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable."

(B) TRANSITIONAL RULE.— 29 USC 1322 note.

(i) IN GENERAL.—In the case of any plan termination to which the amendments made by this section apply and with respect to which notices of intent to terminate were provided on or before December 17, 1990—

(I) subparagraph (A) of section 4022(c)(1) of ERISA (as amended by this paragraph) shall not apply, and

(II) subparagraph (B) of section 4022(c)(1) of ERISA (as so amended) shall apply irrespective of the outstanding amount of benefit liabilities under the plan.

(ii) LIMITATION.—Clause (i) shall not apply in the case of any plan termination referred to in clause (i) with respect to which the recovery ratio is not finally determined under section 4022(c)(1)(B) of ERISA (as so amended) as of December 17, 1990.

(4) BENEFIT LIABILITIES.—Paragraph (16) of section 4001(a) of ERISA (29 U.S.C. 1301(a)(16)) is amended to read as follows:

"(16) 'benefit liabilities' means the benefits of employees and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Internal Revenue Code of 1986);".

(5) OUTSTANDING AMOUNT OF BENEFIT LIABILITIES.—Paragraph (19) of section 4001(a) of ERISA (29 U.S.C. 1301(a)(19)) is amended to read as follows:

"(19) 'outstanding amount of benefit liabilities' means, with respect to any plan, the excess (if any) of—

"(A) the value of the benefit liabilities under the plan (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the value of the benefit liabilities which would be so determined by only taking into account benefits which are guaranteed under section 4022 or to which assets of the plan are allocated under section 4044;".

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 4041(c)(3)(B)(ii) of ERISA (29 U.S.C. 1341(c)(3)(B)(ii)) is amended—

(A) by striking subclause (II);

(B) by striking "plan, and" at the end of subclause (I) and inserting "plan."; and

(C) by striking "available to it—" and all that follows through "the plan administrator" and inserting "available to it, the plan administrator".

(2) Section 4041(c)(3)(B)(iii) of ERISA (29 U.S.C. 1341(c)(3)(B)(iii)) is amended—

(A) by striking subclause (II);

(B) by striking "section 4042, and" at the end of subclause (I) and inserting "section 4042."; and

(C) by striking "available to it—" and all that follows through "the corporation" in subclause (I) and inserting "available to it, the corporation".

(3) Subsection (i) of section 4042 of ERISA (29 U.S.C. 1342(i)) is repealed.

(4) Section 4005(g) of ERISA (29 U.S.C. 1305(g)) is amended by striking out "or fiduciaries with respect to trusts to which the requirements of section 4049 apply".

29 USC 1301 note.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to—

(A) plan terminations under section 4041(c) of ERISA with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

(B) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA after December 17, 1987.

Regulations. 29 USC 1349.

(2) SECTION 4049 ADMINISTRATIVE EXPENSES UNDER PRIOR TERMINATIONS.—Section 4049(a) of ERISA (as effective under paragraph (1)), is amended by adding at the end thereof the following new sentence: "Reasonable administrative expenses incurred in carrying out the responsibilities under this section prior to the receipt of any liability payments under section 4062(c) shall be paid by the persons described in section 4062(a) in accordance with procedures which shall be prescribed by the corporation by regulation, and the amount of the liability determined under section 4062(c) shall be reduced by the amount of such expenses so paid."

SEC. 9313. STANDARDS FOR TERMINATION.

(a) STANDARD TERMINATION PROCEDURES AVAILABLE ONLY WHEN ASSETS SUFFICIENT TO MEET BENEFIT LIABILITIES.—

(1) IN GENERAL.—Subparagraph (D) of section 4041(b)(1) of ERISA (29 U.S.C. 1341(b)(1)(D)) is amended to read as follows:

"(D) when the final distribution of assets occurs, the plan is sufficient for benefit liabilities (determined as of the termination date)."

(2) TECHNICAL AMENDMENTS.—

(A) Paragraphs (2)(A), (2)(C), (2)(D), and (3) of section 4041(b) of ERISA (29 U.S.C. 1341(b)(2)(A), (2)(C), (2)(D), (3)) are each amended by striking out "benefit commitments" each place it appears and inserting in lieu thereof "benefit liabilities".

(B) Subparagraph (B) of section 4041(b)(2) of ERISA (29 U.S.C. 1341(b)(2)(B)) is amended—

(i) by striking out "the amount of such person's benefit commitments (if any)" and inserting in lieu thereof "the amount of the benefit liabilities (if any) attributable to such person"; and

(ii) by striking out "such benefit commitments" and inserting in lieu thereof "such benefit liabilities".

(C)(i) Subparagraph (A) of section 4041(b)(3) of ERISA (29 U.S.C. 1341(b)(3)(A)) is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) purchase irrevocable commitments from an insurer to provide all benefit liabilities under the plan, or

"(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefit liabilities under the plan."

(ii) Subparagraph (B) of section 4041(b)(3) of ERISA (29 U.S.C. 1341(b)(3)) is amended by striking out "so as to pay" and all that follows and inserting in lieu thereof "so as to pay all benefit liabilities under the plan".

(D) Paragraphs (2) and (3) of section 4041(c) of ERISA (29 U.S.C. 1341(c) (2), (3)) are each amended by striking out "benefit commitments" each place it appears (including in any heading) and inserting in lieu thereof "benefit liabilities".

(E) Paragraph (1) of section 4041(d) of ERISA (29 U.S.C. 1341(d)) is amended—

(i) by striking out "no amount of unfunded benefit commitments" and inserting in lieu thereof "no amount of unfunded benefit liabilities", and

(ii) by striking out "BENEFIT COMMITMENTS" in the paragraph heading and inserting in lieu thereof "BENEFIT LIABILITIES".

(F) Paragraph (18) of section 4001(a) of ERISA (29 U.S.C. 1301(a)(18)) is amended to read as follows:

"(18) 'amount of unfunded benefit liabilities' means, as of any date, the excess (if any) of—

"(A) the value of the benefit liabilities under the plan (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the current value (as of such date) of the assets of the plan;".

(b) CRITERIA FOR DISTRESS TERMINATION.—

(1) APPLICABILITY TO ALL MEMBERS OF CONTROLLED GROUP.—Section 4041(c)(2) of ERISA (29 U.S.C. 1341(c)(2)) is amended—

(A) in subparagraph (B), by striking "a substantial member" in the matter preceding clause (i) and inserting "a member"; and

(B) by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(2) REQUIREMENT OF ADDITIONAL FINDINGS TO QUALIFY FOR DISTRESS TERMINATION BASED ON REORGANIZATION IN BANKRUPTCY.—Section 4041(c)(2)(B)(ii)(III) of ERISA (29 U.S.C. 1341(c)(2)(B)(ii)(III)) is amended by striking "approves the termination" and inserting "determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination".

(3) CLARIFICATION OF DATE AS OF WHICH EMPLOYER MUST BE IN A BANKRUPTCY PROCEEDING TO QUALIFY FOR DISTRESS TERMINATION.—Clauses (i) and (ii) of section 4041(c)(2)(B) of ERISA (29 U.S.C. 1341(c)(2)(B) (i) and (ii)) are each amended by inserting "proposed" before "termination date".

(4) TREATMENT UNDER DISTRESS TESTS OF CASES CONVERTED TO LIQUIDATION.—Section 4041(c)(2)(B)(i)(I) of ERISA (29 U.S.C. 1341(c)(2)(B)(i)(I)) is amended by inserting before the comma at the end the following: "(or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought)".

(5) NOTICE TO CORPORATION UNDER REORGANIZATION DISTRESS TEST.—Section 4041(c)(2)(B)(ii) of ERISA (29 U.S.C 1341(c)(2)(B)(ii)) is amended—

(A) in subclause (II), by striking "and" at the end;

(B) by redesignating subclause (III) as subclause (IV);
(C) by inserting after subclause (II) the following new subclause:

"(III) such person timely submits to the corporation any request for the approval of the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) of the plan termination, and";

and

(D) in subclause (IV) (as redesignated), by striking "(or other" and all that follows through "subdivision)" and inserting "(or such other appropriate court)".

(6) ARRANGEMENTS FOR PAYMENT OF LIABILITY BY CONTROLLED GROUPS.—Section 4067 of ERISA (29 U.S.C. 1367) is amended by striking "controlled groups who are" and inserting "controlled groups who are or may become".

29 USC 1301 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan terminations under section 4041 of ERISA with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987.

SEC. 9314. ADDITIONAL AMENDMENTS RELATING TO PLAN TERMINATION.

(a) CERTAIN INFORMATION NOT REQUIRED FROM CERTAIN INSURANCE CONTRACT PLANS.—

(1) STANDARD TERMINATION.—Section 4041(b)(2)(A) of ERISA (29 U.S.C. 1341(b)(2)(A)) is amended—

(A) by striking clause (iii) and inserting the following:

"(iii) certification by the plan administrator that—

"(I) the information on which the enrolled actuary based the certification under clause (i) is accurate and complete, and

"(II) the information provided to the corporation under clause (ii) is accurate and complete."; and

(B) by adding at the end thereof the following:

"Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of the Internal Revenue Code of 1986.".

(2) DISTRESS TERMINATION.—Section 4041(c)(2)(A) of ERISA (29 U.S.C. 1341(c)(2)(A)) is amended—

(A) by striking clause (iv) and inserting the following:

"(iv) certification by the plan administrator that—

"(I) the information on which the enrolled actuary based the certifications under clause (ii) is accurate and complete, and

"(II) the information provided to the corporation under clauses (i) and (iii) is accurate and complete."; and

(B) by adding at the end the following:

"Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of the Internal Revenue Code of 1986.".

(b) CLARIFICATION OF EXISTING AUTHORITY TO POOL ASSETS OF TERMINATED PLANS.—Section 4042 of ERISA (29 U.S.C. 1342(a)) is amended by striking the third sentence and inserting the following: "Notwithstanding any other provision of this title, the corporation is authorized to pool assets of terminated plans for purposes of administration, investment, payment of liabilities of all such terminated plans, and such other purposes as it determines to be appropriate in the administration of this title.".

(b) SUBMISSION OF PLAN DATA IN INVOLUNTARY TERMINATION.—Section 4042(c) of ERISA (29 U.S.C. 1342(c)) is amended by adding at the end the following new paragraph:

"(3) In the case of a proceeding initiated under this section, the plan administrator shall provide the corporation, upon the request of the corporation, the information described in clauses (ii), (iii), and (iv) of section 4041(c)(2)(A).".

(c) CIVIL PENALTIES FOR FAILURE TO TIMELY PROVIDE REQUIRED INFORMATION RELATING TO SINGLE-EMPLOYER PLANS.—

(1) IN GENERAL.—Subtitle D of ERISA (29 U.S.C. 1361 et seq.) is amended by adding at the end the following new section:

"PENALTY FOR FAILURE TO TIMELY PROVIDE REQUIRED INFORMATION

"SEC. 4071. The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other material information required under this subtitle or subtitle A, B, or C, or any regulations prescribed under any such subtitle, within the applicable time limit specified therein. Such penalty shall not exceed $1,000 for each day for which such failure continues.". 29 USC 1371.

(2) CLERICAL AMENDMENTS.—The table of contents in section 1 of ERISA (29 U.S.C. 1001 note) is amended by adding after the item relating to section 4070 the following new item:

"Sec. 4071. Penalty for failure to timely provide required information.".

Subpart C—Increase in Premium Rates

SEC. 9331. INCREASE IN PREMIUM RATES.

(a) GENERAL RULE.—Clause (i) of section 4006(a)(3)(A) of ERISA (29 U.S.C. 1306(a)(3)(A)) is amended by striking out "for plan years beginning after December 31, 1985, an amount equal to $8.50" and inserting in lieu thereof "for plan years beginning after December 31, 1987, an amount equal to the sum of $16 plus the additional premium (if any) determined under subparagraph (E)".

(b) DETERMINATION OF ADDITIONAL PREMIUM.—Paragraph (3) of section 4006(a) of ERISA (29 U.S.C. 1306(a)(3)) is amended by adding at the end thereof the following new subparagraph:

"(E)(i) The additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

"(ii) The amount determined under this clause for any plan year shall be an amount equal to $6.00 for each $1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the close of the preceding plan year.

"(iii) For purposes of clause (ii)—

"(I) Except as provided in subclause (II), the term 'unfunded vested benefits' means the amount which would be the unfunded current liability (within the meaning of section 302(d)(8)(A)) if only vested benefits were taken into account.

"(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to 80 percent of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

"(iv)(I) Except as provided in this clause, the aggregate increase in the premium payable with respect to any participant by reason of this subparagraph shall not exceed $34.

"(II) If an employer made contributions to a plan during 1 or more of the 5 plan years preceding the 1st plan year to which this subparagraph applies in an amount not less than the maximum amount allowable as a deduction with respect to such contributions under section 404 of such Code, the dollar amount in effect under subclause (I) for the 1st 5 plan years to which this subparagraph applies shall be reduced by $3 for each plan year for which such contributions were made in such amount.

(c) LIABILITY FOR PREMIUM.—

(1) IN GENERAL.—Section 4007 of ERISA (29 U.S.C. 1307) is amended by striking out "plan administrator" each place it appears and inserting in lieu thereof "designated payor".

(2) DESIGNATED PAYOR.—Section 4007 of ERISA (29 U.S.C. 1307) is amended by adding at the end thereof the following new subsection:

"(e)(1) For purposes of this section, the term 'designated payor' means—

"(A) the contributing sponsor or plan administrator in the case of a single-employer plan, and

"(B) the plan administrator in the case of a multiemployer plan.

"(2) If the contributing sponsor of any single-employer plan is a member of a controlled group, each member of such group shall be jointly and severally liable for any premiums required to be paid by such contributing sponsor. For purposes of the preceding sentence, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(d) DEPOSIT OF PREMIUMS INTO SEPARATE REVOLVING FUND.—Section 4005 of ERISA (relating to establishment of Pension Benefit Guaranty funds) (29 U.S.C. 1305) is amended by redesignating subsections (f) and (g) as subsections (g) and (h) and by inserting after subsection (e) the following new subsection:

"(f)(1) A seventh fund shall be established and credited with—

"(A) premiums, penalties, and interest charges collected under section 4006(a)(3)(A)(i) (not described in subparagraph (B)) to the extent attributable to the amount of the premium in excess of $8.50,

"(B) premiums, penalties, and interest charges collected under section 4006(a)(3)(E), and

"(C) earnings on investments of the fund or on assets credited to the fund.

"(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

"(A) administrative costs of the corporation, or

"(B) benefits under any plan which was terminated before October 1, 1988,

unless no other amounts are available for such payment.

"(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate."

(e) CONFORMING AMENDMENTS.—Section 4006(c)(1)(A) of ERISA (29 U.S.C. 1306(c)(1)(A)) is amended by striking out "and" at the end of clause (i), by inserting "and before January 1, 1986," after "after

December 31, 1977,", and by adding at the end thereof the following new clause:

"(iii) with respect to each plan year beginning after December 31, 1985, and before January 1, 1988, an amount equal to $8.50 for each individual who was a participant in such plan during the plan year, and".

(f) EFFECTIVE DATE.— 29 USC 1305 note.

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

(2) SEPARATE ACCOUNTING.—The amendments made by subsection (d) shall apply to fiscal years beginning after September 30, 1988.

Subpart D—Miscellaneous Provisions

SEC. 9341. SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.

(a) AMENDMENTS TO 1986 CODE.—[99] Subsection (a) of section 401 of the 1986 Code (relating to requirements for qualification) is amended by inserting after paragraph (28) the following new paragraph: [100] 26 USC 401.

"(29) SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.—

"(A) IN GENERAL.—If—

"(i) a defined benefit plan (other than a multiemployer plan) adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

"(ii) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the trust of which such plan is a part shall not constitute a qualified trust under this subsection unless such amendment does not take effect until the contributing sponsor (or any member of the controlled group of the contributing sponsor) provides security to the plan.

"(B) FORM OF SECURITY.—The security required under subparagraph (A) shall consist of—

"(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

"(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

"(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

"(C) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—

"(i) the lesser of—

"(I) the amount of additional plan assets which would be necessary to increase the funded current

---

[99] Copy read "CODE—".
[100] Copy read "paragraph:—".

liability percentage under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or

"(II) the amount of the increase in current liability under the plan attributable to the plan amendment, over

"(ii) $10,000,000.

"(D) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

Regulations.

"(E) DEFINITIONS.—For purposes of this paragraph, the terms 'current liability', 'funded current liability percentage', and 'unfunded current liability' shall have the meanings given such terms by section 412(l), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year."

(b) AMENDMENTS TO ERISA.—Part 3 of subtitle B of title I of ERISA (29 U.S.C. 1081 et seq.) is amended—

29 USC 1086.

(1) by redesignating section 307 as section 308; and

(2) by inserting after section 306 the following new section:

"SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING

29 USC 1085b.

"SEC. 307. (a) IN GENERAL.—If—

"(1) a defined benefit plan (other than a multiemployer plan) adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

"(2) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the contributing sponsor (or any member of the controlled group of the contributing sponsor) shall provide security to the plan.

"(b) FORM OF SECURITY.—The security required under subsection (a) shall consist of—

"(1) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412,

"(2) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

"(3) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

"(c) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—

"(1) the lesser of—

"(A) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or

"(B) the amount of the increase in current liability under the plan attributable to the plan amendment, over

"(2) $10,000,000.

"(d) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage. Regulations.

"(e) DEFINITIONS.—For purposes of this section, the terms 'current liability', 'funded current liability percentage', and 'unfunded current liability' shall have the meanings given such terms by section 302(d), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year."

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of ERISA (29 U.S.C. 1001 note) is amended by striking out the item relating to section 307 and inserting in lieu thereof the following new items:

"Sec. 307. Security required upon adoption of plan amendment resulting in significant underfunding.
"Sec. 308. Effective dates."

(c) EFFECTIVE DATE.— 26 USC 401 note.

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to plan amendments adopted after the date of the enactment of this Act.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan amendments adopted pursuant to collective bargaining agreements ratified before the date of enactment.

SEC. 9342. REPORTING REQUIREMENTS.

(a) FUNDED PERCENTAGE REQUIRED TO BE SHOWN IN ANNUAL REPORT.—

(1) Subsection (d) of section 103 of ERISA (29 U.S.C. 1023(d)) is amended by redesignating paragraphs (11) and (12) as paragraphs (12) and (13), respectively, and by inserting after paragraph (10) the following new paragraph:

"(11) If the current value of the assets of the plan is less than 60 percent of the current liability under the plan (within the meaning of section 302(d)(7)), such percentage."

(2) Paragraph (3) of section 104(b) of ERISA (29 U.S.C. 1024(b)(3)) is amended by striking out "such other material" and inserting in lieu thereof "such other material (including the percentage determined under section 103(d)(11))".

(b) AMENDMENT OF STATUTE OF LIMITATIONS WITH RESPECT TO CERTAIN REPORTS.—Section 413(a)(2) of ERISA (29 U.S.C. 1113(a)(2)) is amended by striking "(A)" and by striking "or (B)" and all that follows through "title".

(c) PENALTY FOR FAILURE TO PROVIDE ANNUAL REPORT IN COMPLETE FORM.—Section 502(c) of ERISA (29 U.S.C. 1132(c)) is amended—

(1) by inserting "(1)" after "(c)", and by striking "(1) who" and "(2) who" and inserting "(A) who" and "(B) who", respectively; and

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

"(2) The Secretary may assess a civil penalty of up to $1,000 a day from the date of a plan administrator's failure or refusal to file the annual report required to be filed with the Secretary under section 101(b)(4). For purposes of this paragraph, an annual report that has been rejected under section 104(a)(4) for failure to provide material information shall not be treated as having been filed with the Secretary.".

29 USC 1132 note. Reports.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to reports required to be filed after December 31, 1987.

(2) REGULATIONS.—The Secretary of Labor shall issue the regulations required to carry out the amendments made by subsection (c) not later than January 1, 1989.

SEC. 9343. COORDINATION OF PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 WITH PROVISIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.[101]

26 USC 401 note.

(a) INTERPRETATION OF INTERNAL REVENUE CODE.—Except to the extent specifically provided in the Internal Revenue Code of 1986 or as determined by the Secretary of the Treasury, titles I and IV of the Employee Retirement Income Security Act of 1974 are not applicable in interpreting such Code.

(b) CLARIFICATION REGARDING EFFECT OF DETERMINATION LETTER BY THE INTERNAL REVENUE SERVICE ON ENFORCEMENT BY THE DEPARTMENT OF LABOR OF FIDUCIARY STANDARDS UNDER[102] ERISA.—Section 3001(d) of ERISA (29 U.S.C. 1201(d)) is amended by adding after the second sentence the following: "The determination of the Secretary of the Treasury shall not be prima facie evidence on issues relating solely to part 4 of subtitle B of title I.".

(c) CLARIFICATION REGARDING RETURNS OF CONTRIBUTIONS UPON RECEIPT OF ADVERSE DETERMINATION LETTERS.—

(1) IN GENERAL.—Subparagraph (B) of section 403(c)(2) of ERISA (29 U.S.C. 1103(c)(2)(B)) is amended to read as follows:

"(B) If a contribution is conditioned on initial qualification of the plan under section 401 or 403(a) of the Internal Revenue Code of 1986, and if the plan receives an adverse determination with respect to its initial qualification, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after such determination, but only if the application for the determination is made by the time prescribed by law for filing the employer's return for the taxable year in which such plan was adopted, or such later date as the Secretary of the Treasury may prescribe.".

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 403(c) of ERISA (29 U.S.C. 1103(c)(3)) is amended by striking out "4972(b) of the Internal Revenue Code of 1954" and inserting in lieu thereof "4979(c) of the Internal Revenue Code of 1986"

[101] Copy read "1974".
[102] Copy read "UNDER".

SEC. 9344. CLARIFICATION REGARDING THE IMPOSITION OF AN ANNUAL SANCTION FOR PROHIBITED TRANSACTIONS WHICH ARE CONTINUING IN NATURE.

Section 502(i) of ERISA (29 U.S.C. 1132(i)) is amended by striking the second sentence and inserting the following: "The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe [103] in regulations which shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved." Regulations.

SEC. 9345. ADDITIONAL LIMITATIONS ON INVESTMENT BY AN INDIVIDUAL ACCOUNT PLAN FORMING PART OF A FLOOR-OFFSET ARRANGEMENT AND ON INVESTMENT BY AN INDIVIDUAL ACCOUNT PLAN IN EMPLOYER STOCK.

(a) TREATMENT OF INDIVIDUAL ACCOUNT PORTIONS OF FLOOR-OFFSET ARRANGEMENTS.—

(1) IN GENERAL.—Section 407(d)(3) of ERISA (29 U.S.C. 1107(d)(3)) is amended by adding at the end the following new subparagraph:

"(C) The term 'eligible individual account plan' does not include any individual account plan the benefits of which are taken into account in determining the benefits payable to a participant under any defined benefit plan."

(2) TREATMENT OF FLOOR-OFFSET ARRANGEMENT AS SINGLE PLAN.—Section 407(d) of ERISA (29 U.S.C. 1107(d)) is amended by adding at the end the following new paragraph:

"(9) For purposes of this section, an arrangement which consists of a defined benefit plan and an individual account plan shall be treated as 1 plan if the benefits of such arrangement are taken into account in determining the benefits payable under such defined benefit plan."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to arrangements established after December 17, 1987. 29 USC 1107 note.

(b) RESTRICTIONS ON TREATMENT OF STOCK AS QUALIFYING EMPLOYER SECURITY.—Section 407 of ERISA (29 U.S.C. 1107) is amended—

(1) in subsection (d)(5), by adding at the end the following new sentence: "After December 17, 1987, in the case of a plan other than an eligible individual account plan, stock shall be considered a qualifying employer security only if such stock satisfies the requirements of subsection (f)(1)."; and

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

"(f)(1) Stock satisfies the requirements of this subsection if—

"(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and

"(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

[103] Copy read "presribe".

"(2) Until January 1, 1993, a plan shall not be treated as violating subsection (a) solely by holding stock which fails to satisfy the requirements of paragraph (1) if such stock—

"(A) has been so held since December 17, 1987, or

Contracts. "(B) was acquired after December 17, 1987, pursuant to a legally binding contract in effect on December 17, 1987, and has been so held at all times after the acquisition.

Contracts. "(3) After December 17, 1987, no plan may acquire stock which does not satisfy the requirements of paragraph (1) unless the acquisition is made pursuant to a legally binding contract in effect on such date.".

SEC. 9346. INTEREST RATE ON ACCUMULATED CONTRIBUTIONS.

(a) AMENDMENTS TO ERISA.—Section 204(c)(2) of ERISA (29 U.S.C. 1054(c)(2)) is amended—

(1) in subparagraph (C)(iii), by striking "5 percent per annum" and inserting "120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of a plan year)"; and

(2) in subparagraph (D)—

(A) in the first sentence, by striking ", the rate of interest described in clause (iii) of subparagraph (C), or both,"; and

(B) by striking the second sentence.

26 USC 411. (b) AMENDMENTS TO 1986 CODE.—Section 411(c)(2) of the 1986 Code (relating to accrued benefit derived from employee contributions) is amended—

(1) in subparagraph (C)(iii), by striking "5 percent per annum" and inserting "120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year)"; and

(2) in subparagraph (D)—

(A) in the first sentence, by striking ", the rate of interest described in clause (iii) of subparagraph (C), or both,"; and

(B) by striking the second sentence.

29 USC 1054 note. (c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989.—If any amendment made by this section requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(A) during the period after such amendments made by this section take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments or in accordance with an amendment prescribed by the Secretary of the Treasury and adopted by the plan, and

(B) such plan amendment applies retroactively to the period after such amendments take effect and such first plan year.

A plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.

Subtitle E—Miscellaneous Provisions

SEC. 9401. RESTORATION OF TRUST FUNDS FOR 1987.

(a) In General.—

(1) Obligations issued.—Except as provided in subsection (b), within 30 days after the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall issue to each Federal fund obligations under chapter 31 of title 31, United States Code, which bear such issue dates, interest rates, and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of such Federal fund will replicate to the maximum extent practicable the obligations that would have been held by such Federal fund if any—

(A) failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of section 3101(b) of title 31, United States Code, had not occurred, and

(B) issuance of such obligations had occurred immediately on the expiration of the debt issuance suspension period.

(2) Interest credited.—On the first normal interest payment date or within 30 days after the expiration of any debt issuance suspension period (whichever is later) to which this section applies, the Secretary of the Treasury shall credit to each Federal fund an amount determined by the Secretary, after taking into account the actions taken pursuant to paragraph (1), to be equal to the income lost by such Federal fund by reason of any failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of such section 3101(b), including any income lost between the expiration of the debt issuance suspension period and the date of the credit.

(b) Interest on Market-based Obligations.—With respect to any Federal fund which invests in market-based special obligations, on the expiration of a debt issuance suspension period to which this section applies, the Secretary of the Treasury shall immediately credit to such fund an amount equal to the interest that would have been earned by such fund during the debt issuance suspension period if the daily balance in such fund that the Secretary was unable to invest by reason of the limitation of such section 3101(b) had been invested each day during such period, overnight, in obligations under chapter 31 of title 31, United States Code, earning interest at a rate determined by the Secretary in accordance with the standard practice of the Department of the Treasury.

(c) Interest on State and Local Government Series.—On the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall (as of the close of such period) credit to each holder of any obligation which is part of the State and Local Government Series and which is in the nature of a demand deposit an amount equal to the income lost by such holder by reason of not being able to reinvest the principal of, and interest on, such obligation during such period.

(d) Debt Issuance Suspension Periods to Which Section Applies.—This section shall apply to debt issuance suspension periods beginning on or after July 18, 1987, and ending before January 1, 1988.

(e) CREDITED AMOUNTS TREATED AS INTEREST.—[104] All amounts credited under this section shall be treated as interest on obligations issued under chapter 31 of title 31, United States Code, for all purposes of Federal law.

(f) DEFINITIONS.—For purposes of this section—

(1) DEBT ISSUANCE SUSPENSION PERIOD.—The term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to conduct the orderly financial operations of the United States may not be made without exceeding the limitation imposed by section 3101(b) of title 31, United States Code.

(2) FEDERAL FUND.—The term "Federal fund" means any Federal trust fund or Government account established pursuant to Federal law to which the Secretary of the Treasury has issued or is expressly authorized by law directly to issue obligations under chapter 31 of title 31, United States Code, in respect of public money, money otherwise required to be deposited in the Treasury, or amounts appropriated; except that such term shall not include the Civil Service Retirement and Disability Fund or the Thrift Savings Fund of the Federal Employees' Retirement System.

(g) SPECIAL RULES.—In the case of any debt suspension period beginning on or after July 18, 1987, and ending before the date of the enactment of this Act—

(1) for purposes of determining the date on which the Secretary of the Treasury is required to take the actions described in subsections (a), (b), and (c), such period shall be treated as having ended on such date of enactment, and

(2) the amount required to be credited under subsection (c) shall include any income lost because the credit was not made upon the expiration of such period.

SEC. 9402. 6-MONTH EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NON-TAX DEBTS OWED TO FEDERAL AGENCIES.

26 USC 6402 note.

(a) GENERAL RULE.—Subsection (c) of section 2653 of the Deficit Reduction Act of 1984 is amended by striking out "January 1, 1988" and inserting in lieu thereof "July 1, 1988".

26 USC 6402 note.

(b) CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF PROVISION.—

(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

Regulations.

(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection.

26 USC 6402 note.

(c) STUDY BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States, in consultation with the Secretary of the Treasury or his delegate, shall conduct a study of the operation and effectiveness of the amendments made by section 2653 of the Deficit Reduction Act of 1984. The study shall compile and evaluate

[104] Copy read "AMOUNTS TREATED AS INTEREST.—".

information on the effect of those amendments on voluntary compliance with the income tax laws. Not later than April 1, 1989, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of the study conducted under this subsection, together with such recommendations as he may deem advisable. Reports.

SEC. 9403. INCREASE IN LIMIT ON LONG-TERM BONDS.

The last sentence of section 3102(a) of title 31, United States Code, is amended by striking out "$250,000,000,000" and inserting in lieu thereof "$270,000,000,000".

Subtitle F—Customs User Fees; Trade and Customs Agency Authorizations

SEC. 9501. CUSTOMS USER FEES.

(a) AMENDMENTS TO CUSTOMS USER FEES PROGRAM.—Section 13031 of the Consolidated Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended as follows:

(1) MERCHANDISE PROCESSING FEE IMPOSED ON FOREIGN CONTENT OF CERTAIN SCHEDULE 8 ARTICLES.—

(A) Subsection (a)(9)(A) is amended to read as follows: "(A) provided for under any item in schedule 8 of the Tariff Schedules of the United States except item 806.30 or 807.00,".

(B) Subsection (b)(8)(A) is amended—

(i) by striking out "and" at the end of clause (i);

(ii) by striking out the period at the end of clause (ii) and inserting a semicolon; and

(iii) by adding at the end thereof the following:

"(iii) in the case of merchandise classified under item 806.30 of the Tariff Schedules of the United States, be applied to the value of the foreign repairs or alterations to the merchandise; and

"(iv) in the case of merchandise classified under item 807.00 of such Schedules, be applied to the full value of the merchandise, less the cost or value of the component United States products.

With respect to merchandise that is classified under item 806.30 or 807.00 of such Schedules and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a) (9) or (10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.".

(2) PROVISION OF CUSTOMS SERVICES.—Subsection (e) is amended—

(A) by redesignating paragraph (4) as paragraph (6);

(B) by inserting after paragraph (3) the following new paragraphs:

"(4) Notwithstanding any other provision of law, all customs services (including, but not limited to, normal and overtime clearance and preclearance services) shall be adequately provided, when requested, for—

"(A) the clearance of any commercial vessel, vehicle, or aircraft or its passengers, crew, stores, material, or cargo arriving, departing, or transiting the United States;

"(B) the preclearance at any customs facility outside the United States of any commercial vessel, vehicle or aircraft or its passengers, crew, stores, material, or cargo; and

"(C) the inspection or release of commercial cargo or other commercial shipments being entered into, or withdrawn from, the customs territory of the United States.

"(5) For purposes of this subsection, customs services shall be treated as being 'adequately provided' if such of those services that are necessary to meet the needs of parties subject to customs inspection are provided in a timely manner taking into account factors such as—

"(A) the unavoidability of weather, mechanical, and other delays;

"(B) the necessity for prompt and efficient passenger and baggage clearance;

"(C) the perishability of cargo;

"(D) the desirability or unavoidability of late night and early morning arrivals from various time zones;

"(E) the availability (in accordance with regulations prescribed under subsection (g)(2)) of customs personnel and resources; and

"(F) the need for specific enforcement checks."; and

(C) by amending paragraph (6) (as redesignated by subparagraph (A)) to read as follows:

"(6) Notwithstanding any other provision of law except paragraph (2), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

"(A) for any—

"(i) cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or

"(ii) customs personnel provided,

in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States;

"(B) for any preclearance or other customs activity, expense, or service performed, and any customs personnel provided, outside the United States in connection with the departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, for the United States; or

"(C) in connection with—

"(i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly know as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.), or

"(ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).".

(3) DISPOSITION OF FEES.—Subsection (f) is amended by striking out paragraphs (1), (2), and (3) and inserting the following:

"(f) DISPOSITION OF FEES.—(1) There is established in the general fund of the Treasury a separate account which shall be known as the 'Customs User Fee Account'. Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees collected under subsection (a) except that portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations.

"(2) All funds in the Customs User Fee Account shall be available, to the extent provided for in appropriations Acts, to pay the costs (other than costs for which direct reimbursement under paragraph (3) is required) incurred by the United States Customs Service in conducting commercial operations, including, but not limited to, all costs associated with commercial passenger, vessel, vehicle, aircraft, and cargo processing. So long as there is a surplus of funds in the Customs User Fee Account, the Secretary of the Treasury may not reduce personnel staffing levels for providing commercial clearance and preclearance services.

"(3) The Secretary of the Treasury, in accordance with such section 524 and without regard to apportionment or any other administrative practice or limitation, shall directly reimburse, from the fees collected under subsection (a), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary in providing—

"(A) inspectional overtime services; and

"(B) all preclearance services;

for which the recipients of such services are not required to reimburse the Secretary of the Treasury. Reimbursement under this paragraph shall apply with respect to each fiscal year occurring after September 30, 1987, and shall be made at least quarterly. To the extent necessary, reimbursement of appropriations under this paragraph may be made on the basis of estimates made by the Secretary of the Treasury of the costs for inspectional overtime and preclearance services, and adjustments shall be made in subsequent reimbursements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed.".

(4) REGULATIONS.—Subsection (g) is amended—

(A) by striking out "(g) REGULATIONS.—The" and inserting "(g) REGULATIONS.—(1) In addition to the regulations required under paragraph (2), the "; and

(B) by inserting at the end thereof the following new paragraph:

"(2) The Secretary of the Treasury shall prescribe regulations governing the work shifts of customs personnel at airports. Such regulations shall provide, among such other factors considered appropriate by the Secretary, that—

"(A) the work shifts will be adjusted, as necessary, to meet cyclical and seasonal demands and to minimize the use of overtime;

"(B) the work shifts will not be arbitrarily reduced or compressed; and

"(C) consultation with the Advisory Committee on Commercial Operations of the United States Customs Service (established under section 9501(c) of the Omnibus Budget Reconciliation Act of 1987) will be carried out before adjustments are made in the work shifts.".

(5) EXTENSION OF CUSTOMS USER FEES PROGRAM.—Subsection (j)(3) is amended by striking out "1989" and inserting "1990".

(b) ADDITIONAL PERIOD TO CLAIM CERTAIN REFUNDS.—Section 1893(g)(2) of the Tax Reform Act of 1986 is amended by striking out "90 days after the date of enactment of this Act" and inserting "90 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987". 19 USC 58c note.

19 USC 3 note.

(c) ANALYSIS REGARDING THE CES PROGRAM; EFFECT ON IMPLEMENTATION OF PROGRAM.—

(1) The Comptroller General of the United States shall conduct a comprehensive analysis, including a cost-benefit study, of the centralized cargo examination station (CES) concept from the perspective of both the United States Customs Service and business community users. The analysis shall be submitted on the same day to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (hereinafter in this subsection referred to as the "Committees") not later than March 30, 1988, and shall include recommendations as to how best to implement cargo inspection procedures.

(2) The United States Customs Service—

(A) may not, after the date of the enactment of this Act, establish any new centralized cargo examination station at any ocean port, airport, or land border location unless the Customs Service provides to the Committees advance notice, in writing, of not less than 90 days regarding the proposed establishment; and

(B) shall, on such date of enactment, suspend operations at each centralized cargo examination station that was operating at an airport on the day before such date until the 90th day after a date—

(i) that is not earlier than the date on which the analysis required under paragraph (1) is submitted to the Committees, and

(ii) on which the Customs Service provides to the Committees notice, in writing, that it intends to resume such operations at the station.

During the period of suspension of operations under subparagraph (B) at any centralized cargo examination station at an airport, the Secretary of the Treasury shall maintain customs operations and staffing at that airport at a level not less than that which was in effect immediately before the suspension took effect.

19 USC 58c note.

(d) EFFECTIVE DATES.—

(1) Except as otherwise provided in this subsection, the provisions of this section take effect on the date of the enactment of this Act.

(2) The amendments made by subsection (a)(1) apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.

(3) The amendment made by subsection (a)(3) shall take effect on October 1, 1987.

SEC. 9502. UNITED STATES INTERNATIONAL TRADE COMMISSION AUTHORIZATIONS.

Section 330(e)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended—

(1) by striking out "1986" and inserting "1988"; and

(2) by striking out "$28,901,000;" and inserting "$35,386,000;".

SEC. 9503. UNITED STATES CUSTOMS SERVICE AUTHORIZATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended to read as follows:

"(b) AUTHORIZATION OF APPROPRIATIONS.—

"(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year 1988 not to exceed $348,192,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations, of which $171,857.06 shall be available only for concluding Contract TC-82-54 that was awarded for the development and testing of an automatic license plate reader.

"(2) FOR COMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year 1988 not to exceed $615,000,000 from the Customs User Fee Account for the salaries and expenses of the United States Customs Service that are incurred in commercial operations.

"(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for fiscal year 1988 not to exceed $118,309,000 for the operation (including salaries and expenses) and maintenance of the air interdiction program of the United States Customs Service.".

(b) CONGRESSIONAL NOTICE OF CERTAIN ACTIONS.—Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) is amended—

(1) by striking out "USE OF SAVINGS RESULTING FROM ADMINISTRATIVE CONSOLIDATIONS.—" in subsection (f);

(2) by striking out "ALLOCATION OF RESOURCES.—" in subsection (g) and inserting "(1)"; and

(3) by adding at the end of subsection (g) the following new paragraph:

"(2) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days prior to taking any action which would—

"(A) result in any significant reduction in force of employees other than by means of attrition;

"(B) result in any significant reduction in hours of operation or services rendered at any office of the United States Customs Service or any port of entry;

"(C) eliminate or relocate any office of the United States Customs Service;

"(D) eliminate any port of entry; or

"(E) significantly reduce the number of employees assigned to any office of the United States Customs Service or any port of entry.".

(c) ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE UNITED STATES CUSTOMS SERVICE.— Establishment. 19 USC 2071 note.

(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the "Advisory Committee on Commercial Operations of the United States Customs Service" (hereafter in this subsection referred to as the "Advisory Committee").

(2)(A) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

(3) The Advisory Committee shall—

(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

Reports. (B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

(i) describe the operations of the Advisory Committee during the preceding year, and

(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

(4) The Assistant Secretary of the Treasury for Enforcement shall preside over meetings of the Advisory Committee.

19 USC 2071 note. (d) DISSOLUTION OF EXISTING ADVISORY COMMITTEE.—Section 13033 of the Consolidated Budget Reconciliation Act of 1985 is repealed.

SEC. 9504. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE AUTHORIZATIONS.

Section 141(f)(1) of the Trade Act of 1974 (19 U.S.C. 2171(f)(1)) is amended to read as follows:

"(f)(1)(A) There are authorized to be appropriated for fiscal year 1988 to the Office for the purposes of carrying out its functions not to exceed $15,172,000.

"(B) Of the amounts authorized to be appropriated under subparagraph (A) for fiscal year 1988—

"(i) not to exceed $69,000 may be used for entertainment and representation expenses of the Office; and

"(ii) not to exceed $1,000,000 shall remain available until expended.".

Revenue Act of 1987.

TITLE X—REVENUE PROVISIONS

SEC. 10000. SHORT TITLE; AMENDMENT OF THE 1986 CODE.

26 USC 1 note. (a) SHORT TITLE.—This title may be cited as the "Revenue Act of 1987".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title 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

26 USC 1 *et seq.* or other provision of the Internal Revenue Code of 1986.

26 USC 15 note. (c) COORDINATION WITH SECTION 15.—No amendment made by this title shall be treated as a change in a rate of tax for purposes section 15 of the Internal Revenue Code of 1986.

(d) TABLE OF CONTENTS.—

TITLE X—REVENUE PROVISIONS

Subtitle A—Individual Income Tax Provisions

Subtitle A—Individual Income Tax Provisions

SEC. 10101. EXPENSES OF OVERNIGHT CAMPS NOT ALLOWABLE FOR DEPENDENT CARE CREDIT.

(a) GENERAL RULE.—Subparagraph (A) of section 21(b)(2) (defining employment-related expenses) is amended by adding at the end thereof the following new sentence:

"Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight."

26 USC 21 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses paid in taxable years beginning after December 31, 1987.

SEC. 10102. CHANGES TO DEDUCTION FOR QUALIFIED RESIDENCE INTEREST.

(a) GENERAL RULE.—Paragraph (3) of section 163(h) (defining qualified residence interest) is amended to read as follows:

---

[105] Copy read "Indian Tribal Governments.".

"(3) QUALIFIED RESIDENCE INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified residence interest' means any interest which is paid or accrued during the taxable year on—

"(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

"(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

"(B) ACQUISITION INDEBTEDNESS.—

"(i) IN GENERAL.—The term 'acquisition indebtedness' means any indebtedness which—

"(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

"(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

"(ii) $1,000,000 LIMITATION.—The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

"(C) HOME EQUITY INDEBTEDNESS.—

"(i) IN GENERAL.—The term 'home equity indebtedness' means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

"(I) the fair market value of such qualified residence, reduced by

"(II) the amount of acquisition indebtedness with respect to such residence.

"(ii) LIMITATION.—The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

"(D) TREATMENT OF INDEBTEDNESS INCURRED ON OR BEFORE OCTOBER 13, 1987.—

"(i) IN GENERAL.—In the case of any pre-October 13, 1987, indebtedness—

"(I) such indebtedness shall be treated as acquisition indebtedness, and

"(II) the limitation of subparagraph (B)(ii) shall not apply.

"(ii) REDUCTION IN $1,000,000 LIMITATION.—The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

19-139 0 - 88 — 13 (203)

"(iii) PRE-OCTOBER 13, 1987, INDEBTEDNESS.—The term 'pre-October 13, 1987, indebtedness' means—

"(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

"(II) any indebtedness which is secured by the qualified residence and was incurred after October 13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

"(iv) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (iii) shall not apply to any indebtedness after—

"(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

"(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing)."

(b) CONFORMING AMENDMENTS.—Subsection (h) of section 163 is amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

26 USC 163 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

26 USC 219 note.

SEC. 10103. CLARIFICATION OF TREATMENT OF FEDERAL JUDGES.

(a) GENERAL RULE.—A Federal judge—

(1) shall be treated as an active participant for purposes of section 219(g) of the Internal Revenue Code of 1986, and

(2) shall be treated as an employee for purposes of chapter 1 of such Code.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10104. TREATMENT OF REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR.

26 USC 67 note.

(a) 1-YEAR DELAY IN TREATMENT OF PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR.—

(1) GENERAL RULE.—Section 67(c) of the Internal Revenue Code of 1986 to the extent it relates to indirect deductions through a publicly offered regulated investment company shall apply only to taxable years beginning after December 31, 1987.

(2) PUBLICLY OFFERED REGULATED INVESTMENT COMPANY DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "publicly offered regulated investment company" means a regulated investment company the shares of which are—

(i) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(ii) regularly traded on an established securities market, or

(iii) held by or for no fewer than 500 persons at all times during the taxable year.

(B) SECRETARY MAY REDUCE 500 PERSON REQUIREMENT.—The Secretary of the Treasury or his delegate may by regulation decrease the minimum shareholder requirement of subparagraph (A)(iii) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares. Regulations.

(b) CHANGES IN DISTRIBUTION REQUIREMENTS.—

(1) INCREASE IN REQUIRED DISTRIBUTION OF INCOME.—Paragraph (1) of section 4982(b) (defining required distribution) is amended by striking out "90 percent" in subparagraph (B) and inserting in lieu thereof "98 percent".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 651 of the Tax Reform Act of 1986. 26 USC 4982 note.

Subtitle B—Business Provisions

PART I—ACCOUNTING PROVISIONS

SEC. 10201. REPEAL OF RESERVE FOR ACCRUAL OF VACATION PAY.

(a) GENERAL RULE.—Section 463 (relating to accrual of vacation pay) is hereby repealed.

(b) TECHNICAL AMENDMENTS.—

(1) Section 81 is hereby repealed.

(2) Subparagraph (B) of section 404(b)(2) is amended to read as follows:

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e))."

(3) Section 404(a)(5) is amended by adding at the end thereof the following new sentence: "For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee."

(4) Paragraph (2) of section 419(e) is amended by inserting "or" at the end of subparagraph (B), by striking out ", or" at the end of subparagraph (C), and inserting in lieu thereof a period, and by striking out subparagraph (D).

(5) Paragraph (5) of section 461(h) is amended to read as follows:

"(5) SUBSECTION NOT TO APPLY TO CERTAIN ITEMS.—This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses."

(6) The table of sections for part II of subchapter B of chapter 1 is amended by striking out the item relating to section 81.

(7) The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 463.

(c) EFFECTIVE DATE.—

26 USC 404 note. (1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

26 USC 463 note. (2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who elected to have section 463 of the Internal Revenue Code of 1986 apply for such taxpayer's last taxable year beginning before January 1, 1988, and who is required to change his method of accounting by reason of the amendments made by this section—

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

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

(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

(ii) shall be taken into account over the 4-taxable year period beginning with the taxable year following such last taxable year as follows:

In the case of the:	The percentage taken into account is:
1st year	25
2nd year	5
3rd year	35
4th year	35.

Notwithstanding subparagraph (C)(ii), if the period the adjustments are required to be taken into account under section 481 of such Code is less than 4 years, such adjustments shall be taken into account ratably over such shorter period.

SEC. 10202. PROVISIONS RELATING TO INSTALLMENT SALES.

(a) REPEAL OF PROPORTIONATE DISALLOWANCE OF INSTALLMENT METHOD.—

(1) IN GENERAL.—Section 453C (relating to certain indebtedness treated as payment on installment obligations) is hereby repealed.

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 453C.

(b) REPEAL OF INSTALLMENT METHOD FOR DEALERS IN PROPERTY.—

(1) IN GENERAL.—Subparagraph (A) of section 453(b)(2) (defining installment sale) is amended to read as follows:

"(A) DEALER DISPOSITIONS.—Any dealer disposition (as defined in subsection (l))."

(2) DEALER DISPOSITION DEFINED.—Section 453 (relating to installment method) is amended by adding at the end thereof the following new subsection:

"(l) DEALER DISPOSITIONS.—For purposes of subsection (b)(2)(A)—

"(1) IN GENERAL.—The term 'dealer disposition' means any of the following dispositions:

"(A) PERSONAL PROPERTY.—Any disposition of personal property by a person who regularly sells or otherwise disposes of personal property on the installment plan.

"(B) REAL PROPERTY.—Any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

"(2) EXCEPTIONS.—The term 'dealer disposition' does not include—

"(A) FARM PROPERTY.—The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

"(B) TIMESHARES AND RESIDENTIAL LOTS.—

"(i) IN GENERAL.—Any dispositions described in clause (ii) on the installment plan if the taxpayer elects to have paragraph (3) apply to any installment obligations which arise from such dispositions. An election under this paragraph shall not apply with respect to an installment obligation which is guaranteed by any person other than an individual.

"(ii) DISPOSITIONS TO WHICH SUBPARAGRAPH APPLIES.—A disposition is described in this clause if it is a disposition in the ordinary course of the taxpayer's trade or business to an individual of—

"(I) a timeshare right to use or a timeshare ownership interest in residential real property for not more than 6 weeks per year, or a right to use specified campgrounds for recreational purposes, or

"(II) any residential lot, but only if the taxpayer (or any related person) is not to make any improvements with respect to such lot.

For purposes of subclause (I), a timeshare right to use (or timeshare ownership interest in) property held by the spouse, children, grandchildren, or parents of an individual shall be treated as held by such individual.

"(C) CARRYING CHARGES OR INTEREST.—Any carrying charges or interest with respect to a disposition described in subparagraph (A) or (B) which are added on the books of account of the seller to the established cash selling price of the property shall be included in the total contract price of the property and, if such charges or interest are not so included, any payments received shall be treated as applying first against such carrying charges or interest.

"(3) PAYMENT OF INTEREST ON TIMESHARES AND RESIDENTIAL LOTS.—

"(A) IN GENERAL.—In the case of any installment obligation to which paragraph (2)(B) applies, the tax imposed by this chapter for any taxable year for which payment is received on such obligation shall be increased by the amount of interest determined in the manner provided under subparagraph (B).

"(B) COMPUTATION OF INTEREST.—

"(i) IN GENERAL.—The amount of interest referred to in subparagraph (A) for any taxable year shall be determined—

"(I) on the amount of the tax for such taxable year which is attributable to the payments received during such taxable year on installment obligations to which this subsection applies, "(II) for the period beginning on the date of sale, and ending on the date such payment is received, and

"(III) by using the applicable Federal rate under section 1274 (without regard to subsection (d)(2) thereof) in effect at the time of the sale compounded semiannually.

"(ii) INTEREST NOT TAKEN INTO ACCOUNT.—For purposes of clause (i), the portion of any tax attributable to the receipt of any payment shall be determined without regard to any interest imposed under subparagraph (A).

"(iii) TAXABLE YEAR OF SALE.—No interest shall be determined for any payment received in the taxable year of the disposition from which the installment obligation arises.

"(C) TREATMENT AS INTEREST.—Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year."

(c) TREATMENT OF INSTALLMENT OBLIGATIONS OF NONDEALERS.— Section 453A (relating to installment method for dealers in personal property) is amended to read as follows:

"SEC. 453A. SPECIAL RULES FOR NONDEALERS OF REAL PROPERTY.

"(a) GENERAL RULE.—In the case of an installment obligation to which this section applies—

"(1) interest shall be paid on the deferred tax liability with respect to such obligation in the manner provided under subsection (c), and

"(2) the pledging rules under subsection (d) shall apply.

"(b) INSTALLMENT OBLIGATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—This section shall apply to any obligation which arises from the disposition of real property under the installment method which is property used in the taxpayer's trade or business or property held for the production of rental income, but only if the sales price of such property exceeds $150,000.

"(2) SPECIAL RULE FOR INTEREST PAYMENTS.—For purposes of subsection (a)(1), this section shall apply to an obligation described in paragraph (1) arising during a taxable year only if—

"(A) such obligation is outstanding as of the close of such taxable year, and

"(B) the face amount of all obligations of the taxpayer described in paragraph (1) which arose during, and are outstanding as of the close of, such taxable year exceeds $5,000,000.

Except as provided in regulations, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as one person for purposes of this paragraph.

"(3) EXCEPTION FOR PERSONAL USE AND FARM PROPERTY.—An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

"(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

"(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

"(4) SPECIAL RULE FOR TIMESHARES AND RESIDENTIAL LOTS.—An installment obligation shall not be treated as described in paragraph (1) if it arises from a disposition described in section 453(l)(2)(B), but the provisions of section 453(l)(3) (relating to interest payments on timeshares and residential lots) shall apply to such obligation.

"(5) SALES PRICE.—For purposes of paragraph (1), all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

"(c) INTEREST ON DEFERRED TAX LIABILITY.—

"(1) IN GENERAL.—If an obligation to which this section applies is outstanding as of the close of any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined in the manner provided under paragraph (2).

"(2) COMPUTATION OF INTEREST.—For purposes of paragraph (1), the interest for any taxable year shall be an amount equal to the product of—

"(A) the applicable percentage of the deferred tax liability with respect to such obligation, multiplied by

"(B) the underpayment rate in effect under section 6621(a)(2) for the month with or within which the taxable year ends.

"(3) DEFERRED TAX LIABILITY.—For purposes of this section, the term 'deferred tax liability' means, with respect to any taxable year, the product of—

"(A) the amount of gain with respect to an obligation which has not been recognized as of the close of such taxable year, multiplied by

"(B) the maximum rate of tax in effect under section 1 or 11, whichever is appropriate, for such taxable year.

"(4) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means, with respect to obligations arising in any taxable year, the percentage determined by dividing—

"(A) the portion of the aggregate face amount of such obligations outstanding as of the close of such taxable year in excess of $5,000,000, by

"(B) the aggregate face amount of such obligations outstanding as of the close of such taxable year.

"(5) REGULATIONS.[106]—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection including regulations providing for the application of this subsection in the case of contingent payments, short taxable years, and pass-thru entities.

"(d) PLEDGES, ETC., OF INSTALLMENT OBLIGATIONS.—

"(1) IN GENERAL.—For purposes of section 453, if any indebtedness (hereinafter in this subsection referred to as 'secured indebtedness') is secured by an installment obligation to which this section applies, the net proceeds of the secured indebted-

[106] Copy read "REGULATIONS—"

ness shall be treated as a payment received on such installment obligation as of the later of—

"(A) the time the indebtedness becomes secured indebtedness, or

"(B) the proceeds of such indebtedness are received by the taxpayer.

"(2) LIMITATION BASED ON TOTAL CONTRACT PRICE.—The amount treated as received under paragraph (1) by reason of any secured indebtedness shall not exceed the excess (if any) of—

"(A) the total contract price, over

"(B) any portion of the total contract price received under the contract before such secured indebtedness was incurred (including amounts previously treated as received under paragraph (1) but not including amounts not taken into account by reason of paragraph (3)).

"(3) LATER PAYMENTS TREATED AS RECEIPT OF TAX PAID AMOUNTS.—If any amount is treated as received under paragraph (1) with respect to any installment obligation, subsequent payments received on such obligation shall not be taken into account for purposes of section 453 to the extent that the aggregate of such subsequent payments does not exceed the aggregate amount treated as received under paragraph (1).

"(4) SECURED INDEBTEDNESS.—For purposes of this subsection indebtedness is secured by an installment obligation to the extent that payment of principal or interest on such indebtedness is directly secured (under the terms of the indebtedness or any underlying arrangements) by any interest in such installment obligation."

(2) CLERICAL AMENDMENT.—The table of sections for subpart B of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 453A and inserting in lieu thereof the following new item:

"Sec. 453A. Special rules for nondealers of real property."

(3) CONFORMING AMENDMENTS.—Sections 381(c)(8) and 691(a) (4) and (5) are each amended by striking out "or 453A" each place it appears.

(d) MINIMUM TAX.—Paragraph (6) of section 56(a) (relating to installment sales of certain property) is amended to read as follows:

"(6) INSTALLMENT SALES OF CERTAIN PROPERTY.—In the case of any disposition after March 1, 1986, of any property described in section 1221(1), income from such disposition shall be determined without regard to the installment method under section 453. This paragraph shall not apply to any disposition with respect to which an election is in effect under section 453(l)(2)(B)."

26 USC 453 note. (e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to dispositions in taxable years beginning after December 31, 1987.

(2) SPECIAL RULES FOR DEALERS.—

(A) IN GENERAL.—In the case of dealer dispositions (within the meaning of section 453A of the Internal Revenue Code of 1986), the amendments made by subsections (a) and (b) shall apply to installment obligations arising from dispositions after December 31, 1987.

(B) SPECIAL RULES FOR OBLIGATIONS ARISING FROM DEALER DISPOSITIONS AFTER FEBRUARY 28, 1986, AND BEFORE JANUARY 1, 1988.—

(i) IN GENERAL.—In the case of an applicable installment obligation arising from a disposition described in subclause (I) or (II) of section 453C(e)(1)(A)(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) before January 1, 1988, the amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 1987.

(ii) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by clause (i) to change its method of accounting for any taxable year with respect to obligations described in clause (i)—

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

(II) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(III) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

(3) SPECIAL RULE FOR NONDEALERS.—

(A) ELECTION.—A taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by subsections (a) and (c) apply to taxable years ending after December 31, 1986, with respect to dispositions and pledges occurring after August 16, 1986.

(B) PLEDGING RULES.—Except as provided in subparagraph (A)—

(i) IN GENERAL.—Section 453A(d) of the Internal Revenue Code of 1986 shall apply to any installment obligation which is pledged to secure any secured indebtedness (within the meaning of section 453A(d)(4) of such Code) after December 17, 1987, in taxable years ending after such date.

(ii) COORDINATION WITH SECTION 453C.—For purposes of section 453C of such Code (as in effect before its repeal), the face amount of any obligation to which section 453A(d) of such Code applies shall be reduced by the amount treated as payments on such obligation under section 453A(d) of such Code and the amount of any indebtedness secured by it shall not be taken into account.

(4) MINIMUM TAX.—The amendment made by subsection (d) shall apply to dispositions in taxable years beginning after December 31, 1986.

(5) COORDINATION WITH TAX REFORM ACT OF 1986.—The amendments made by this section shall not apply to any installment obligation or to any taxpayer during any period to the extent the amendments made by section 811 of the Tax Reform Act of 1986 do not apply to such obligation or during such period.

SEC. 10203. REDUCTION IN PERCENTAGE OF ITEMS TAKEN INTO ACCOUNT UNDER COMPLETED CONTRACT METHOD.

(a) IN GENERAL.—Section 460(a) (relating to percentage of completion—capitalized cost method) is amended—

(1) by striking out "40 percent" each place it appears in the text and heading thereof and inserting in lieu thereof "70 percent", and

(2) by striking out "60 percent" and inserting in lieu thereof "30 percent".

26 USC 460 note.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contracts entered into after October 13, 1987.

(2) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—

(A) IN GENERAL.—The amendments made by this section shall not apply in the case of a qualified ship contract.

(B) QUALIFIED SHIP CONTRACT.—For purposes of subparagraph (A), the term "qualified ship contract" [107] means any contract for the construction in the United States of not more than 5 ships if—

(i) such ships will not be constructed (directly or indirectly) for the Federal Government, and

(ii) the taxpayer reasonably expects to complete such contract within 5 years of the contract commencement date (as defined in section 460(g) of the Internal Revenue Code of 1986).

26 USC 263A note.

SEC. 10204. AMORTIZATION OF PAST SERVICE PENSION COSTS.

(a) IN GENERAL.—For purposes of sections 263A and 460 of the Internal Revenue Code of 1986, the allocable costs (within the meaning of section 263A(a)(2) or section 460(c) of such Code, whichever is applicable) with respect to any property shall include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) shall apply to costs incurred after December 31, 1987, in taxable years ending after such date.

(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

(A) IN GENERAL.—Subsection (a) shall apply to taxable years beginning after December 31, 1987.

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

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

(ii) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

(iii) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

---

[107] Copy read " 'qualified ship contract' ".

SEC. 10205. CERTAIN FARM CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.

(a) GENERAL RULE.—Section 447 (relating to method of accounting for corporations engaged in farming) is amended by striking out subsections (c) and (e), by redesignating subsection (d) as subsection (e), and by inserting after subsection (b) the following new subsections:

"(c) EXCEPTION FOR CERTAIN CORPORATIONS.—For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

"(1) an S corporation, or

"(2) a corporation the gross receipts of which meet the requirements of subsection (d).

"(d) GROSS RECEIPTS REQUIREMENTS.—

"(1) IN GENERAL.—A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of the same controlled group of corporations (within the meaning of section 1563(a)) shall be treated as 1 corporation.

"(2) SPECIAL RULES FOR FAMILY CORPORATIONS.—

"(A) IN GENERAL.—In the case of a family corporation, paragraph (1) shall be applied—

"(i) by substituting 'December 31, 1985,' for 'December 31, 1975,'; and

"(ii) by substituting '$25,000,000' for '$1,000,000'.

"(B) GROSS RECEIPTS TEST.—

"(i) CONTROLLED GROUPS.—Notwithstanding the last sentence of paragraph (1), in the case of a family corporation—

"(I) except as provided by the Secretary, only the applicable percentage of gross receipts of any other member of any controlled group of corporations of which such corporation is a member shall be taken into account, and

"(II) under regulations, gross receipts of such corporation or of another member of such group shall not be taken into account by such corporation more than once.

"(ii) PASS-THRU ENTITIES.—For purposes of paragraph (1), if a family corporation holds directly or indirectly any interest in a partnership, estate, trust or other pass-thru entity, such corporation shall take into account its proportionate share of the gross receipts of such entity.

"(iii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the term 'applicable percentage' means the percentage equal to a fraction—

"(I) the numerator of which is the fair market value of the stock of another corporation held directly or indirectly as of the close of the taxable year by the family corporation, and

"(II) the denominator of which is the fair market value of all stock of such corporation as of such time.

For purposes of this clause, the term 'stock' does not include stock described in section 1563(c)(1).[108]

"(C) FAMILY CORPORATION.—For purposes of this section,[108a] the term 'family corporation' means—

"(i) any corporation if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of all other classes of stock of the corporation, are owned by members of the same family, and

"(ii) any corporation described in subsection (h)."

(b) SUSPENSE ACCOUNT IN LIEU OF 481 ADJUSTMENTS.—Section 447 is amended by adding at the end thereof the following new subsection:

"(i) SUSPENSE ACCOUNT FOR FAMILY CORPORATIONS.—

"(1) IN GENERAL.—If any family corporation is required by this section to change its method of accounting for any taxable year (hereinafter in this subsection referred to as the 'year of the change'), notwithstanding subsection (f), such corporation shall establish a suspense account under this subsection in lieu of taking into account adjustments under section 481(a) with respect to amounts included in the suspense account.

"(2) INITIAL OPENING BALANCE.—The initial opening balance of the account described in paragraph (1) shall be the lesser of—

"(A) the net adjustments which would have been required to be taken into account under section 481 but for this subsection, or

"(B) the amount of such net adjustments determined as of the beginning of the taxable year preceding the year of change.

If the amount referred to in subparagraph (A) exceeds the amount referred to in subparagraph (B), notwithstanding paragraph (1), such excess shall be included in gross income in the year of the change.

"(3) REDUCTION IN ACCOUNT IF FARMING BUSINESS CONTRACTS.—If—

"(A) the gross receipts of the corporation from the trade or business of farming for the year of the change or any subsequent taxable year, is less than

"(B) such gross receipts for the taxpayer's last taxable year beginning before the year of the change (or for the most recent taxable year for which a reduction in the suspense account was made under this paragraph),

the amount in the suspense account (after taking into account prior reductions) shall be reduced by the percentage by which the amount described in subparagraph (A) is less than the amount described in subparagraph (B).

"(4) INCOME INCLUSION.—Any reduction in the suspense account under paragraph (3) shall be included in gross income for the taxable year of the reduction.

"(5) INCLUSION WHERE CORPORATION CEASES TO BE A FAMILY CORPORATION.—

"(A) IN GENERAL.—If the corporation ceases to be a family corporation during any taxable year, the amount in the suspense account (after taking into account prior reduc-

[108] Copy read "1563(c)(1)." ".
[108a] Copy read "section.".

tions) shall be included in gross income for such taxable year.

"(B) SPECIAL RULE FOR CERTAIN TRANSFERS.—For purposes of subparagraph (A), any transfer in a corporation after December 15, 1987, shall be treated as a transfer to a person whose ownership could not qualify such corporation as a family corporation unless it is a transfer—

"(i) to a member of the family of the transferor, or

"(ii) in the case of a corporation described in subsection (h), to a member of a family which on December 15, 1987, held stock in such corporation which qualified the corporation under subsection (h).

"(6) SUBCHAPTER C TRANSACTIONS.—The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party by reason of subchapter C shall be determined under regulations prescribed by the Secretary."

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (e) of section 447 (as redesignated by subsection (a)) is amended by striking out "subsection (c)(2)" and inserting in lieu thereof "subsection (d)".

(2) Paragraph (1) of section 447(h) is amended—

(A) by striking out "This section shall not apply to any corporation" and inserting in lieu thereof "A corporation is described in this subsection",

(B) by striking out "subsection (d)" each place it appears and inserting in lieu thereof "subsection (e)", and

(C) by striking out "subsection (d)(1)" each place it appears and inserting in lieu thereof "subsection (e)(1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987. 26 USC 447 note.

SEC. 10206. ENTITIES MAY ELECT TAXABLE YEARS OTHER THAN REQUIRED TAXABLE YEAR.

(a) ELECTION OF DIFFERENT YEAR.—

(1) IN GENERAL.—Part I of subchapter E of chapter 1 (relating to accounting periods) is amended by adding at the end thereof the following new section:[109]

"SEC. 444. ELECTION OF TAXABLE YEAR OTHER THAN REQUIRED TAXABLE YEAR. 26 USC 444.

"(a) GENERAL RULE.—Except as provided in subsections (b) and (c), a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

"(b) LIMITATIONS ON TAXABLE YEARS WHICH MAY BE ELECTED.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than 3 months.

"(2) CHANGES IN TAXABLE YEAR.—Except as provided in paragraph (3), in the case of an entity changing a taxable year, an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than the shorter of—

"(A) 3 months, or

[109] Copy read "section.".

"(B) the deferral period of the taxable year which is being changed.

"(3) SPECIAL RULE FOR ENTITIES RETAINING 1986 TAXABLE YEARS.—In the case of an entity's 1st taxable year beginning after December 31, 1986, an entity may elect a taxable year under subsection (a) which is the same as the entity's last taxable year beginning in 1986.

"(4) DEFERRAL PERIOD.—For purposes of this subsection, the term 'deferral period' means, with respect to any taxable year of the entity, the months between—

"(A) the beginning of such year, and

"(B) the close of the 1st required taxable year ending within such year.

"(c) EFFECT OF ELECTION.—If an entity makes an election under subsection (a), then—

"(1) in the case of a partnership or S corporation, such entity shall make the payments required by section 7519, and

"(2) in the case of a personal service corporation, such corporation shall be subject to the deduction limitations of section 280H.

"(d) ELECTIONS.—

"(1) PERSON MAKING ELECTION.—An election under subsection (a) shall be made by the partnership, S corporation, or personal service corporation.

"(2) PERIOD OF ELECTION.—

"(A) IN GENERAL.—Any election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation changes its taxable year. Any change to a required taxable year may be made without the consent of the Secretary.

"(B) NO FURTHER ELECTION.—If an election is terminated under subparagraph (A), the partnership, S corporation, or personal service corporation may not make another election under subsection (a).

"(3) TIERED STRUCTURES, ETC.—No election may be made under subsection (a) with respect to an entity which is part of a tiered structure other than a tiered structure comprised of 1 or more partnerships or S corporations all of which have the same taxable year.

"(e) REQUIRED TAXABLE YEAR.—For purposes of this section, the term 'required taxable year' means the taxable year determined under section 706(b), 1378, or 441(i) without taking into account any taxable year which is allowable by reason of business purposes. Solely for purposes of the preceding sentence, sections 706(b), 1378, and 441(i) shall be treated as in effect for taxable years beginning before January 1, 1987.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of subsection (b)(2)(B) or (d)(2)(B) through the change in form of an entity."

(2) CONFORMING AMENDMENT.—The table of sections for part I of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 444. Election of taxable year other than required taxable year."

(b) REQUIRED PAYMENTS.—

(1) IN GENERAL.—Chapter 77 is amended by adding at the end thereof the following new section:

"SEC. 7519. REQUIRED PAYMENTS FOR ENTITIES ELECTING NOT TO HAVE REQUIRED TAXABLE YEAR. 26 USC 7519.

"(a) GENERAL RULE.—This section applies to a partnership or S corporation for any taxable year, if—

"(1) an election under section 444 is in effect for the taxable year, and

"(2) the required payment determined under subsection (b) for such taxable year (or any preceding taxable year) exceeds $500.

"(b) REQUIRED PAYMENT.—For purposes of this section, the term 'required payment' means, with respect to any applicable election year of a partnership or S corporation, an amount equal to—

"(1) the excess of the product of—

"(A) the applicable percentage of the adjusted highest section 1 rate, multiplied by

"(B) the net base year income of the entity, over

"(2) the amount of the required payment for the preceding applicable election year.

For purposes of paragraph (1)(A), the term 'adjusted highest section 1 rate' means the highest rate of tax in effect under section 1 as of the end of the base year plus 1 percentage point (or, in the case of applicable election years beginning in 1987, 36 percent).

"(c) REFUND OF PAYMENTS.—If the amount determined under subsection (b)(2) exceeds the amount determined under subsection (b)(1), then the entity shall be entitled to a refund of such excess.

"(d) NET BASE YEAR INCOME.—For purposes of this section—

"(1) IN GENERAL.—An entity's net base year income shall be equal to the sum of—

"(A) the deferral ratio multiplied by the entity's net income for the base year, plus

"(B) the excess (if any) of—

"(i) the deferral ratio multiplied by the aggregate amount of applicable payments made by the entity during the base year, over

"(ii) the aggregate amount of such applicable payments made during the deferral period of the base year.

For purposes of this paragraph, the term 'deferral ratio' means the ratio which the number of months in the deferral period of the base year bears to the number of months in the partnership's or S corporation's taxable year.

"(2) NET INCOME.—Net income is determined by taking into account the aggregate amount of the following items—

"(A) PARTNERSHIPS.—In the case of a partnership, net income shall be the amount (not below zero) determined by taking into account the aggregate amount of the partnership's items described in section 702(a) (other than credits).

"(B) S CORPORATIONS.—In the case of an S corporation, net income shall be the amount (not below zero) determined by taking into account the aggregate amount of the S corporation's items described in section 1366(a) (other than credits). If the S corporation was a C corporation for the base year, its taxable income for such year shall be treated as its net income for such year.

"(C) CERTAIN LIMITATIONS DISREGARDED.—For purposes of subparagraph (A) or (B), any limitation on the amount of any item described in either such paragraph which may be taken into account for purposes of computing the taxable income of a partner or shareholder shall be disregarded.

"(3) APPLICABLE PAYMENTS.—

"(A) IN GENERAL.—The term 'applicable payment' means amounts paid or incurred by a partnership or S corporation which are includible in gross income of a partner or shareholder.

"(B) EXCEPTIONS.—The term 'applicable payment' shall not include any—

"(i) gain from the sale or exchange of property between the partner or shareholder and the partnership or S corporation, and

"(ii) dividend paid by the S corporation.

"(4) APPLICABLE PERCENTAGE.—The applicable percentage is the percentage determined in accordance with the following table:

"If the applicable election year of the partnership or S corporation begins during:	The applicable percentage is:
1987	25
1988	50
1989	75
1990 or thereafter	100.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) DEFERRAL PERIOD.—The term 'deferral period' has the meaning given to such term by section 444(b)(4).

"(2) YEARS.—

"(A) BASE YEAR.—The term 'base year' means, with respect to any applicable election year, the taxable year of the partnership or S corporation preceding such applicable election year.

"(B) APPLICABLE ELECTION YEAR.—The term 'applicable election year' means any taxable year of a partnership or S corporation with respect to which an election is in effect under section 444.

"(3) REQUIREMENT OF REPORTING.—Each partnership or S corporation which makes an election under section 444 shall include on any required return or statement such information as the Secretary shall prescribe as is necessary to carry out the provisions of this section.

"(f) ADMINISTRATIVE PROVISIONS.—

Regulations.

"(1) IN GENERAL.—Except as otherwise provided in this subsection or in regulations prescribed by the Secretary, any payment required by this section shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C.

"(2) DUE DATE.—The amount of any payment required by this section shall be paid on or before April 15 of the calendar year following the calendar year in which the applicable election year begins (or such later date as may be prescribed by the Secretary).

"(3) INTEREST.—For purposes of determining interest, any payment required by this section shall be treated as a tax; except that no interest shall be allowed with respect to any refund of a payment made under this section.

"(4) PENALTIES.—

"(A) IN GENERAL.—In the case of any failure by any person to pay on the date prescribed therefor any amount required by this section, there shall be imposed on such person a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term 'underpayment' means the excess of the amount of the payment required under this section over the amount (if any) of such payment paid on or before the date prescribed therefor.

"(B) NEGLIGENCE AND FRAUD PENALTIES MADE APPLICABLE.—For purposes of section 6653, any payment required by this section shall be treated as a tax.

"(C) WILLFUL [110] FAILURE.—If any partnership or S corporation willfully fails to comply with the requirements of this section, section 444 shall cease to apply with respect to such partnership or S corporation.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section and section 280H, including regulations for annualizing the income and applicable payments of an entity if the base year is a taxable year of less than 12 months."

(2) CONFORMING AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7519. Required payments for entities electing not to have required taxable year."

(c) DEDUCTION LIMITATIONS.—

(1) IN GENERAL.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280H. LIMITATION ON CERTAIN AMOUNTS PAID TO EMPLOYEE-OWNERS BY PERSONAL SERVICE CORPORATIONS ELECTING ALTERNATIVE TAXABLE YEARS. 26 USC 280H.

"(a) GENERAL RULE.—If—

"(1) an election by a personal service corporation under section 444 is in effect for a taxable year, and

"(2) such corporation does not meet the minimum distribution requirements of subsection (c) for such taxable year,

then the deduction otherwise allowed under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the maximum deductible amount. The preceding sentence shall not apply for purposes of subchapter G (relating to personal holding companies).

"(b) CARRYOVER OF NONDEDUCTIBLE AMOUNTS.—If any amount is not allowed as a deduction for a taxable year under subsection (a), such amount shall be treated as paid or incurred in the succeeding taxable year.

"(c) MINIMUM DISTRIBUTION REQUIREMENT.—For purposes of this section—

"(1) IN GENERAL.—A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid or incurred during the deferral period

[110] Copy read "WILLFULL"

of the taxable year (determined without regard to subsection (b)) equal or exceed the lesser of—

"(A) the product of—

"(i) the applicable amounts paid or incurred during the preceding taxable year, divided by the number of months in such taxable year, multiplied by

"(ii) the number of months in the deferral period of the preceding taxable year, or

"(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

"(2) APPLICABLE PERCENTAGE.—[110a] The term 'applicable percentage' means the percentage (not in excess of 95 percent) determined by dividing—

"(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

"(B) the adjusted taxable income of such corporation for such 3 taxable years.

"(d) MAXIMUM DEDUCTIBLE AMOUNT.—For purposes of this section, the term 'maximum deductible amount' means the sum of—

"(1) the applicable amounts paid or incurred during the deferral period, plus

"(2) an amount equal to the product of—

"(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

"(B) the number of months in the nondeferral period.

"(e) DISALLOWANCE OF NET OPERATING LOSS CARRYBACKS.—No net operating loss carryback shall be allowed to (or from) any taxable year of a personal service corporation to which an election under section 444 applies.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE AMOUNT.—The term 'applicable amount' means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

"(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

"(B) any dividend paid by the corporation.

"(2) EMPLOYEE-OWNER.—The term 'employee-owner' has the meaning given such term by section 296A(b)(2).

"(3) NONDEFERRAL AND DEFERRAL PERIODS.—

"(A) DEFERRAL PERIOD.—The term 'deferral period' has the meaning given to such term by section 444(b)(4).

"(B) NONDEFERRAL PERIOD.—The term 'nondeferral period' means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period.[111]

"(4) ADJUSTED TAXABLE INCOME.—The term 'adjusted taxable income' means taxable income increased by any amount paid or incurred to an employee-owner which was includible in the gross income of such employee-owner."

(2) CLERICAL AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 is amended by adding at the end thereof the following item:

[110a] Copy read "PERCENTAGE.—".

[111] Copy read "period.' ".

"Sec. 280H. Limitation on certain amounts paid to owner-employees by personal service corporations electing alternative taxable years."

(d) EFFECTIVE DATES.— 26 USC 444 note.

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

(2) REQUIRED PAYMENTS.—The amendments made by subsection (b) shall apply to applicable election years beginning after December 31, 1986.

(3) ELECTIONS.—Any election under section 444 of the Internal Revenue Code of 1986 (as added by subsection (a)) for an entity's 1st taxable year beginning after December 31, 1986, shall not be required to be made before the 90th day after the date of the enactment of this Act.

(4) SPECIAL RULE FOR EXISTING ENTITIES ELECTING S CORPORATION STATUS.—If a C corporation (within the meaning of section 1361(a)(2) [112] of the Internal Revenue Code of 1986) with a taxable year other than the calendar year—

(A) made an election after September 18, 1986, and before January 1, 1988, under section 1362 of such Code to be treated as an S corporation, and

(B) elected to have the calendar year as the taxable year of the S corporation,

then section 444(b)(2)(B) of such Code shall be applied by taking into account the deferral period of the last taxable year of the C corporation rather than the deferral period of the taxable year being changed.

PART II—PARTNERSHIP PROVISIONS

SEC. 10211. CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS.

(a) GENERAL RULE.—Chapter 79 (relating to definitions) is amended by adding at the end thereof the following new section:

"SEC. 7704. CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS. 26 USC 7704.

"(a) GENERAL RULE.—For purposes of this title, except as provided in subsection (c), a publicly traded partnership shall be treated as a corporation.

"(b) PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(1) interests in such partnership are traded on an established securities market, or

"(2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

"(c) EXCEPTION FOR PARTNERSHIPS WITH PASSIVE-TYPE INCOME.—

"(1) IN GENERAL.—Subsection (a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of paragraph (2) for such taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence.

"(2) GROSS INCOME REQUIREMENTS.—A partnership meets the gross income requirements of this paragraph for any taxable

[112] Copy read "1361(a)(2))".

year if 90 percent or more of the gross income of such partnership for such taxable year consists of qualifying income.

"(3) EXCEPTION NOT TO APPLY TO CERTAIN PARTNERSHIPS WHICH COULD QUALIFY AS REGULATED INVESTMENT COMPANIES.—This subsection shall not apply to any partnership which would be described in section 851(a) if such partnership were a domestic corporation. To the extent provided in regulations, the preceding sentence shall not apply to any partnership a principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures, or forwards with respect to commodities.

"(d) QUALIFYING INCOME.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualifying income' means—

"(A) interest,

"(B) dividends,

"(C) real property rents,

"(D) gain from the sale or other disposition of real property (including property described in section 1221(1)),

"(E) income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber),

"(F) any gain from the sale or disposition of a capital asset (or property described in section 1231(b)) held for the production of income described in any of the foregoing subparagraphs of this paragraph, and

"(G) in the case of a partnership described in the second sentence of subsection (c)(3), income and gains from commodities (not described in section 1221(1)) or futures, forwards, and options with respect to commodities.

"(2) CERTAIN INTEREST NOT QUALIFIED.—Interest shall not be treated as qualifying income if—

"(A) such interest is derived in the conduct of a financial or insurance business, or

"(B) such interest would be excluded from the term 'interest' under section 856(f).

"(3) REAL PROPERTY RENT.—The term 'real property rent' means amounts which would qualify as rent from real property under section 856(d) if such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements).

"(4) CERTAIN INCOME QUALIFYING UNDER REGULATED INVESTMENT COMPANY OR REAL ESTATE TRUST PROVISIONS.—The term 'qualifying income' also includes any income which would qualify under section 851(b)(2) or 856(c)(2).

"(5) SPECIAL RULE FOR DETERMINING GROSS INCOME FROM CERTAIN REAL PROPERTY SALES.—In the case of the sale or other disposition of real property described in section 1221(1), gross income shall not be reduced by inventory costs.

"(e) INADVERTENT TERMINATIONS.—If—

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

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

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

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

"(f) EFFECT OF BECOMING CORPORATION.—As of the 1st day that a partnership is treated as a corporation under this section, for purposes of this title, such partnership shall be treated as—

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

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

(b) CLERICAL AMENDMENT.—The table of sections for chapter 79 is amended by adding at the end thereof the following new item:

"Sec. 7704. Certain publicly traded partnerships treated as corporations."

(c) EFFECTIVE DATE.— 26 USC 7704 note.

(1) IN GENERAL.—The amendments made by this section shall apply—

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

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

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

(A) IN GENERAL.—The term "existing partnership" means any partnership if—

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

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

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

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

SEC. 10212. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS UNDER SECTION 469.

(a) GENERAL RULE.—Section 469 (relating to passive activity losses and credits limited) is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

"(k) SEPARATE APPLICATION OF SECTION IN CASE OF PUBLICLY TRADED PARTNERSHIPS.—

"(1) IN GENERAL.—This section shall be applied separately with respect to items attributable to each publicly traded partnership (and subsection (i) shall not apply with respect to items attributable to any such partnership). The preceding sentence shall not apply to any credit determined under section 42, or any rehabilitation investment credit (within the meaning of section 48(o)), attributable to a publicly traded partnership to the extent the amount of any such credits exceeds the regular tax liability attributable to income from such partnership.

"(2) PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(A) interests in such partnership are traded on an established securities market, or

"(B) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof)."

(b) CONFORMING AMENDMENTS.—Paragraph (3) of section 58(b) and subparagraph (E) of section 163(d)(4) are each amended by striking out "469(l)" and inserting in lieu thereof "469(m)".

26 USC 58 note. (c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986.

SEC. 10213. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS FOR UNRELATED BUSINESS TAX.

(a) GENERAL RULE.—Subsection (c) of section 512 (relating to special rules for partnerships) is amended to read as follows:

"(c) SPECIAL RULES FOR PARTNERSHIPS.—

"(1) IN GENERAL.—If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

"(2) SPECIAL RULE FOR PUBLICLY TRADED PARTNERSHIPS.—Notwithstanding any other provision of this section—

"(A) any organization's share (whether or not distributed) of the gross income of a publicly traded partnership (as defined in section 469(k)(2)) shall be treated as gross income derived from an unrelated trade or business, and

"(B) such organization's share of the partnership deductions shall be allowed in computing unrelated business taxable income.

"(3) SPECIAL RULE WHERE PARTNERSHIP YEAR IS DIFFERENT FROM ORGANIZATION'S YEAR.—If the taxable year of the organization is different from that of the partnership, the amounts to be included or deducted in computing the unrelated business taxable income under paragraph (1) or (2) shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to partnership interests acquired after December 17, 1987. 26 USC 512 note.

SEC. 10214. TREATMENT OF CERTAIN PARTNERSHIP ALLOCATIONS.

(a) GENERAL RULE.—Clause (vi) of section 514(c)(9)(B) is amended to read as follows:

"(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

"(I) all of the partners of the partnership are qualified organizations,

"(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(h)(6)), or

"(III) such partnership meets the requirements of subparagraph (E)."

(b) CERTAIN ALLOCATIONS PERMITTED.—Paragraph (9) of section 514(c) is amended by adding at the end thereof the following new subparagraph:

"(E) CERTAIN ALLOCATIONS PERMITTED.—

"(i) IN GENERAL.—A partnership meets the requirements of this subparagraph if—

"(I) the allocation of items to any partner other than a qualified organization cannot result in such partner having a share of the overall partnership loss for any taxable year greater than such partner's share of the overall partnership income for the taxable year for which such partner's income share will be the smallest,

"(II) the allocation of items to any partner which is a qualified organization cannot result in such partner having a share of the overall partnership income for any taxable year greater than such partner's share of the overall partnership loss for the taxable year for which such partner's loss share will be the smallest, and

"(III) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this clause, items allocated under section 704(c) shall not be taken into account.

"(ii) SPECIAL RULES.—

"(I) CHARGEBACKS.—Except as provided in regulations, a partnership may without violating the requirements of this subparagraph provide for chargebacks with respect to disproportionate losses previously allocated to qualified organizations and disproportionate income previously allocated to other partners. Any chargeback referred to in the preceding sentence shall not be at a ratio in excess of the ratio under which the loss or income (as the case may be) was allocated.

"(II) PREFERRED RATES OF RETURN, ETC.—To the extent provided in regulations, a partnership may without violating the requirements of this subparagraph provide for reasonable preferred returns or reasonable guaranteed payments."

26 USC 514 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) property acquired by the partnership after October 13, 1987, and

(2) partnership interests acquired after October 13, 1987,

except that such amendments shall not apply in the case of any property (or partnership interest) acquired pursuant to a written binding contract in effect on October 13, 1987, and at all times thereafter before such property (or interest) is acquired.

SEC. 10215. STUDY.

The Secretary of the Treasury or his delegate shall conduct a study of—

(1) the issue of treating publicly traded limited partnerships (and other partnerships which significantly resemble corporations) as corporations for Federal income tax purposes, including the issues of disincorporation and opportunities for avoidance of the corporate tax, and

(2) the administrative and compliance issues related to the tax treatment of publicly traded partnerships and other large partnerships.

Reports.

Not later than January 1, 1989, the Secretary of the Treasury or his delegate shall submit a report on such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, together with such recommendations as he may deem appropriate. Not later than May 1, 1988, an interim report with respect to the issues referred to in paragraph (2) shall be submitted to such Committees.

PART III—CORPORATE PROVISIONS

SEC. 10221. REDUCTION IN DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM CORPORATIONS NOT 20-PERCENT OWNED.

(a) GENERAL RULE.—The following provisions are each amended by striking out "80 percent" and inserting in lieu thereof "70 percent":

(1) Section 243(a)(1) (relating to dividends received by corporations).

(2) Subsections (a)(3) and (b)(2) of section 244 (relating to dividends received on certain preferred stock).

(b) RETENTION OF 80-PERCENT DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM 20-PERCENT OWNED CORPORATIONS.—Section 243 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) RETENTION OF 80-PERCENT DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM 20-PERCENT OWNED CORPORATIONS.—

"(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation—

"(A) subsection (a)(1) of this section, and

"(B) subsections (a)(3) and (b)(2) of section 244,

shall be applied by substituting '80 percent' for '70 percent'.

"(2) 20-PERCENT OWNED CORPORATION.—For purposes of this section, the term '20-percent owned corporation' means any corporation if 20 percent or more of the stock of such corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account."

(c) MODIFICATIONS TO TAXABLE YEAR LIMITATIONS.—

(1) Subsection (b) of section 246 (relating to limitation on aggregate amount of deductions) is amended—

(A) by striking out "80 percent" in paragraph (1) and inserting in lieu thereof "the percentage determined under paragraph (3)", and

(B) by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULES.—The provisions of paragraph (1) shall be applied—

"(A) first separately with respect to dividends from 20-percent owned corporations (as defined in section 243(c)(2)) and the percentage determined under this paragraph shall be 80 percent, and

"(B) then separately with respect to dividends not from 20-percent owned corporations and the percentage determined under this paragraph shall be 70 percent and the taxable income shall be reduced by the aggregate amount of dividends from 20-percent owned corporations (as so defined)."

(2) Subparagraph (B) of section 805(a)(4) is amended by striking out "shall be 80 percent of the life insurance company taxable income" and inserting in lieu thereof "shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3))".

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 245(c)(1) is amended by striking out "85 percent" and inserting in lieu thereof "70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2))".

(2) Paragraph (1) of section 246A(a) is amended by striking out "80 percent" and inserting in lieu thereof "70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2))".

(3) Subparagraph (A) of section 854(b)(1) is amended by inserting before the period at the end thereof the following: "and such dividend shall be treated as received from a corporation which is not a 20-percent owned corporation".

(4) Paragraph (2) of section 861(a) is amended—

(A) by striking out "100/85th" and inserting in lieu thereof "100/70th", and

(B) by adding at the end thereof the following new sentence:

"In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting '100/80th' for '100/70th'."

(e) EFFECTIVE DATES.— 26 USC 243 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to dividends received or accrued after December 31, 1987, in taxable years ending after such date.

(2) AMENDMENTS RELATING TO LIMITATIONS.—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 1987.

SEC. 10222. CERTAIN EARNINGS AND PROFITS ADJUSTMENTS NOT TO APPLY FOR CERTAIN PURPOSES.

(a) SPECIAL RULE FOR DETERMINING ADJUSTED BASIS OF STOCK OF MEMBERS OF AFFILIATED GROUP.—

(1) IN GENERAL.—Section 1503 (relating to computation and payment of tax by affiliated group) is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR DETERMINING ADJUSTMENTS TO BASIS.—

"(1) IN GENERAL.—Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—

"(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof, and

"(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce tax attributes (other than basis in property).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) INTRAGROUP STOCK.—The term 'intragroup stock' means any stock which—

"(i) is in a corporation which is or was a member of an affiliated group of corporations, and

"(ii) is held by another member of such group.

Such term includes any other property the basis of which is determined (in whole or in part) by reference to the basis of stock described in the preceding sentence.

"(B) CONSOLIDATED YEAR.—The term 'consolidated year' means any taxable year for which the affiliated group makes a consolidated return."

26 USC 1503 note.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to any intragroup stock disposed of after December 15, 1987. For purposes of determining the adjustments to the basis of such stock, such amendment shall be deemed to have been in effect [113] for all periods whether before, on, or after December 15, 1987.

(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply to any intragroup stock disposed of after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987.

(b) DISTRIBUTIONS RECEIVED BY 20-PERCENT CORPORATE SHAREHOLDERS.—

[113] Copy read "been effect".

(1) IN GENERAL.—Paragraph (1) of section 301(f) (relating to special rule for certain distributions received by 20-percent corporate shareholders) is amended by striking out "subsection (n) thereof" and inserting in lieu thereof "subsections (k) and (n) thereof".

(2) EFFECTIVE DATES.— 26 USC 301 note.

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to distributions after December 15, 1987. For purposes of applying such amendment to any such distribution—

(i) for purposes of determining earnings and profits, such amendment shall be deemed to be in effect for all periods whether before, on, or after December 15, 1987, but

(ii) such amendment shall not affect the determination of whether any distribution on or before December 15, 1987, is a dividend and the amount of any reduction in accumulated earnings and profits on account of any such distribution.

(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on any disposition described in subsection (a)(2)(B) of this section.

SEC. 10223. TREATMENT OF MIRROR SUBSIDIARY TRANSACTIONS.

(a) CONSOLIDATED RETURN REGULATIONS NOT TO APPLY FOR [114] PURPOSES OF NONRECOGNITION UNDER SECTION 337.—Subsection (c) of section 337 (defining 80-percent distributee) is amended by adding at the end thereof the following new sentence: "For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation."

(b) AMENDMENT TO SECTION 355.—Subparagraph (D) of section 355(b)(2) (relating to requirements as to active business) is amended—

(1) by amending clause (i) to read as follows:

"(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B), or",

(2) by striking out "by another corporation" in clause (ii) and inserting in lieu thereof "such distributee corporation", and

(3) by adding at the end thereof the following new sentence: "For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation."

(c) AMENDMENT TO SECTION 304.—Subsection (b) of section 304 (relating to redemption through use of related corporations) is amended by adding at the end thereof the following new paragraph:

"(4) TREATMENT OF CERTAIN INTRAGROUP TRANSACTIONS.—

"(A) IN GENERAL.—In the case of any transfer described in subsection (a) of stock of 1 member of an affiliated group to another member of such group, proper adjustments shall be made to—

[114] Copy read "TO APPLY FOR PURPOSES".

"(i) the adjusted basis of any intragroup stock, and
"(ii) the earnings and profits of any member of such group,

to the extent necessary to carry out the purposes of this section.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) AFFILIATED GROUP.—The term 'affiliated group' has the meaning given such term by section 1504(a).

"(ii) INTRAGROUP STOCK.—The term 'intragroup stock' means any stock which—

"(I) is in a corporation which is a member of an affiliated group, and

"(II) is held by another member of such group."

26 USC 304 note. (d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions or transfers after December 15, 1987.

(2) EXCEPTIONS.—

(A) DISTRIBUTIONS.—The amendments made by this section shall not apply to any distribution after December 15, 1987, and before January 1, 1993, if—

(i) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before December 15, 1987, or

Contracts. (ii) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

For purposes of the preceding sentence, stock described in section 1504(a)(4) of the Internal Revenue Code of 1986 shall not be taken into account.

(B) SECTION 304 TRANSFERS.—The amendment made by subsection (c) shall not apply to any transfer after December 15, 1987, and before January 1, 1993, if such transfer is—

(i) between corporations which are members of the same affiliated group on December 15, 1987, or

Contracts. (ii) between corporations which become members of the same affiliated group before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

(C) DISTRIBUTIONS COVERED BY PRIOR TRANSITION RULE.—The amendments made by this section shall not apply to any distribution to which the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 do not apply.

SEC. 10224. BENEFITS OF GRADUATED CORPORATE RATES NOT ALLOWED TO PERSONAL SERVICE CORPORATIONS.

(a) GENERAL RULE.—Subsection (b) of section 11 (relating to corporate tax rates) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be the sum of—

"(A) 15 percent of so much of the taxable income as does not exceed $50,000,

"(B) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000, and

"(C) 34 percent of so much of the taxable income as exceeds $75,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) $11,750.

"(2) CERTAIN PERSONAL SERVICE CORPORATIONS NOT ELIGIBLE FOR GRADUATED RATES.—Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 34 percent of the taxable income."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987. 26 USC 11 note.

SEC. 10225. AMENDMENTS TO SECTION 382.

(a) TREATMENT OF WORTHLESS STOCK.—Paragraph (4) of section 382(g) (defining ownership change) is amended by adding at the end thereof the following new subparagraph:

"(D) TREATMENT OF WORTHLESS STOCK.—If any stock held by a 50-percent shareholder is treated by such shareholder as becoming worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder—

"(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

"(ii) shall not be treated as having owned such stock during any prior period.

For purposes of the preceding sentence, the term '50-percent shareholder' means any person owning 50 percent or more of the stock of the corporation at any time during the 3-year period ending on the last day of the taxable year with respect to which the stock was so treated."

(b) TREATMENT OF DEPRECIATION UNDER BUILT-IN LOSS RULES.—Subparagraph (B) of section 382(h)(2) (defining recognized built-in loss) is amended by adding at the end thereof the following new sentence:

"Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii)."

(c) EFFECTIVE DATES.— 26 USC 382 note.

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply in the case of stock treated as becoming worthless in taxable years beginning after December 31, 1987.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply in the case of ownership changes (as defined in section 382 of the Internal Revenue Code of 1986 as amended by subsection (a)) after December 15, 1987; except that such amendment shall not apply in the case of any ownership change pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change. Contracts.

SEC. 10226. LIMITATION ON USE OF PREACQUISITION LOSSES TO OFFSET BUILT-IN GAINS.

(a) GENERAL RULE.—Part V of subchapter C of chapter 1 (relating to carryovers) is amended by adding at the end thereof the following new section:

26 USC 384.

"SEC. 384. LIMITATION ON USE OF PREACQUISITION LOSSES TO OFFSET BUILT-IN GAINS.

"(a) GENERAL RULE.—

"(1) STOCK ACQUISITIONS, ETC.—If—

"(A) a corporation (hereinafter in this section referred to as the 'gain corporation') becomes a member of an affiliated group, and

"(B) such corporation has a net unrealized built-in gain,

the income of such corporation for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss of any other member of such group.

"(2) ASSET ACQUISITIONS.—If—

"(A) the assets of a corporation (hereinafter in this section referred to as the 'gain corporation') are acquired by another corporation—

"(i) in a liquidation to which section 332 applies, or

"(ii) in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

"(B) the gain corporation has a net unrealized built-in gain,

the income of the acquiring corporation for any recognition period taxable year (to the extent attributable to recognized built-in gains of the gain corporation) shall not be offset by any preacquisition loss of any corporation (other than the gain corporation).

"(b) EXCEPTION WHERE 50 PERCENT OF GAIN CORPORATION HELD.—Subsection (a) shall not apply if more than 50 percent of the stock (by vote and value) of the gain corporation was held throughout the 5-year period ending on the acquisition date—

"(1) in any case described in subsection (a)(1), by members of the affiliated group referred to in subsection (a)(1), or

"(2) in any case described in subsection (a)(2), by the acquiring corporation or members of such acquiring corporation's affiliated group.

For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.

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

"(1) RECOGNIZED BUILT-IN GAIN.—

"(A) IN GENERAL.—The term 'recognized built-in gain' means any gain recognized during the recognition period on the disposition of any asset except to the extent the gain corporation (or, in any case described in subsection (a)(2), the acquiring corporation) establishes that—

"(i) such asset was not held by the gain corporation on the acquisition date, or

"(ii) such gain exceeds the excess (if any) of—

"(I) the fair market value of such asset on the acquisition date, over

"(II) the adjusted basis of such asset on such date.

"(B) TREATMENT OF CERTAIN INCOME ITEMS.—Any item of income which is properly taken into account for any recognition period taxable year but which is attributable to periods before the acquisition date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account and shall be taken into account in determining the amount of the net unrealized built-in gain.

"(C) LIMITATION.—The amount of the recognized built-in gains for any recognition period taxable year shall not exceed—

"(i) the net unrealized built-in gain, reduced by

"(ii) the recognized built-in gains for prior years ending in the recognition period which (but for this section) would have been offset by preacquisition losses.

"(2) ACQUISITION DATE.—The term 'acquisition date' means the date on which the gain corporation becomes a member of the affiliated group or, in any case described in subsection (a)(2), the date of the distribution or transfer in the liquidation or reorganization.

"(3) PREACQUISITION LOSS.—

"(A) IN GENERAL.—The term 'preacquisition loss' means—

"(i) any net operating loss carryforward to the taxable year in which the acquisition date occurs, and

"(ii) any net operating loss for the taxable year in which the acquisition date occurs to the extent such loss is allocable to the period in such year on or before the acquisition date.

Except as provided in regulations, the net operating loss shall, for purposes of clause (ii), be allocated ratably to each day in the year.

"(B) TREATMENT OF RECOGNIZED BUILT-IN LOSS.—In the case of a corporation with a net unrealized built-in loss, the term 'preacquisition loss' includes any recognized built-in loss.

"(4) OTHER DEFINITIONS.—Except as provided in regulations, the terms 'net unrealized built-in gain', 'net unrealized built-in loss', 'recognized built-in loss', 'recognition period', and 'recognition period taxable year', have the same respective meanings as when used in section 382(h), except that the acquisition date shall be taken into account in lieu of the change date.

"(d) LIMITATION ALSO TO APPLY TO EXCESS CREDITS OR NET CAPITAL LOSSES.—Rules similar to the rules of subsection (a) shall also apply in the case of any excess credit (as defined in section 383(a)(2)) or net capital loss.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to ensure that the purposes of this section may not be circumvented through—

"(1) the use of any provision of law or regulations (including subchapter K of this chapter), or

"(2) contributions of property to the gain corporation."

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

"Sec. 384. Limitation on use of preacquisition losses to offset built-in gains."

26 USC 384 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply in cases where the acquisition date (as defined in section 384(c)(2) of the Internal Revenue Code of 1986 as added by this section) is after December 15, 1987; except that such amendments shall not apply in the case of any transaction pursuant to—

(1) a binding written contract in effect on or before December 15, 1987, or

(2) a letter of intent or agreement of merger signed on or before December 15, 1987.

SEC. 10227. RECAPTURE OF LIFO AMOUNT IN THE CASE OF ELECTIONS BY S CORPORATIONS.

(a) GENERAL RULE.—Section 1363 (relating to effect of election on corporations) is amended by adding at the end thereof the following new subsection:

"(d) RECAPTURE OF LIFO BENEFITS.—

"(1) IN GENERAL.—If—

"(A) an S corporation was a C corporation for the last taxable year before the first taxable year for which the election under section 1362(a) was effective, and

"(B) the corporation inventoried goods under the LIFO method for such last taxable year,

the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year (and appropriate adjustments to the basis of inventory shall be made to take into account the amount included in gross income under this paragraph).

"(2) ADDITIONAL TAX PAYABLE IN INSTALLMENTS.—

"(A) IN GENERAL.—Any increase in the tax imposed by this chapter by reason of this subsection shall be payable in 4 equal installments.

"(B) DATE FOR PAYMENT OF INSTALLMENTS.—The first installment under subparagraph (A) shall be paid on or before the due date (determined without regard to extensions) for the return of the tax imposed by this chapter for the last taxable year for which the corporation was a C corporation and the 3 succeeding installments shall be paid on or before the due date (as so determined) for the corporation's return for the 3 succeeding taxable years.

"(C) NO INTEREST FOR PERIOD OF EXTENSION.—Notwithstanding section 6601(b), for purposes of section 6601, the date prescribed for the payment of each installment under this paragraph shall be determined under this paragraph.

"(3) LIFO RECAPTURE AMOUNT.—For purposes of this subsection, the term 'LIFO recapture amount' means the amount (if any) by which—

"(A) the inventory amount of the inventory asset under the first-in, first-out method authorized by section 471, exceeds

"(B) the inventory amount of such assets under the LIFO method.

For purposes of the preceding sentence, inventory amounts shall be determined as of the close of the last taxable year referred to in paragraph (1).

"(4) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) LIFO METHOD.—The term 'LIFO method' means the method authorized by section 472.

"(B) INVENTORY ASSETS.—The term 'inventory assets' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

"(C) METHOD OF DETERMINING INVENTORY AMOUNT.—The inventory amount of assets under a method authorized by section 471 shall be determined—

"(i) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

"(ii) if clause (i) does not apply, by using cost or market, whichever is lower."

(b) EFFECTIVE DATES.— 26 USC 1363 note.

(1) IN GENERAL.—Except as provided in paragraph (2) the amendment made by subsection (a) shall apply in the case of elections made after December 17, 1987.

(2) EXCEPTION.—The amendment made by subsection (a) shall not apply in the case of any election made by a corporation after December 17, 1987, and before January 1, 1989, if, on or before December 17, 1987—

(A) there was a resolution adopted by the board of directors of such corporation to make an election under subchapter S of chapter 1 of the Internal Revenue Code of 1986, or

(B) there was a ruling request with respect to the business filed with the Internal Revenue Service expressing an intent to make such an election.

SEC. 10228. EXCISE TAX ON RECEIPT OF GREENMAIL.

(a) IN GENERAL.—Subtitle E is amended by adding at the end thereof the following new chapter:

"CHAPTER 54—GREENMAIL

"SEC. 5881. GREENMAIL.

"(a) IMPOSITION OF TAX.—There is hereby imposed on any person who receives greenmail a tax equal to 50 percent of gain realized by such person on such receipt.

"(b) GREENMAIL.—For purposes of this section, the term 'greenmail' means any consideration transferred by a corporation to directly or indirectly acquire its stock from any shareholder if—

"(1) such shareholder held such stock (as determined under section 1223) for less than 2 years before entering into the agreement to make the transfer,

"(2) at some time during the 2-year period ending on the date of such acquisition—

"(A) such shareholder,

"(B) any person acting in concert with such shareholder, or

"(C) any person who is related to such shareholder or person described in subparagraph (B), made or threatened to make a public tender offer for stock of such corporation, and

"(3) such acquisition is pursuant to an offer which was not made on the same terms to all shareholders.

For purposes of the preceding sentence, payments made in connection with, or in transactions related to, an acquisition shall be treated as paid in such acquisition.

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

"(1) PUBLIC TENDER OFFER.—The term 'public tender offer' means any offer to purchase or otherwise acquire stock or assets in a corporation if such offer was or would be required to be filed or registered with any Federal or State agency regulating securities.

"(2) RELATED PERSON.—A person is related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b).

"(d) TAX APPLIES WHETHER OR NOT GAIN RECOGNIZED.—The tax imposed by this section shall apply whether or not the gain referred to in subsection (a) is recognized."

(b) DENIAL OF INCOME TAX DEDUCTION FOR GREENMAIL TAX.—Paragraph (6) of section 275(a) is amended by striking out "and 46" and inserting in lieu thereof "46, and 54".

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end thereof the following new item:

"CHAPTER 54. GREENMAIL."

26 USC 5881 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to consideration received after the date of the enactment of this Act in taxable years ending after such date; except that such amendments shall not apply in the case of any acquisition pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.

PART IV—FOREIGN TAX PROVISIONS

SEC. 10231. DENIAL OF FOREIGN TAX CREDIT FOR TAXES PAID OR ACCRUED TO SOUTH AFRICA.

(a) GENERAL RULE.—Paragraph (2) of section 901(j) (relating to denial of foreign tax credit, etc., with respect to certain foreign countries) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE FOR SOUTH AFRICA.—

"(i) IN GENERAL.—In addition to any period during which this subsection would otherwise apply to South Africa, this subsection shall apply to South Africa during the period—

Effective date. Termination date.

"(I) beginning on January 1, 1988, and

"(II) ending on the date the Secretary of State certifies to the Secretary of the Treasury that South Africa meets the requirements of section 311(a) of the Comprehensive Anti-Apartheid Act of 1986 (as in effect on the date of the enactment of this subparagraph).

"(ii) SOUTH AFRICA DEFINED.—For purposes of clause (i), the term 'South Africa' has the meaning given to such term by paragraph (6) of section 3 of the Comprehensive Anti-Apartheid Act of 1986 (as so in effect)."

(b) TECHNICAL AMENDMENTS.—Paragraph (1) of section 901(j) is amended—

(1) by striking out "to which" in subparagraph (A) and inserting in lieu thereof "during which", and

(2) by striking out "any country so identified" and inserting in lieu thereof "such country".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987. 26 USC 901 note.

PART V—INSURANCE PROVISIONS

SEC. 10241. INTEREST RATE USED IN COMPUTING TAX RESERVES FOR LIFE INSURANCE COMPANIES MAY NOT BE LESS THAN APPLICABLE FEDERAL RATE.

(a) IN GENERAL.—Subparagraph (B) of section 807(d)(2) (relating to method of computing reserves for purposes of determining income) is amended to read as follows:

"(B) the greater of—

"(i) the applicable Federal interest rate, or

"(ii) the prevailing State assumed interest rate, and".

(b) APPLICABLE FEDERAL INTEREST RATE.—

(1) IN GENERAL.—Paragraph (4) of section 807(d) (defining State assumed interest rate) is amended to read as follows:

"(4) APPLICABLE FEDERAL INTEREST RATE; PREVAILING STATE ASSUMED INTEREST RATE.—For purposes of this subsection—

"(A) APPLICABLE FEDERAL INTEREST RATE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'applicable Federal interest rate' means the annual rate determined by the Secretary under section 846(c)(2) for the calendar year in which the contract was issued.

"(ii) ELECTION TO RECOMPUTE FEDERAL INTEREST RATE EVERY 5 YEARS.—

"(I) IN GENERAL.—In computing the amount of the reserve with respect to any contract to which an election under this clause applies for periods during any recomputation period, the applicable Federal interest rate shall be the annual rate determined by the Secretary under section 846(c)(2) for the 1st year of such period. No change in the applicable Federal interest rate shall be made under the preceding sentence unless such change would equal or exceed ½ of 1 percentage point.

"(II) RECOMPUTATION PERIOD.—For purposes of subclause (I), the term 'recomputation period' means, with respect to any contract, the 5 calendar year period beginning with the 5th calendar year beginning after the calendar year in which the contract was issued (and each subsequent 5 calendar year period).

"(III) ELECTION.—An election under this clause shall apply to all contracts issued during the calendar year for which the election was made or during any subsequent calendar year unless such election is revoked with the consent of the Secretary. Contracts.

"(IV) SPREAD NOT AVAILABLE.—Subsection (f) shall not apply to any adjustment required under this clause.

"(B) PREVAILING STATE ASSUMED INTEREST RATE.—

"(i) IN GENERAL.—The term 'prevailing State assumed interest rate' means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

Contracts.

"(ii) WHEN RATE DETERMINED.—The prevailing State assumed interest rate with respect to any contract shall be determined as of the beginning of the calendar year in which the contract was issued."

(2) TECHNICAL AMENDMENTS.—

(A) The third to the last sentence of section 807(c) is amended by striking out "the higher of" and all that follows and inserting in lieu thereof "whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit."

(B) Paragraph (2) of section 812(b) is amended—

(i) by striking out "at the prevailing State assumed rate or, where such rate is not used, another appropriate rate" and inserting in lieu thereof "at the greater of the prevailing State assumed rate or the applicable Federal interest rate", and

(ii) by adding at the end thereof the following new sentence:

"In any case where the prevailing State assumed rate is not used, another appropriate rate shall be treated as the prevailing State assumed rate for purposes of subparagraph (A)."

26 USC 807 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts issued in taxable years beginning after December 31, 1987.

SEC. 10242. TREATMENT OF FOREIGN INSURANCE COMPANIES.

(a) IN GENERAL.—Section 842 (relating to foreign corporations carrying on insurance business) is amended to read as follows:

26 USC 842.

"SEC. 842. FOREIGN COMPANIES CARRYING ON INSURANCE BUSINESS.

"(a) TAXATION UNDER THIS SUBCHAPTER.—If a foreign company carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such company shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income which is from sources within the United States, such a foreign company shall be taxable as provided in section 881.

"(b) MINIMUM EFFECTIVELY CONNECTED NET INVESTMENT INCOME.—

"(1) IN GENERAL.—In the case of a foreign company taxable under part I or II of this subchapter for the taxable year, its net investment income for such year which is effectively connected with the conduct of an insurance business within the United States shall be not less than the product of—

"(A) the required United States [115] assets of such company, and

"(B) the domestic investment yield applicable to such company for such year.

"(2) REQUIRED U.S. ASSETS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the required United States[115] assets of any foreign company for any taxable year is an amount equal to the product of—

"(i) the mean of such foreign company's total insurance liabilities on United States business, and

"(ii) the domestic asset/liability percentage applicable to such foreign company for such year.

"(B) TOTAL INSURANCE LIABILITIES.—For purposes of this paragraph—

"(i) COMPANIES TAXABLE UNDER PART I [116].—In the case of a company taxable under part I, the term 'total insurance liabilities' means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

"(ii) COMPANIES TAXABLE UNDER PART [117] II.—In the case of a company taxable under part II, the term 'total insurance liabilities' means the sum of unearned premiums and unpaid losses.

"(C) DOMESTIC ASSET/LIABILITY PERCENTAGE.—The domestic asset/liability percentage applicable for purposes of subparagraph (A)(ii) to any foreign company for any taxable year is a percentage determined by the Secretary on the basis of a ratio—

"(i) the numerator of which is the mean of the assets of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

"(ii) the denominator of which is the mean of the total insurance liabilities of the same companies.

"(3) DOMESTIC INVESTMENT YIELD.—The domestic investment yield applicable for purposes of paragraph (1)(B) to any foreign company for any taxable year is the percentage determined by the Secretary on the basis of a ratio—

"(A) the numerator of which is the net investment income of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

"(B) the denominator of which is the mean of the assets of the same companies held for the production of such income.

"(4) ELECTION TO USE WORLDWIDE YIELD.—

---

[115] Copy read "U.S.".
[116] Copy read "PART I.—".
[117] Copy read "PART II.—".

"(A) IN GENERAL.—If the foreign company makes an election under this paragraph, such company's worldwide current investment yield shall be taken into account in lieu of the domestic investment yield for purposes of paragraph (1)(B).

"(B) WORLDWIDE CURRENT INVESTMENT YIELD.—For purposes of subparagraph (A), the term 'worldwide current investment yield' means the percentage obtained by dividing—

"(i) the net investment income of the company from all sources, by

"(ii) the mean of all assets of the company (whether or not held in the United States) held for the production of investment income.

"(C) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(5) NET INVESTMENT INCOME.—For purposes of this subsection, the term 'net investment income' means—

"(A) gross investment income (within the meaning of section 834(b)), reduced by

"(B) expenses allocable to such income.

"(c) SPECIAL RULES FOR PURPOSES OF SUBSECTION (b).—

"(1) COORDINATION WITH SMALL LIFE INSURANCE COMPANY DEDUCTION.—In the case of a foreign company taxable under part I, subsection (b) shall be applied before computing the small life insurance company deduction.

"(2) REDUCTION IN SECTION 881 TAXES.—

"(A) IN GENERAL.—The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which bears the same ratio to such tax as—

"(i) the amount of the increase in effectively connected income of the company resulting from subsection (b), bears to

"(ii) the amount which would be subject to tax under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894.

"(B) LIMITATION ON REDUCTION.—The reduction under subparagraph (A) shall not exceed the increase in taxes under part I or II (as the case may be) by reason of the increase in effectively connected income of the company resulting from subsection (b).

"(3) ADJUSTMENT TO LIMITATION ON DEDUCTION FOR POLICYHOLDER DIVIDENDS IN THE CASE OF FOREIGN MUTUAL LIFE INSURANCE COMPANIES.—For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the excess of—

"(A) the required United States [118] assets of the company (determined under subsection (b)(2)), over

"(B) the mean of the assets held in the United States during the taxable year.

[118] Copy read "U.S.".

"(4) DATA USED IN DETERMINING DOMESTIC ASSET/LIABILITY PERCENTAGES AND DOMESTIC INVESTMENT YEILDS.—Each domestic asset/liability percentage, and each domestic investment yield, for any taxable year shall be based on such representative data with respect to domestic insurance companies for the second preceding taxable year as the Secretary considers appropriate.

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

"(1) providing for the proper treatment of segregated asset accounts,

"(2) providing for proper adjustments in succeeding taxable years where the company's actual net investment income for any taxable year which is effectively connected with the conduct of an insurance business within the United States exceeds the amount required under subsection (b)(1), and

"(3) providing for the proper treatment of investments in domestic subsidiaries."

(b) PART II COMPANIES SUBJECT TO SAME EFFECTIVELY CONNECTED INCOME RULE AS PART I COMPANIES.—Subparagraph (C) of section 864(c)(4) (relating to income from sources without the United States) is amended by inserting "or part II" after "part I".

(c) REPEAL OF SECTION [119] 813.—

(1) Section 813 (relating to foreign life insurance companies) is hereby repealed.

(2) Subsection (h) of section 816 is amended by striking out "section 813(a)(4)(B)" and inserting in lieu thereof "section 842(c)(1)(A)".

(3) Paragraph (2) of section 4371 is amended by striking out "section 813" and inserting in lieu thereof "section 842(b)".

(4) The table of sections for part I of subchapter L of chapter 1 is amended by striking out the item relating to section 813.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987. 26 USC 816 note.

SEC. 10243. TREATMENT OF MUTUAL LIFE INSURANCE COMPANY POLICYHOLDER DIVIDENDS FOR PURPOSES OF BOOK PREFERENCE.

(a) GENERAL RULE.—Paragraph (2) of section 56(f) (defining adjusted net book income) is amended by redesignating subparagraph (H) as subparagraph (I) and by inserting after subparagraph (G) the following new subparagraph:

"(H) SPECIAL RULES FOR LIFE INSURANCE COMPANIES.—

"(i) POLICYHOLDER DIVIDENDS OF MUTUAL COMPANIES.—In determining the adjusted net book income of any mutual life insurance company, a reduction shall be allowed for policyholder dividends with respect to any taxable year only to the extent such dividends exceed the differential earnings amount determined for such taxable year under section 809.

"(ii) OTHER ADJUSTMENTS.—To the extent provided by the Secretary, such additional adjustments shall be made as may be necessary to make the calculation of adjusted net book income in the case of any life insur-

[119] Copy read "SECTION 813—".

ance company consistent with the calculation of adjusted net book income generally."

26 USC 56 note. (b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10244. CERTAIN INSURANCE SYNDICATES.

(a) STUDY.—The Secretary of the Treasury (or his delegate) shall conduct a study of the proper Federal income tax treatment of income earned by members of insurance or reinsurance syndicates. Reports. Not later than April 1, 1988, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the results of the study conducted under this subsection, together with such recommendations as he may deem advisable.

(b) RENEGOTIATION OF CLOSING AGREEMENT.—Not later than January 1, 1990, the Secretary of the Treasury (or his delegate) shall renegotiate the closing agreement with the underwriters participating in certain insurance or reinsurance syndicates which was signed by the Internal Revenue Service on April 1, 1980, to implement the conclusions reached in the study conducted under subsection (a).

Subtitle C—Estimated Tax Provisions

SEC. 10301. REVISION OF CORPORATE ESTIMATED TAX PROVISIONS.

(a) GENERAL RULE.—Section 6655 (relating to failure by corporation to pay estimated income tax) is amended to read as follows:

26 USC 6655. "SEC. 6655. FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

"(a) ADDITION TO TAX.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under chapter 1 for the taxable year an amount determined by applying—

"(1) the underpayment rate established under section 6621,

"(2) to the amount of the underpayment,

"(3) for the period of the underpayment.

"(b) AMOUNT OF UNDERPAYMENT; PERIOD OF UNDERPAYMENT.—For purposes of subsection (a)—

"(1) AMOUNT.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) PERIOD OF UNDERPAYMENT.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 3rd month following the close of the taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

"(1) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each taxable year.

"(2) TIME FOR PAYMENT OF INSTALLMENTS.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	June 15
3rd	September 15
4th	December 15.

"(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

"(1) AMOUNT.—

"(A) IN GENERAL.—Except as otherwise provided in this section, the amount of any required installment shall be 25 percent of the required annual payment.

"(B) REQUIRED ANNUAL PAYMENT.—Except as otherwise provided in this subsection, the term 'required annual payment' means the lesser of—

"(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

"(ii) 100 percent of the tax shown on the return of the corporation for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months, or the corporation did not file a return for such preceding taxable year showing a liability for tax.

"(2) LARGE CORPORATIONS REQUIRED TO PAY 90 PERCENT OF CURRENT YEAR TAX.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), clause (ii) of paragraph (1)(B) shall not apply in the case of a large corporation.

"(B) MAY USE LAST YEAR'S TAX FOR 1ST INSTALLMENT.—Subparagraph (A) shall not apply for purposes of determining the amount of the 1st required installment for any taxable year. Any reduction in such 1st installment by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction.

"(e) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT OR ADJUSTED SEASONAL INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER SUBSECTION (d).—

"(1) IN GENERAL.—In the case of any required installment, if the corporation establishes that the annualized income installment or the adjusted seasonal installment is less than the amount determined under section (d)(1) (as modified by subsection (d)(2))—

"(A) the amount of such required installment shall be the annualized income installment (or, if lesser, the adjusted seasonal installment), and

"(B) any reduction in a required installment resulting from the application of this paragraph shall be recaptured by increasing the amount of the next required installment determined under subsection (d)(1) (as so modified) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subparagraph).

A reduction shall be treated as recaptured for purposes of subparagraph (B) if 90 percent of the reduction is recaptured.

"(2) DETERMINATION OF ANNUALIZED INCOME INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the annualized income installment is the excess (if any) of—

"(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and modified alternative minimum taxable income—

"(I) for the first 3 months of the taxable year, in the case of the 1st required installment,

"(II) for the first 3 months or for the first 5 months of the taxable year, in the case of the 2nd required installment,

"(III) for the first 6 months or for the first 8 months of the taxable year in the case of the 3rd required installment, and

"(IV) for the first 9 months or for the first 11 months of the taxable year, in the case of the 4th required installment, over

"(ii) the aggregate amount of any prior required installments for the taxable year.

"(B) SPECIAL RULES.—For purposes of this paragraph—

"(i) ANNUALIZATION.—The taxable income, alternative minimum taxable income, and modified alternative minimum taxable income shall be placed on an annualized basis under regulations prescribed by the Secretary.

"(ii) APPLICABLE PERCENTAGE.—

"In the case of the following required installments:	The applicable percentage is:
1st	22.5
2nd	45
3rd	67.5
4th	90

"(iii) MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.—The term 'modified alternative minimum taxable income' has the meaning given to such term by section 59A(b).

"(3) DETERMINATION OF ADJUSTED SEASONAL INSTALLMENT.—

"(A) IN GENERAL.—In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

"(i) 90 percent of the amount determined under subparagraph (C), over

"(ii) the aggregate amount of all prior required installments for the taxable year.

"(B) LIMITATION ON APPLICATION OF PARAGRAPH.—This paragraph shall apply only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70 percent.

"(C) DETERMINATION OF AMOUNT.—The amount determined under this subparagraph for any installment shall be determined in the following manner—

"(i) take the taxable income for all months during the taxable year preceding the filing month,

"(ii) divide [120] such amount by the base period percentage for all months during the taxable year preceding the filing month,

"(iii) determine the tax on the amount determined under clause (ii), and

"(iv) multiply the tax computed under clause (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

"(D) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

"(i) BASE PERIOD PERCENTAGE.—The base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income for the 3 preceding taxable years.

"(ii) FILING MONTH.—The term 'filing month' means the month in which the installment is required to be paid.

"(iii) REORGANIZATION, ETC.—The Secretary may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances. Regulations.

"(f) EXCEPTION WHERE TAX IS [121] SMALL AMOUNT.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

"(g) DEFINITIONS AND SPECIAL RULES.—

"(1) TAX.—For purposes of this section, the term 'tax' means the excess of—

"(A) the sum of—

"(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever applies,

"(ii) the tax imposed by section 55,

"(iii) the tax imposed by section 59A, plus

"(iv) the tax imposed by section 887, over

"(B) the sum of—

"(i) the credits against tax provided by part IV of subchapter A of chapter 1, plus

"(ii) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

For purposes of the preceding sentence, in the case of a foreign corporation subject to taxation under section 11 or 1201(a), or under subchapter L of chapter 1, the tax imposed by section 881 shall be treated as a tax imposed by section 11.

"(2) LARGE CORPORATION.—

[120] Copy read "divided".
[121] Copy read "IS".

"(A) IN GENERAL.—For purposes of this section, the term 'large corporation' means any corporation if such corporation (or any predecessor corporation) had taxable income of $1,000,000 or more for any taxable year during the testing period.

"(B) RULES FOR APPLYING SUBPARAGRAPH (A).—

"(i) TESTING PERIOD.—For purposes of subparagraph (A), the term 'testing period' means the 3 taxable years immediately preceding the taxable year involved.

"(ii) MEMBERS OF CONTROLLED GROUP.—For purposes of applying subparagraph (A) to any taxable year in the testing period with respect to corporations which are component members of a controlled group of corporations for such taxable year, the $1,000,000 amount specified in subparagraph (A) shall be divided among such members under rules similar to the rules of section 1561.

"(iii) CERTAIN CARRYBACKS AND CARRYOVERS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), taxable income shall be determined without regard to any amount carried to the taxable year under section 172 or 1212(a).

"(3) CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of this section—

"(A) Any organization subject to the tax imposed by section 511, and any private foundation, shall be treated as a corporation subject to tax under section 11.

"(B) Any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11.

"(C) Any reference to taxable income shall be treated as including a reference to unrelated business taxable income or net investment income (as the case may be).

In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting '5th month' for '3rd month'.

"(h) EXCESSIVE ADJUSTMENT UNDER SECTION 6425.—

"(1) ADDITION TO TAX.—If the amount of an adjustment under section 6425 made before the 15th day of the 3rd month following the close of the taxable year is excessive, there shall be added to the tax under chapter 1 for the taxable year an amount determined at the underpayment rate established under section 6621 upon the excessive amount from the date on which the credit is allowed or the refund is paid to such 15th day.

"(2) EXCESSIVE AMOUNT.—For purposes of paragraph (1), the excessive amount is equal to the amount of the adjustment or (if smaller) the amount by which—

"(A) the income tax liability (as defined in section 6425(c)) for the taxable year as shown on the return for the taxable year, exceeds

"(B) the estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

"(i) FISCAL YEARS AND SHORT YEARS.—

"(1) FISCAL YEARS.—In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

"(2) SHORT TAXABLE YEAR.—This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 6154 of such Code is hereby repealed.

(2) Subparagraph (C) of section 585(c)(3) of such Code is amended by striking out "section 6655(d)(3)" and inserting in lieu thereof "section 6655(e)(2)(A)(i)".

(3) Paragraph (1) of section 6201(b) of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(4) Subsection (c) of section 6425 of such Code is amended by striking out "section 6655(g)" and inserting in lieu thereof "section 6655(h)".

(5) Subsection (h) of section 6601 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(6) Subsection (e) of section 6651 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(7) The table of sections for subchapter A of chapter 62 of such Code is amended by striking out the item relating to section 6154.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987. 26 USC 585 note.

SEC. 10302. REVISED WITHHOLDING CERTIFICATES REQUIRED TO BE PUT INTO EFFECT MORE PROMPTLY.

(a) GENERAL RULE.—Subparagraph (B) of section 3402(f)(3) (relating to when certificate takes effect) is amended to read as follows:

"(B) FURNISHED TO TAKE PLACE OF EXISTING CERTIFICATE.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

"(ii) EMPLOYER MAY ELECT EARLIER EFFECTIVE DATE.—At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

"(iii) CHANGE OF STATUS WHICH AFFECTS NEXT YEAR.—Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act. 26 USC 3402 note.

SEC. 10303. ESTIMATED TAX PENALTIES FOR 1987.

26 USC 6654 note. (a) DELAY OF INCREASE IN CURRENT YEAR LIABILITY TEST FOR INDIVIDUALS.—Notwithstanding section 1541(c) of the Tax Reform Act of 1986, the amendments made by section 1541 of such Act shall apply only to taxable years beginning after December 31, 1987.

(b) CORPORATE PROVISIONS.—

(1) RATIFICATION OF SECRETARIAL WAIVER.—The Congress hereby ratifies the safe harbor provided by paragraph (b) of the Treasury Temporary Regulation 1.6655-2T.

26 USC 6655 note. (2) CORPORATIONS ALSO MAY USE 1986 TAX TO DETERMINE AMOUNT OF CERTAIN ESTIMATED TAX INSTALLMENTS DUE ON OR BEFORE JUNE 15, 1987.—

(A) IN GENERAL.—In the case of a large corporation, no addition to tax shall be imposed by section 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an estimated tax installment to which this subsection applies if no addition would be imposed with respect to such underpayment by reason of section 6655(d)(1) of such Code if such corporation were not a large corporation. The preceding sentence shall apply only to the extent the underpayment is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987.

(B) INSTALLMENT TO WHICH SUBSECTION APPLIES.—This subsection applies to any installment of estimated tax for a taxable year beginning after December 31, 1986, which is due on or before June 15, 1987.

(C) LARGE CORPORATION.—For purposes of this subsection, the term "large corporation" has the meaning given such term by section 6655(i)(2) of such Code (as in effect on the day before the date of the enactment of this Act).

Subtitle D—Estate and Gift Tax Provisions

PART I—GENERAL PROVISIONS

SEC. 10401. 5-YEAR EXTENSION OF EXISTING RATES; PHASEOUT OF BENEFITS OF EXISTING RATES AND UNIFIED CREDIT.

(a) 5-YEAR EXTENSION OF GRADUATED RATES.—Paragraph (2) of section 2001(c) (relating to phasein of 50 percent maximum rate) is amended—

(1) by striking out "1988" in subparagraph (A) and inserting in lieu thereof "1993",

(2) by striking out "in 1984, 1985, 1986, or 1987" in the text of subparagraph (D) and inserting in lieu thereof "after 1983 and before 1993", and

(3) by amending the heading of subparagraph (D) to read as follows:

"(D) AFTER 1983 AND BEFORE 1993.—".

(b) PHASEOUT OF BENEFITS OF GRADUATED RATES AND UNIFIED CREDIT.—

(1) IN GENERAL.—Subsection (c) of section 2001 is amended by adding at the end thereof the following new paragraph:

"(3) PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.—The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds $10,000,000 but does not exceed $21,040,000 ($18,340,000 in the case of decedents dying, and gifts made, after 1992)."

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (b) of section 2001 is amended—

(i) by striking out "in accordance with the rate schedule set forth in subsection (c)" in paragraph (1) and inserting in lieu thereof "under subsection (c)", and

(ii) by striking out "the rate schedule set forth in subsection (c) (as in effect at the decedent's death)" in paragraph (2) and inserting in lieu thereof "the provisions of subsection (c) (as in effect at the decedent's death)".

(B) Subsection (a) of section 2502 is amended—

(i) by striking out "in accordance with the rate schedule set forth in section 2001(c)" in paragraph (1) and inserting in lieu thereof "under section 2001(c)", and

(ii) by striking out "in accordance with such rate schedule" in paragraph (2) and inserting in lieu thereof "under such section".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of decedents dying, and gifts made, after December 31, 1987. 26 USC 2001 note.

SEC. 10402. INCLUSION RELATED TO VALUATION FREEZES.

(a) IN GENERAL.—Section 2036 (relating to transfers with retained life estate) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) INCLUSION RELATED TO VALUATION FREEZES.—

"(1) IN GENERAL.—For purposes of subsection (a), if—

"(A) any person holds a substantial interest in an enterprise, and

"(B) such person in effect transfers after December 17, 1987, property having a disproportionately large share of the potential appreciation in such person's interest in the enterprise while retaining a disproportionately large share in the income of, or rights in, the enterprise,

then the retention of the retained interest shall be considered to be a retention of the enjoyment of the transferred property.

"(2) SPECIAL RULE FOR SALES TO FAMILY MEMBERS.—The exception contained in subsection (a) for a bona fide sale shall not apply to a transfer described in paragraph (1) if such transfer is to a member of the transferor's family.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) SUBSTANTIAL INTEREST.—A person holds a substantial interest in an enterprise if such person owns (directly or indirectly) 10 percent or more of the voting power or income stream, or both, in such enterprise. For purposes of the preceding sentence, an individual shall be treated as owning any interest in an enterprise which is owned (directly or indirectly) by any member of such individual's family.

"(B) FAMILY.—The term 'family' means, with respect to any individual, such individual's spouse, any lineal descendant of such individual or of such individual's spouse, any parent or grandparent of such individual, and any spouse of any of the foregoing. For purposes of the preceding sentence, a relationship by legal adoption shall be treated as a relationship by blood.

"(C) TREATMENT OF SPOUSE.—An individual and such individual's spouse shall be treated as 1 person.

"(4) COORDINATION WITH SECTION 2035.—For purposes of applying section 2035, any transfer of the retained interest referred to in paragraph (1) shall be treated as a transfer of an interest in the transferred property referred to in paragraph (1).

"(5) COORDINATION WITH SECTION 2043.—In lieu of applying section 2043, appropriate adjustments shall be made for the value of the retained interest." [122]

26 USC 2036 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to estates of decedents dying after December 31, 1987, but only in the case of property transferred after December 17, 1987.

PART II—ESTATE TAX PROVISIONS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS

SEC. 10411. CONGRESSIONAL CLARIFICATION OF ESTATE TAX DEDUCTION FOR SALES OF EMPLOYER SECURITIES.

(a) INTENT OF CONGRESS IN ENACTING SECTION 2057 OF THE INTERNAL REVENUE CODE OF 1986.—Section 2057 (relating to sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED PROCEEDS FROM QUALIFIED SALES.—

"(1) IN GENERAL.—For purposes of this section, the proceeds of a sale of employer securities by an executor to an employee stock ownership plan or an eligible worker-owned cooperative shall not be treated as qualified proceeds from a qualified sale unless—

"(A) the decedent directly owned the securities immediately before death, and

"(B) after the sale, the employer securities—

"(i) are allocated to participants, or

"(ii) are held for future allocation in connection with—

"(I) an exempt loan under the rules of section 4975, or

"(II) a transfer of assets under the rules of section 4980(c)(3).

"(2) NO SUBSTITUTION PERMITTED.—For purposes of paragraph (1)(B), except in the case of a bona fide business transaction (e.g., a substitution of employer securities in connection with a merger of employers), employer securities shall not be treated as allocated or held for future allocation to the extent that such securities are allocated or held for future allocation in substitution of other employer securities that had been allocated or held for future allocation."

[122] Copy read "interest.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986. 26 USC 2057 note.

SEC. 10412. MODIFICATIONS OF ESTATE TAX DEDUCTION FOR SALE OF EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 2057 (relating to estate tax deduction for sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended to read as follows:

"SEC. 2057. SALES OF EMPLOYER SECURITIES TO EMPLOYEE STOCK OWNERSHIP PLANS OR WORKER-OWNED COOPERATIVES.

"(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to 50 percent of the proceeds of any sale of any qualified employer securities to—

"(1) an employee stock ownership plan, or

"(2) an eligible worker-owned cooperative.

"(b) LIMITATIONS.—

"(1) MAXIMUM REDUCTION IN TAX LIABILITY.—The amount allowable as a deduction under subsection (a) shall not exceed the amount which would result in an aggregate reduction in the tax imposed by section 2001 (determined without regard to any credit allowable against such tax) equal to $750,000.

"(2) DEDUCTION SHALL NOT EXCEED 50 PERCENT OF TAXABLE ESTATE.—The amount of the deduction allowable under subsection (a) shall not exceed 50 percent of the taxable estate (determined without regard to this section).

"(c) LIMITATIONS ON PROCEEDS WHICH MAY BE TAKEN INTO ACCOUNT.—

"(1) DISPOSITIONS BY PLAN OR COOPERATIVE WITHIN 1 YEAR OF SALE.—

"(A) IN GENERAL.—Proceeds from a sale which are taken into account under subsection (a) shall be reduced (but not below zero) by the net sale amount.

"(B) NET SALE AMOUNT.—For purposes of subparagraph (A), the term 'net sale amount' means the excess (if any) of—

"(i) the proceeds of the plan or cooperative from the disposition of employer securities during the 1-year period immediately preceding such sale, over

"(ii) the cost of employer securities purchased by such plan or cooperative during such 1-year period.

"(C) EXCEPTIONS.—For purposes of subparagraph (B)(i), there shall not be taken into account any proceeds of a plan or cooperative from a disposition described in section 4978A(e).

"(D) AGGREGATION RULES.—For purposes of this paragraph, all employee stock ownership plans maintained by an employer shall be treated as 1 plan.

"(2) SECURITIES MUST BE ACQUIRED BY PLAN FROM ASSETS WHICH ARE NOT TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Proceeds from a sale shall not be taken into account under subsection (a) to the extent that such proceeds (as reduced under paragraph (1)) are attributable to transferred assets. For purposes of the preceding sentence, all assets of a plan or cooperative (other than qualified employer securities) shall be treated as first acquired out of transferred assets.

"(B) TRANSFERRED ASSETS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'transferred assets' means assets of an employee stock ownership plan which—

"(I) are attributable to assets held by a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a) (other than an employee stock ownership plan of the employer), or

"(II) were held by the plan when it was not an employee stock ownership plan.

"(ii) EXCEPTION FOR ASSETS HELD ON FEBRUARY 26, 1987.—The term 'transferred assets' shall not include any asset held by the employee stock ownership plan on February 26, 1987.

"(iii) SECRETARIAL AUTHORITY TO WAIVE TREATMENT AS TRANSFERRED ASSET.—The Secretary may provide that assets or a class of assets shall not be treated as transferred assets if the Secretary finds such treatment is not necessary to carry out the purposes of this paragraph.

"(3) OTHER PROCEEDS.—The following proceeds shall not be taken into account under subsection (a):

"(A) PROCEEDS FROM SALE AFTER DUE DATE FOR RETURN.—Any proceeds from a sale which occurs after the date on which the return of the tax imposed by section 2001 is required to be filed (determined by taking into account any extension of time for filing).

"(B) PROCEEDS FROM SALE OF CERTAIN SECURITIES.—Any proceeds from a sale of employer securities which were received by the decedent—

"(i) in a distribution from a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a), or

"(ii) as a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

Any employer security the basis of which is determined by reference to any employer security described in the preceding sentence shall be treated as an employer security to which this subparagraph applies.

"(d) QUALIFIED EMPLOYER SECURITIES.—

"(1) IN GENERAL.—The term 'qualified employer securities' means employer securities—

"(A) which are issued by a domestic corporation which has no stock outstanding which is readily tradable on an established securities market,

"(B) which are includible in the gross estate of the decedent,

"(C) which would have been includible in the gross estate of the decedent if the decedent had died at any time during the shorter of—

"(i) the 5-year period ending on the date of death, or

"(ii) the period beginning on October 22, 1986, and ending on the date of death, and

"(D) with respect to which the executor elects the application of this section.

Subparagraph (C) shall not apply if the decedent died on or before October 22, 1986.

"(2) CERTAIN ASSETS HELD BY SPOUSE.—For purposes of paragraph (1)(C), any employer security which would have been includible in the gross estate of the spouse of a decedent during any period if the spouse had died during such period shall be treated as includible in the gross estate of the decedent during such period.

"(3) PERIODS DURING WHICH DECEDENT NOT AT RISK.—For purposes of paragraph (1)(C), employer securities shall not be treated as includible in the gross estate of the decedent during any period described in section 246(c)(4).

"(e) WRITTEN STATEMENT REQUIRED.—

"(1) IN GENERAL.—No deduction shall be allowed under subsection (a) unless the executor of the estate of the decedent files with the Secretary the statement described in paragraph (2).

"(2) STATEMENT.—A statement is described in this paragraph if it is a verified written statement—

"(A) which is made by—

"(i) the employer whose employees are covered by the employee stock ownership plan, or

"(ii) any authorized officer of the eligible worker-owned cooperative, and

"(B) which—

"(i) acknowledges that the sale of employer securities to the plan or cooperative is a sale to which sections 4978A and 4979A apply, and

"(ii) certifies—

"(I) the net sale amount for purposes of subsection (c)(1), and

"(II) the amount of assets which are not transferred assets for purposes of subsection (c)(2).

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given such term by section 409(l).

"(2) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means—

"(A) a tax credit employee stock ownership plan (within the meaning of section 409(a)), or

"(B) a plan described in section 4975(e)(7).

"(3) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term 'eligible worker-owned cooperative' has the meaning given such term by section 1042(c).

"(4) EMPLOYER.—Except to the extent provided in regulations, the term 'employer' includes any person treated as an employer under subsections (b), (c), (m), and (o) of section 414.

"(g) TERMINATION.—This section shall not apply to any sale after December 31, 1991."

(b) EFFECTIVE DATES.— 26 USC 2057 note.

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to sales after February 26, 1987.

(2) PROVISIONS TAKING EFFECT AS IF INCLUDED IN THE TAX REFORM ACT OF 1986.—The following provisions shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986:

(A) Section 2057(f)(2) of the Internal Revenue Code of 1986, as added by this section.

(B) The repeal of the requirement that a sale be made by the executor of an estate to qualify for purposes of section 2057 of such Code.

(3) DIRECT OWNERSHIP REQUIREMENT.—If the requirements of section 2057(d)(1)(B) of such Code (as modified by section 2057(d)(2) of such Code), as in effect after the amendments made by this section, are met with respect to any employer securities sold after October 22, 1986, and before February 27, 1987, such securities shall be treated as having been directly owned by the decedent for purposes of section 2057 of such Code, as in effect before such amendments.

(4) REDUCTION FOR SALES ON OR BEFORE FEBRUARY 26, 1987.—In applying the limitations of subsection (b) of section 2057 of such Code to sales after February 26, 1987, there shall be taken into account sales on or before February 26, 1987, to which section 2057 of such Code applied.

SEC. 10413. EXCISE TAX ON PLANS OR COOPERATIVES DISPOSING OF EMPLOYER SECURITIES FOR WHICH ESTATE TAX DEDUCTION WAS ALLOWED.

(a) IN GENERAL.—Chapter 43 (relating to excise taxes on qualified pension, etc., plans) is amended by inserting after section 4978 the following new section:

"SEC. 4978A. TAX ON CERTAIN DISPOSITIONS OF EMPLOYER SECURITIES TO WHICH SECTION 2057 APPLIED.

"(a) IMPOSITION OF TAX.—In the case of a taxable event involving qualified employer securities held by an employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax equal to the amount determined under subsection (b).

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be equal to 30 percent of—

"(A) the amount realized on the disposition in the case of a taxable event described in paragraph (1) or (2) of subsection (c), or

Loans.

"(B) the amount repaid on the loan in the case of a taxable event described in paragraph (3) of subsection (c).

"(2) DISPOSITIONS OTHER THAN SALES OR EXCHANGES.—For purposes of paragraph (1), in the case of a disposition of employer securities which is not a sale or exchange, the amount realized on such disposition shall be the fair market value of such employer securities at the time of disposition.

"(c) TAXABLE EVENT.—For purposes of this section, the term 'taxable event' means the following:

"(1) DISPOSITION WITHIN 3 YEARS OF ACQUISITION.—Any disposition of employer securities by an employee stock ownership plan or eligible worker-owned cooperative within 3 years after such plan or cooperative acquired qualified employer securities.

"(2) STOCKS DISPOSED OF BEFORE ALLOCATION.—Any disposition of qualified employer securities to which paragraph (1) does not apply if—

"(A) such disposition occurs before such securities are allocated to accounts of participants or their beneficiaries, and

"(B) the proceeds from such disposition are not so allocated.

"(3) USE OF ASSETS TO REPAY ACQUISITION LOANS.—The payment by an employee stock ownership plan of any portion of any loan used to acquire employer securities from transferred assets (within the meaning of section 2057(c)(2)(B)).

"(d) ORDERING RULES.—For purposes of this section and section 4978, any disposition of employer securities shall be treated as having been made in the following order:

"(1) First, from qualified employer securities acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(2) Second, from qualified employer securities acquired before such 3-year period unless such securities (or the proceeds from such disposition) have been allocated to accounts of participants or their beneficiaries.

"(3) Third, from qualified securities (within the meaning of section 4978(e)(2)) to which section 1042 applied acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(4) Finally, from any other employer securities. In the case of a disposition to which section 4978(d) or subsection (e) applies, the disposition of employer securities shall be treated as having been made in the opposite order of the preceding sentence.

"(e) SECTION NOT TO APPLY TO CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—This section shall not apply to any disposition described in paragraph (1) or (3) of section 4978(d).

"(2) CERTAIN REORGANIZATIONS.—For purposes of this section, any exchange of qualified employer securities for employer securities of another corporation in any reorganization described in section 368(a)(1) shall not be treated as a disposition, but the employer securities which were received shall be treated—

"(A) as qualified employer securities of the plan or cooperative, and

"(B) as having been held by the plan or cooperative during the period the qualified employer securities were held.

"(3) DISPOSITION TO MEET DIVERSIFICATION REQUIREMENTS.—Any disposition which is made to meet the requirements of section 401(a)(28) shall not be treated as a disposition.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TERMS USED IN SECTION 2057.—Any term used in this section which is used in section 2057 shall have the meaning given such term by section 2057.

"(2) QUALIFIED EMPLOYER SECURITIES.—The term 'qualified employer securities' has the meaning given such term by section

2057, except that such term shall include employer securities sold before February 27, 1987, for which a deduction was allowed under section 2057.

"(3) DISPOSITION.—The term 'disposition' includes any distribution.

"(4) LIABILITY FOR PAYMENT OF TAXES.—The tax imposed by this section shall be paid by—

"(A) the employer, or

"(B) the eligible worker-owned cooperative,

which made the written statement described in section 2057(e)."

(b) CONFORMING AMENDMENTS.—

(1) Section 4978(b)(2) is amended by striking out the parenthetical and inserting in lieu thereof "(determined as if such securities were disposed of in the order described in section 4978A(e))".

(2) The table of sections for chapter 43 is amended by inserting after the item relating to section 4978 the following new item:

"Sec. 4978A. Tax on certain dispositions of employer securities to which section 2057 applied."

26 USC 4978 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987.

Subtitle E—Provisions Relating to Excise Taxes and User Fees

PART I—EXCISE TAXES

SEC. 10501. EXTENSION OF TELEPHONE EXCISE TAX.

Paragraph (2) of section 4251(b) (relating to applicable percentage) is amended to read as follows:

"(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means 3 percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero."

SEC. 10502. DIESEL FUEL AND AVIATION FUEL TAXES IMPOSED AT WHOLESALE LEVEL.

(a) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by inserting after subpart A the following new subpart:

"Subpart B—Diesel Fuel and Aviation Fuel

26 USC 4091. "SEC. 4091. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed a tax on the sale of any taxable fuel by the producer or the importer thereof or by any producer of a taxable fuel.

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) shall be the sum of—

"(A)(i) the Highway Trust Fund financing rate in the case of diesel fuel, and

"(ii) the Airport and Airway Trust Fund financing rate in the case of aviation fuel, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate in the case of any taxable fuel.

"(2) HIGHWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), except as provided in subsection (c), the Highway Trust Fund financing rate is 15 cents per gallon.

"(3) AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Airport and Airway Trust Fund financing rate is 14 cents per gallon.

"(4) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

"(5) TERMINATION OF RATES.—

"(A) The Highway Trust Fund financing rate shall not apply on and after October 1, 1993.

"(B) The Airport and Airway Trust Fund financing rate shall not apply on and after January 1, 1988.

"(C) The Leaking Underground Storage Tank Trust Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) REDUCED RATE OF TAX FOR DIESEL FUEL IN ALCOHOL MIXTURE, ETC.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—The Highway Trust Fund financing rate shall be—

"(A) 9 cents per gallon in the case of the sale of any mixture of diesel fuel if—

"(i) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(ii) the diesel fuel in such mixture was not taxed under subparagraph (B), and

"(B) 10 cents per gallon in the case of the sale of diesel fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

"(2) LATER SEPARATION.—If any person separates the diesel fuel from a mixture of the diesel fuel and alcohol on which tax was imposed under subsection (a) at a Highway Trust Fund financing rate equivalent to 9 cents a gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such diesel fuel. The amount of tax imposed on any sale of such diesel fuel by such person shall be 5 cents per gallon.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 1993.

"(d) EXEMPTION FROM TAX FOR AVIATION FUEL IN ALCOHOL MIXTURE, ETC.—

"(1) IN GENERAL.—The Airport and Airway Trust Fund financing rate shall not apply to the sale of—

"(A) any mixture of aviation fuel at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)), or

"(B) any aviation fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

"(2) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which the Airport and Airway Trust Fund financing rate did not apply by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(2)), such person shall be treated as the producer of such aviation fuel.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 1993.

26 USC 4092.

"SEC. 4092. DEFINITIONS.

"(a) TAXABLE FUEL.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxable fuel' means—

"(A) diesel fuel, and

"(B) aviation fuel.

"(2) DIESEL FUEL.—The term 'diesel fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

"(3) AVIATION FUEL.—The term 'aviation fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in an aircraft.

"(b) PRODUCER.—For purposes of this subpart—

"(1) CERTAIN PERSONS TREATED AS PRODUCERS.—

"(A) IN GENERAL.—The term 'producer' includes any person described in subparagraph (B) who elects to register under section 4101 with respect to the tax imposed by section 4091.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a refiner, compounder, blender, or wholesale distributor of a taxable fuel, or

"(ii) a dealer selling any taxable fuel exclusively to producers of such taxable fuel.

"(C) TAX-FREE PURCHASERS TREATED AS PRODUCERS.—Any person to whom any taxable fuel is sold tax-free under this subpart shall be treated as the producer of such fuel.

"(2) WHOLESALE DISTRIBUTOR.—For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells a taxable fuel to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks. Such term does not include any person who (excluding the term 'wholesale distributor' from paragraph (1)) is a producer or importer.

26 USC 4093.

"SEC. 4093. EXEMPTIONS; SPECIAL RULE.

"(a) HEATING OIL.—The tax imposed by section 4091 shall not apply in the case of sales of any taxable fuel which the Secretary determines is destined for use as heating oil.

Regulations.

"(b) SALES TO PRODUCER.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply in the case of sales of a taxable fuel to a producer of such fuel.

Regulations.

"(c) AUTHORITY TO EXEMPT CERTAIN OTHER USES.—Subject to such terms and conditions as the Secretary may provide (including the application of section 4101), the Secretary may by regulation provide that-

"(1) the Highway Trust Fund financing rate under section 4091 shall not apply to diesel fuel sold for use by any purchaser as a fuel in a diesel-powered train,

"(2) the Airport and Airway Trust Fund financing rate under section 4091 shall not apply to aviation fuel sold for use by any purchaser as a fuel in an aircraft not in noncommercial aviation (as defined in section 4041(c)(4)),

"(3) the tax imposed by section 4091 shall not apply to taxable fuel sold for use by any purchaser other than as a motor fuel, and

"(4) the tax imposed by section 4091 shall not apply to taxable fuel sold for the exclusive use of any State, any political subdivision of a State, or the District of Columbia.

"(d) SPECIAL ADMINISTRATIVE RULES.—The Secretary may require— Reports.

"(1) information reporting by each remitter of the tax imposed by section 4091, and

"(2) information reporting by, and registration of, such other persons as the Secretary deems necessary to carry out this subpart.

"(e) CROSS REFERENCES.—

"(1) For imposition of tax where certain uses of diesel fuel or aviation fuel occur before imposition of tax by section 4091, see subsections (a)(1) and (c)(1) of section 4041.

"(2) For provisions allowing a credit or refund for fuel not used for certain taxable purposes, see section 6427."

(b) RETAIL DIESEL FUEL AND AVIATION FUEL TAXES TO BE RESIDUAL TAXES.—

(1) Paragraph (1) of section 4041(a) is amended—

(A) by striking out "DIESEL FUEL" in the heading and inserting in lieu thereof "TAX ON DIESEL FUEL WHERE NO TAX IMPOSED ON FUEL UNDER SECTION 4091", and

(B) by adding at the end thereof the following new sentence:

"No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(2) Paragraph (1) of section 4041(c) is amended—

(A) by striking out "IN GENERAL" in the heading and inserting in lieu thereof "TAX ON NONGASOLINE FUELS WHERE NO TAX IMPOSED ON FUEL UNDER SECTION 4091", and

(B) by adding at the end thereof the following new sentence:

"No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(3) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) TAX ON SALES AND USES SUBJECT TO TAX UNDER SUBSECTION (a).—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cent a gallon on the sale or use of any liquid (other than liquefied petroleum gas) if tax is imposed by subsection (a) on such sale or use.

"(2) TAX ON DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than a product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

"(3) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c), there is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(4) Subsection (n) of section 4041 is hereby repealed.

(c) AMENDMENTS RELATING TO CREDITS AND REFUNDS.—

(1) Section 6427 is amended by redesignating subsections (l) through (p) as subsections (m) through (q), respectively, and by inserting after subsection (k) the following new subsection:

"(l) NONTAXABLE USES OF DIESEL FUEL AND AVIATION FUEL TAXED UNDER SECTION 4091.—

"(1) IN GENERAL.—Except as provided in subsection (k) and in paragraph (3) of this subsection, if any fuel on which tax has been imposed by section 4091 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4091.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means, with respect to any fuel, any use of such fuel if such use is exempt from the taxes imposed by subsections (a)(1) and (c)(1) of section 4041 (other than by reason of the imposition of tax on any sale thereof).

"(3) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING TAX.—Paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section in the case of—

"(A) fuel used in a diesel-powered train, and

"(B) fuel used in any aircraft."

(2) Paragraph (1) of section 6427(b) is amended—

(A) by striking out "subsection (a) of section 4041" the first place it appears and inserting in lieu thereof "section 4041(a) or 4091", and

(B) by striking out "subsection (a) of section 4041" the second place it appears and inserting in lieu thereof "section 4041(a) or 4091, as the case may be".

(3) Subparagraph (B) of section 6427(e)(1) is amended by inserting "or 4091" after "section 4041".

(4) Subsection (f) of section 6427 is amended to read as follows:

"(f) GASOLINE, DIESEL FUEL, AND AVIATION FUEL USED TO[123] PRODUCE CERTAIN ALCOHOL FUELS.—Except as provided in subsection (k)—

"(1) GASOLINE AND DIESEL FUELS.—

"(A) IN GENERAL.—If any gasoline or diesel fuel on which tax was imposed by section 4081 or 4091 at the regular Highway Trust Fund financing rate is used by any person in producing a mixture described in section 4081(c) or in section 4091(c)(1)(A) (as the case may be) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular Highway Trust Fund financing rate over the incentive Highway Trust Fund Financing rate with respect to such fuel.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) REGULAR HIGHWAY TRUST FUND FINANCING RATE.—The term 'regular Highway Trust Fund financing rate' means—

"(I) 9 cents per gallon in the case of gasoline, and

"(II) 15 cents per gallon in the case of diesel fuel.

"(ii) INCENTIVE HIGHWAY TRUST FUND FINANCING RATE.—The term 'incentive Highway Trust Fund Financing rate' means—

"(I) 3⅓ cents per gallon in the case of gasoline, and

"(II) 10 cents per gallon in the case of diesel fuel.

"(C) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under subparagraph (A) with respect to any gasoline or diesel fuel with respect to which an amount is payable under subsection (d), (e), or (l) of this section or under section 6420 or 6421.

"(2) AVIATION FUEL.—If any aviation fuel on which tax was imposed by section 4091 is used by any person in producing a mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of tax (attributable to the Airport and Airway Trust Fund financing rate) imposed on such fuel under section 4091.

"(3) TERMINATION.—Paragraphs (1) and (2) shall not apply with respect to any mixture sold or used after September 30, 1993."

(5)(A) Paragraph (1) of section 6427(i) is amended by striking out "or (h)" and inserting in lieu thereof "(h), or (l)".

(B) Clause (i) of section 6427(i)(2)(A) is amended by striking out "and (h)" and inserting in lieu thereof "(h), and (l)".

(6) Subsection (o) of section 6427 (as redesignated by paragraph (1)) is amended to read as follows:

"(o) TERMINATION OF CERTAIN PROVISIONS.—Except with respect to taxes imposed by section 4041(d) and sections 4081 and 4091 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections (a), (b), (c), (d), (g), (h), and (l) shall only apply with respect to fuels purchased before October 1, 1993."

(d) OTHER CONFORMING AMENDMENTS.—

[123] Copy read "TO".

(1) Subsection (c) of section 40 is amended by striking out "or section 4081(c)" and inserting in lieu thereof ", section 4081(c), or section 4091(c)".

(2) Subparagraph (B) of section 4081(e)(2), as amended by section 1703 of the Tax Reform Act of 1986, is amended by striking out "net revenues" and all that follows and inserting in lieu thereof the following: "net revenues are at least $500,000,000 from taxes imposed by section 4041(d) and taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091."

(3) Subsection (a) of section 4101, as amended by section 1703 of the Tax Reform Act of 1986, is amended by inserting "or 4091" after "section 4081".

(4) Subsection (a) of section 4221 is amended by striking out "(other than" and all that follows through "sale by the manufacturer" and inserting in lieu thereof "(other than under section 4121, 4081, or 4091) on the sale by the manufacturer".

(5) Section 6206 is amended by striking out "or 4041" and inserting in lieu thereof "or 4041 or 4091".

(6) Paragraph (2) of section 6416(b) is amended—

(A) by striking out "(other than coal taxable under section 4121)", and

(B) by adding at the end thereof the following new sentence: "This paragraph shall not apply in the case of any tax paid under section 4091 or 4121."

(7) Subparagraph (A) of section 6416(b)(3) is amended by inserting "and other than any fuel taxable under section 4091" after "section 4081".

(8) Subparagraph (B) of section 6416(b)(3) is amended by striking out ", such gasoline" and inserting in lieu thereof "or any fuel taxable under section 4091, such gasoline or fuel".

(9) Subparagraph (C) of section 6421(e)(2) is hereby repealed.

(10) The subsection (j) of section 6421 relating to cross references is amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4), as paragraphs (1), (2), and (3), respectively.

(11) Section 6652 is amended by striking out the subsection (j) added by section 1702(b) of the Tax Reform Act of 1986 and by redesignating subsections (l) and (m) as subsections (k) and (l), respectively.

(12) Subsection (b) of section 9502 is amended by striking out "and" at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) amounts determined by the Secretary to be equivalent to the taxes received in the Treasury before January 1, 1988, under section 4091 (to the extent attributable to the Airport and Airway Trust Fund financing rate), and".

(13) Paragraph (1) of section 9503(b) is amended by striking out subparagraph (F) and inserting in lieu thereof the following:

"(F) section 4091 (relating to tax on diesel fuel), and".

(14) Paragraph (4) of section 9503(b) is amended to read as follows:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2)—

"(A) there shall not be taken into account the taxes imposed by sections 4041(d), and

"(B) there shall be taken into account the taxes imposed by sections 4081 and 4091 only to the extent attributable to the Highway Trust Fund financing rates under such sections."

(15) Paragraph (2) of section 9503(e) is amended—

(A) by striking out "sections 4041 and 4081" and inserting in lieu thereof "sections 4041, 4081, and 4091", and

(B) by striking out "section 4041 or 4081" and inserting in lieu thereof "section 4041, 4081, or 4091".

(16) Subsection (b) of section 9508 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) taxes received in the Treasury under section 4091 (relating to tax on diesel fuel and aviation fuel) to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such section,".

(17) Subparagraph (A) of section 9508(c)(2) is amended by striking out clause (ii) and all that follows and inserting in lieu thereof the following:

"(ii) credits allowed under section 34,

with respect to the taxes imposed by section 4041(d) or by sections 4081 and 4091 (to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such sections)."

(18) The table of subparts for part III of subchapter A of chapter 32 is amended by inserting after the item relating to subpart A the following new item:

"Subpart B. Diesel fuel and aviation fuel."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after March 31, 1988. 26 USC 40 note.

(f) FLOOR STOCKS TAX.— 26 USC 4091 note.

(1) IMPOSITION OF TAX.—On any taxable fuel which on April 1, 1988, is held by a taxable person, there is hereby imposed a floor stocks tax at the rate of tax which would be imposed if such fuel were sold on such date in a sale subject to tax under section 4091 of the Internal Revenue Code of 1986 (as added by this section).

(2) OVERPAYMENT OF FLOOR STOCKS TAXES, ETC.—Sections 6416 and 6427 of such Code shall apply in respect of the floor stocks taxes imposed by this subsection so as to entitle, subject to all provisions of such sections, any person paying such floor stocks taxes to a credit or refund thereof for any reason specified in such sections. All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code (as so added) shall apply to the floor stocks taxes imposed by this subsection.

(3) DUE DATE OF TAX.—The taxes imposed by this subsection shall be paid before June 16, 1988.

(4) DEFINITIONS.—For purposes of this subsection—

(A) TAXABLE FUEL.—

(i) IN GENERAL.—The term "taxable fuel" means any taxable fuel (as defined in section 4092 of such Code, as added by this section) on which no tax has been imposed under section 4041 of such Code.

(ii) EXCEPTION FOR FUEL HELD FOR NONTAXABLE USES.—The term "taxable fuel"[124] shall not include fuel held exclusively for any use which is a nontaxable use (as defined in section 6427(l) of such Code, as added by this section).

(B) TAXABLE PERSON.—The term "taxable person" means any person other than a producer (as defined in section 4092 of such Code, as so added) or importer of taxable fuel.

(C) HELD BY A TAXABLE PERSON.—An article shall be treated as held by a person if title thereto has passed to such person (whether or not delivery to such person has been made).

(5) SPECIAL RULE FOR FUEL HELD FOR USE IN TRAINS AND COMMERCIAL AIRCRAFT.—Only the Leaking Underground Storage Tank Trust Fund financing rate under section 4091 of such Code shall apply for purposes of this subsection with respect to—

(A) diesel fuel held exclusively for use as a fuel in a diesel-powered train, and

(B) aviation fuel held exclusively for use as a fuel in an aircraft not in noncommercial aviation (as defined in section 4041(c)(4) of such Code).

(6) TRANSFER OF FLOOR STOCK REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4091 of such Code (as so added).

Effective date. 26 USC 4091 note.

(g) COORDINATION WITH AIRPORT AND AIRWAY SAFETY AND CAPACITY EXPANSION ACT OF 1987.—If the Airport and Airway Safety and Capacity Expansion Act of 1987 is enacted, effective on December 31, 1987, sections 4091(b)(5)(B) and 9502(b)(3) of such Code (as added by this section) are each amended by striking out "January 1, 1988" and inserting in lieu thereof "January 1, 1991".[125]

SEC. 10503. EXTENSION OF TEMPORARY INCREASE IN AMOUNT OF TAX IMPOSED ON COAL PRODUCERS.

Subparagraph (A) of section 4121(e)(2) (relating to temporary increase termination date) is amended by striking out "January 1, 1996" and inserting in lieu thereof "January 1, 2014".

PART II—TAX-RELATED USER FEES

26 USC 7801 note.

SEC. 10511. FEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS.

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

(b) PROGRAM CRITERIA.—

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

[124] Copy read " 'taxable fuel' ".
[125] Copy read "1991", and.".

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

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

(C) shall be payable in advance.

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

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

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

(c) APPLICATION OF SECTION.—Subsection (a) shall apply with respect to requests made on or after the 1st day of the second calendar month beginning after the date of the enactment of this Act and before September 30, 1990. Effective date.

SEC. 10512. OCCUPATIONAL TAXES RELATING TO ALCOHOL, TOBACCO, AND FIREARMS.

(a) OCCUPATIONAL TAXES ON DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, BREWERIES, ETC.—

(1) DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, ETC.—

(A) IN GENERAL.—Part II of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer) is amended by inserting before subpart B the following new subpart:

"Subpart A—Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Etc.

"SEC. 5081. IMPOSITION AND RATE OF TAX. 26 USC 5081.

"(a) GENERAL RULE.—Every proprietor of—

"(1) a distilled spirits plant,

"(2) a bonded wine cellar,

"(3) a bonded wine warehouse, or

"(4) a taxpaid wine bottling house,

shall pay a tax of $1,000 per year in respect of each such premises.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(B) TECHNICAL AMENDMENTS.—

(i) Subsection (a) of section 5691 is amended by striking out "the business of a brewer, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, or limited retail dealer," and inserting in lieu thereof "a business subject to a special tax imposed by part II of subchapter A or section 5276 (relating to occupational taxes)"

(ii) The section heading of section 5691 is amended by striking out "**RELATING TO LIQUORS**".

(iii) The table of sections for part V of subchapter J of chapter 51 is amended by striking out "relating to liquors" in the item relating to section 5691.

(C) CLERICAL AMENDMENT.—The table of subparts for part II of subchapter A of chapter 51 is amended by inserting before the item relating to subpart B the following new item:

"Subpart A. Proprietors of distilled spirits plants, bonded wine cellars, etc."

(2) BREWERIES.—Section 5091 (relating to imposition and rate of tax on brewers) is amended to read as follows:

26 USC 5091. "**SEC. 5091. IMPOSITION AND RATE OF TAX.**

"(a) GENERAL RULE.—Every brewer shall pay a tax of $1,000 per year in respect of each brewery.

"(b) REDUCED RATES FOR SMALL BREWERS.—Rules similar to the rules of section 5081(b) shall apply for purposes of subsection (a)."

(b) WHOLESALE DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5111 (relating to imposition and rate of tax on wholesale dealers) is amended by striking out "$255" and inserting in lieu thereof "$500".

(2) BEER.—Subsection (b) of section 5111 is amended by striking out "$123" and inserting in lieu thereof "$500".

(c) RETAIL DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5121 (relating to imposition and rate of tax on retail dealers) is amended by striking out "$54" and inserting in lieu thereof "$250".

(2) BEER.—Subsection (b) of section 5121 is amended by striking out "$24" and inserting in lieu thereof "$250".

(3) REPEAL OF TAX ON LIMITED RETAIL DEALERS.—Subsection (c) of section 5121 is hereby repealed.

(d) TAX ON NONBEVERAGE DOMESTIC DRAWBACK.—Subsection (b) of section 5131 (relating to eligibility and rate of tax) is amended to read as follows:

"(b) RATE OF TAX.—The special tax imposed by subsection (a) shall be $500 per year."

(e) TAX ON INDUSTRIAL USE OF DISTILLED SPIRITS.—

(1) IN GENERAL.—Subchapter D of chapter 51 (relating to industrial use of distilled spirits) is amended by adding at the end thereof the following new section:

26 USC 5276. "**SEC. 5276. OCCUPATIONAL TAX.**

"(a) GENERAL RULE.—A permit issued under section 5271 shall not be valid with respect to acts conducted at any place unless the person holding such permit pays a special tax of $250 with respect to such place.

"(b) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A shall apply for purposes of this section."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end thereof the following new item:

"Sec. 5276. Occupational tax."

(f) TOBACCO.—

(1) IN GENERAL.—Chapter 52 (relating to cigars, cigarettes, smokeless tobacco and cigarette papers and tubes) is amended by redesignating subchapters D, E, and F as subchapters E, F, and G, respectively, and by inserting after subchapter C the following new subchapter:

"Subchapter D—Occupational Tax

"Sec. 5731. Imposition and rate of tax.

"SEC. 5731. IMPOSITION AND RATE OF TAX. 26 USC 5731.

"(a) GENERAL RULE.—Every person engaged in business as—

"(1) a manufacturer of tobacco products,

"(2) a manufacturer of cigarette papers and tubes, or

"(3) an export warehouse proprietor,

shall pay a tax of $1,000 per year in respect of each premises at which such business is carried on.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

"(c) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A of chapter 51 shall apply for purposes of this section.

"(d) PENALTY FOR FAILURE TO REGISTER.—Any person engaged in a business referred to in subsection (a) who willfully fails to pay the tax imposed by subsection (a) shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense."

(2) CLERICAL AMENDMENT.—The table of subchapters for chapter 52 is amended by redesignating the items relating to subchapters D, E, and F as items relating to subchapters E, F, and G, respectively, and by inserting after the item relating to subchapter C the following new item:

"SUBCHAPTER D. Occupational tax."

(g) FIREARMS.—

(1) IN GENERAL.—Section 5801 (relating to occupational taxes) is amended to read as follows:

26 USC 5801.

"SEC. 5801. IMPOSITION OF TAX.

"(a) GENERAL RULE.—On 1st engaging in business and thereafter on or before July 1 of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

"(1) Importers and manufacturers: $1,000 a year or fraction thereof.

"(2) Dealers: $500 a year or fraction thereof.

"(b) REDUCED RATES OF TAX FOR SMALL IMPORTERS AND MANUFACTURERS.—

"(1) IN GENERAL.—Paragraph (1) of subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 53 is amended by striking out the item relating to section 5801 and inserting in lieu thereof the following new item:

"Sec. 5801. Imposition of tax."

26 USC 5081 note.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1988.

(2) ALL TAXPAYERS TREATED AS COMMENCING IN BUSINESS ON JANUARY 1, 1988.—

(A) IN GENERAL.—Any person engaged on January 1, 1988, in any trade or business which is subject to an occupational tax shall be treated for purposes of such tax as having 1st engaged in such trade or business on such date.

(B) LIMITATION ON AMOUNT OF TAX.—In the case of a taxpayer who paid an occupational tax in respect of any premises for any taxable period which began before January 1, 1988, and includes such date, the amount of the occupational tax imposed by reason of subparagraph (A) in respect of such premises shall not exceed an amount equal to ½ the excess (if any) of—

(i) the rate of such tax as in effect on January 1, 1988, over

(ii) the rate of such tax as in effect on December 31, 1987.

(C) OCCUPATIONAL TAX.—For purposes of this paragraph, the term "occupational tax" means any tax imposed under part II of subchapter A of chapter 51, section 5276, section 5731, or section 5801 of the Internal Revenue Code of 1986 (as amended by this section).

(D) DUE DATE OF TAX.—The amount of any tax required to be paid by reason of this paragraph shall be due on April 1, 1988.

Subtitle F—Other Revenue Provisions

PART I—TARGETED JOBS CREDIT

SEC. 10601. DENIAL OF TARGETED JOBS CREDIT FOR WAGES PAID DURING PERIOD OF LABOR DISPUTE.

(a) GENERAL RULE.—Subsection (c) of section 51 (defining wages) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) PAYMENTS FOR SERVICES DURING LABOR DISPUTES.—If—

"(A) the principal place of employment of an individual with the employer is at a plant or facility, and

"(B) there is a strike or lockout involving employees at such plant or facility,

the term 'wages' shall not include any amount paid or incurred by the employer to such individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of such strike or lockout."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid or incurred on or after January 1, 1987, for services rendered on or after such date. 26 USC 51 note.

PART II—TREATMENT OF CERTAIN ILLEGAL IRRIGATION SUBSIDIES

SEC. 10611. TREATMENT OF CERTAIN ILLEGAL IRRIGATION SUBSIDIES.

(a) GENERAL RULE.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end thereof the following new section:

"SEC. 90. ILLEGAL FEDERAL IRRIGATION SUBSIDIES. 26 USC 90.

"(a) GENERAL RULE.—Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.

"(b) ILLEGAL FEDERAL IRRIGATION SUBSIDY.—For purposes of this section—

"(1) IN GENERAL.—The term 'illegal Federal [126] irrigation subsidy' means the excess (if any) of—

"(A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over

"(B) the amount paid for such water.

"(2) FEDERAL IRRIGATION WATER.—The term 'Federal irrigation water' means any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982.

"(c) DENIAL OF DEDUCTION.—No deduction shall be allowed under this subtitle by reason of any inclusion in gross income under subsection (a)."

[126] Copy read "federal".

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

"Sec. 90. Federal irrigation subsidies."

26 USC 90 note. (c) EFFECTIVE DATE.—The amendments made by this section shall apply to water delivered to the taxpayer in months beginning after the date of the enactment of this Act.

PART III—COMPLIANCE

SEC. 10621. STATE ESCHEAT LAWS NOT TO APPLY TO REFUNDS OF FEDERAL TAX.

(a) GENERAL RULE.—Subchapter A of chapter 65 (relating to procedure in general for abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

26 USC 6408. "SEC. 6408. STATE ESCHEAT LAWS NOT TO APPLY.

"No overpayment of any tax imposed by this title shall be refunded (and no interest with respect to any such overpayment shall be paid) if the amount of such refund (or interest) would escheat to a State or would otherwise become the property of a State under any law relating to the disposition of unclaimed or abandoned property. No refund (or payment of interest) shall be made to the estate of any decedent unless it is affirmatively shown that such amount will not escheat to a State or otherwise become the property of a State under such a law."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6408. State escheat laws not to apply."

26 USC 6408 note. (c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

26 USC 7803 note.

SEC. 10622. SENSE OF CONGRESS AS TO INCREASED INTERNAL REVENUE SERVICE FUNDING FOR TAXPAYER ASSISTANCE AND ENFORCEMENT.

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

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

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

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

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

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

(1) The Congress increase outlays for the Internal Revenue Service in fiscal year 1989 and fiscal year 1990 in the areas of taxpayer assistance and enforcement by $.7 billion in fiscal year 1989 for a revenue total of $3.2 billion and by $.8 billion in fiscal year 1990 for a revenue total of $4.4 billion. The net revenue increase would be $2.5 billion in fiscal year 1989 and $3.6 billion in fiscal year 1990, or a net revenue increase over the House

Appropriations Committee recommendations of $.4 billion in fiscal year 1989 and $1.3 billion in fiscal year 1990.

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

(3) The Congress should undertake an experimental multiyear authorization and 2-year appropriation for the Internal Revenue Service consistent with the recommendations in Public Law 100-119, section [127] 201 (Increasing the Statutory Limit on the Public Debt).

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

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

PART IV—TAX-EXEMPT BOND PROVISIONS

SEC. 10631. ISSUES USED TO ACQUIRE NONGOVERNMENTAL OUTPUT PROPERTY.

(a) IN GENERAL.—Section 141 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN ISSUES USED TO ACQUIRE NONGOVERNMENTAL OUTPUT PROPERTY TREATED AS PRIVATE ACTIVITY BONDS.—

"(1) IN GENERAL.—For purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of—

"(A) 5 percent of such proceeds, or

"(B) $5,000,000.

"(2) NONGOVERNMENTAL OUTPUT PROPERTY.—Except as otherwise provided in this subsection, for purposes of paragraph (1), the term 'nongovernmental output property' means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (within the meaning of subsection (b)(4)) (other than a facility for the furnishing of water). For purposes of the preceding sentence, use (or the holding for use) before October 14, 1987, shall not be taken into account.

[127] Copy read "Sec.".

"(3) EXCEPTION FOR PROPERTY ACQUIRED TO PROVIDE OUTPUT TO CERTAIN AREAS.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'nongovernmental output property' shall not include any property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in—

"(i) a qualified service area of the governmental unit acquiring the property, or

"(ii) a qualified annexed area of such unit.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) QUALIFIED SERVICE AREA.—The term 'qualified service area' means, with respect to the governmental unit acquiring the property, any area throughout which such unit provided (at all times during the 10-year period ending on the date such property is acquired by such unit) output of the same type as the output to be provided by such property. For purposes of the preceding sentence, the period before October 14, 1987, shall not be taken into account.

"(ii) QUALIFIED ANNEXED AREA.—The term 'qualified annexed area' means, with respect to the governmental unit acquiring the property, any area if—

"(I) such area is contiguous to, and annexed for general governmental purposes into, a qualified service area of such unit,

"(II) output from such property is made available to all members of the general public in the annexed area, and

"(III) the annexed area is not greater than 10 percent of such qualified service area.

"(C) LIMITATION ON SIZE OF ANNEXED AREA NOT TO APPLY WHERE OUTPUT CAPACITY DOES NOT INCREASE BY MORE THAN 10 PERCENT.—Subclause (III) of subparagraph (B)(ii) shall not apply to an annexation of an area by a governmental unit if the output capacity of the property acquired in connection with the annexation, when added to the output capacity of all other property which is not treated as nongovernmental output property by reason of subparagraph (A)(ii) with respect to such annexed area, does not exceed 10 percent of the output capacity of the property providing output of the same type to the qualified service area into which it is annexed.

"(D) RULES FOR DETERMINING RELATIVE SIZE, ETC.—For purposes of subparagraphs (B)(ii) and (C)—

"(i) The size of any qualified service area and the output capacity of property serving such area shall be determined as the close of the calendar year preceding the calendar year in which the acquisition of nongovernmental output property or the annexation occurs.

"(ii) A qualified annexed area shall be treated as part of the qualified service area into which it is annexed for purposes of determining whether any other area an nexed in a later year is a qualified annexed area.

"(4) EXCEPTION FOR PROPERTY CONVERTED TO NONOUTPUT USE.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'nongovernmental output property' shall not include any property which is to be converted to a use not in connection with an output facility.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any property which is part of the output function of a nuclear power facility.

"(5) SPECIAL RULES.—In the case of a bond which is a private activity bond solely by reason of this subsection—

"(A) subsections (c) and (d) of section 147 (relating to limitations on acquisition of land and existing property) shall not apply, and

"(B) paragraph (8) of section 142(a) shall be applied as if it did not contain 'local'.

"(6) TREATMENT OF JOINT ACTION AGENCIES.—With respect to nongovernmental output property acquired by a joint action agency the members of which are governmental units, this subsection shall be applied at the member level by treating each member as acquiring its proportionate share of such property."

(b) TECHNICAL AMENDMENT.—Subparagraph (A) of section 146(f)(5) is amended to read as follows:

"(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a),".

(c) EFFECTIVE DATE.— 26 USC 141 note.

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to bonds issued after October 13, 1987 (other than bonds issued to refund bonds issued on or before such date).

(2) BINDING AGREEMENTS.—The amendments made by this section shall not apply to bonds (other than advance refunding bonds) with respect to a facility acquired after October 13, 1987, pursuant to a binding contract entered into on or before such date.

(3) TRANSITIONAL RULE.—The amendments made by this section shall not apply to bonds issued—

(A) after October 13, 1987, by an authority created by a statute—

(i) approved by the State Governor on July 24, 1986 and

(ii) sections 1 through 10 of which became effective on January 15, 1987, and

(B) to provide facilities serving the area specified in such statute on the date of its enactment.

SEC. 10632. BONDS ISSUED BY INDIAN TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Section 7871 is amended by adding at the end thereof the following new subsection:

"(e) ESSENTIAL GOVERNMENTAL FUNCTION.—For purposes of this section, the term 'essential governmental function' shall not include any function which is not customarily performed by State and local governments with general taxing powers."

(b) EXCEPTION FOR CERTAIN PRIVATE ACTIVITY BONDS.—

(1) IN GENERAL.—Subsection (c) of section 7871 (relating to additional requirements for tax-exempt bonds) is amended by adding at the end thereof the following new paragraph:

"(3) EXCEPTION FOR CERTAIN PRIVATE ACTIVITY BONDS.—

"(A) IN GENERAL.—In the case of an obligation to which this paragraph applies—

"(i) paragraph (2) shall not apply,

"(ii) such obligation shall be treated for purposes of this title as a qualified small issue bond, and

"(iii) section 146 shall not apply.

"(B) OBLIGATIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any obligation issued as part of an issue if—

"(i) 95 percent or more of the net proceeds of the issue are to be used for the acquisition, construction, reconstruction, or improvement of property which is of a character subject to the allowance for depreciation and which is part of a manufacturing facility (as defined in section 144(a)(12)(C)),

"(ii) such issue is issued by an Indian tribal government or a subdivision thereof,

"(iii) 95 percent or more of the net proceeds of the issue are to be used to finance property which—

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

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

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

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

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

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

"(C) PRIVATE ACTIVITY BOND RULES TO APPLY.—An obligation to which this paragraph applies (other than an obligation described in paragraph (1)) shall be treated for purposes of this title as a private activity bond.

"(D) EMPLOYMENT REQUIREMENTS.—

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

"(ii) FAILURE TO MEET REQUIREMENTS.—

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

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

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

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFIED INDIAN LANDS.—The term 'qualified Indian lands' means land which is held in trust by the United States for the benefit of an Indian tribe.

"(ii) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(iii) NET PROCEEDS.—The term 'net proceeds' has the meaning given such term by section 150(a)(3)."

(2) TECHNICAL AMENDMENT.—Paragraph (2) of section 7871(c) is amended by striking out "Subsection (a)" and inserting in lieu thereof "Except as provided in paragraph (3), subsection (a)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after October 13, 1987. 26 USC 7871 note.

Subtitle G—Lobbying and Political Activities of Tax-Exempt Organizations

PART I—DISCLOSURE REQUIREMENTS

SEC. 10701. REQUIRED DISCLOSURE OF NONDEDUCTIBILITY OF CONTRIBUTIONS.

(a) GENERAL RULE.—Subchapter B of chapter 61 (relating to miscellaneous provisions) is amended by redesignating section 6113 as section 6114 and by inserting after section 6112 the following new section:

"SEC. 6113. DISCLOSURE OF NONDEDUCTIBILITY OF CONTRIBUTIONS. 26 USC 6113.

"(a) GENERAL RULE.—Each fundraising solicitation by (or on behalf of) an organization to which this section applies shall contain an express statement (in a conspicuous and easily recognizable format) that contributions or gifts to such organization are not deductible as charitable contributions for Federal income tax purposes.

"(b) ORGANIZATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall apply to any organization which is not described in section 170(c) and which—

"(A) is described in subsection (c) (other than paragraph (1) thereof) or (d) of section 501 and exempt from taxation under section 501(a),

"(B) is a political organization (as defined in section 527(e)), or

"(C) was an organization described in subparagraph (A) or (B) at any time during the 5-year period ending on the date of the fundraising solicitation or is a successor to an organization so described at any time during such 5-year period.

"(2) EXCEPTION FOR SMALL ORGANIZATIONS.—

"(A) ANNUAL GROSS RECEIPTS DO NOT EXCEED $100,000.— This section shall not apply to any organization the gross receipts of which in each taxable year are normally not more than $100,000.

"(B) MULTIPLE ORGANIZATION RULE.—The Secretary may treat any group of 2 or more organizations as 1 organization for purposes of subparagraph (A) where necessary or appropriate to prevent the avoidance of this section through the use of multiple organizations.

"(3) SPECIAL RULE FOR CERTAIN FRATERNAL ORGANIZATIONS.— For purposes of paragraph (1), an organization described in section 170(c)(4) shall be treated as described in section 170(c) only with respect to solicitations for contributions or gifts which are to be used exclusively for purposes referred to in section 170(c)(4).

"(c) FUNDRAISING SOLICITATION.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'fundraising solicitation' means any solicitation of contributions or gifts which is made—

"(A) in written or printed form,

"(B) by television or radio, or

"(C) by telephone.

"(2) EXCEPTION FOR CERTAIN LETTERS OR CALLS.—The term 'fundraising solicitation' shall not include any letter or telephone call if such letter or call is not part of a coordinated fundraising campaign soliciting more than 10 persons during the calendar year."

(b) PENALTY.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

26 USC 6710.

"SEC. 6710. FAILURE TO DISCLOSE THAT CONTRIBUTIONS ARE NON-DEDUCTIBLE.

"(a) IMPOSITION OF PENALTY.—If there is a failure to meet the requirement of section 6113 with respect to a fundraising solicitation by (or on behalf of) an organization to which section 6113 applies, such organization shall pay a penalty of $1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed $10,000.

"(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

"(c) $10,000 LIMITATION NOT TO APPLY WHERE INTENTIONAL DISREGARD.—If any failure to which subsection (a) applies is due to intentional disregard of the requirement of section 6113—

"(1) the penalty under subsection (a) for the day on which such failure occurred shall be the greater of—

"(A) $1,000, or

"(B) 50 percent of the aggregate cost of the solicitations which occurred on such day and with respect to which there was such a failure,

"(2) the $10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

"(3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).

"(d) DAY ON WHICH FAILURE OCCURS.—For purposes of this section, any failure to meet the requirement of section 6113 with respect to a solicitation—

"(1) by television or radio, shall be treated as occurring when the solicitation was telecast or broadcast,

"(2) by mail, shall be treated as occurring when the solicitation was mailed,

"(3) not by mail but in written or printed form, shall be treated as occurring when the solicitation was distributed, or

"(4) by telephone, shall be treated as occurring when the solicitation was made."

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 61 is amended by striking out the item relating to section 6113 and inserting in lieu thereof the following:

"Sec. 6113. Disclosure of nondeductibility of contributions.
"Sec. 6114. Cross reference."

(2) The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6710. Failure to disclose that contributions are nondeductible."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to solicitations after January 31, 1988. 26 USC 6113 note.

SEC. 10702. PUBLIC INSPECTION OF ANNUAL RETURNS AND APPLICATIONS FOR TAX-EXEMPT STATUS.

(a) GENERAL RULE.—Section 6104 (relating to publicity of information required from certain tax-exempt organizations and certain trusts) is amended by adding at the end thereof the following new subsection:

"(e) PUBLIC INSPECTION OF CERTAIN ANNUAL RETURNS AND APPLICATIONS FOR EXEMPTION.—

"(1) ANNUAL RETURNS.—

"(A) IN GENERAL.—During the 3-year period beginning on the filing date, a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of the organization and, if such organization regularly maintains 1 or more regional or district offices

Public information.

having 3 or more employees, at each such regional or district office.

"(B) ORGANIZATIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any organization which—

"(i) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), and

"(ii) is not a private foundation (within the meaning of section 509(a)).

"(C) NONDISCLOSURE OF CONTRIBUTORS.—Subparagraph (A) shall not require the disclosure of the name or address of any contributor to the organization.

"(D) FILING DATE.—For purposes of subparagraph (A), the term 'filing date' means the last day prescribed for filing the return under section 6033 (determined with regard to any extension of time for filing).

"(2) APPLICATION FOR EXEMPTION.—

"(A) IN GENERAL.—If—

"(i) an organization described in subsection (c) or (d) of section 501 is exempt from taxation under section 501(a), and

Public information.

"(ii) such organization filed an application for recognition of exemption under section 501,

a copy of such application (together with a copy of any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application) shall be made available by the organization for inspection during regular business hours by any individual at the principal office of the organization and, if the organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office.

"(B) NONDISCLOSURE OF CERTAIN INFORMATION.—Subparagraph (A) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D)."

26 USC 6104 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) to returns for years beginning after December 31, 1986, and

(2) on and after the 30th day after the date of the enactment of this Act in the case of applications submitted to the Internal Revenue Service—

(A) after July 15, 1987, or

(B) on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987.

SEC. 10703. ADDITIONAL INFORMATION REQUIRED ON ANNUAL RETURNS OF SECTION 501(c)(3) ORGANIZATIONS.

(a) GENERAL RULE.—Subsection (b) of section 6033 (relating to certain organizations described in section 501(c)(3)) [128] is amended by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof a comma, and by inserting after paragraph (8) the following new paragraphs:

[128] Copy read "503(c)(3))".

"(9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to prevent—

"(A) diversion of funds from the organization's exempt purpose, or

"(B) misallocation of revenues or expenses, and

"(10) such other information for purposes of carrying out the internal revenue laws as the Secretary may require."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to returns for years beginning after December 31, 1987. 26 USC 6033 note.

SEC. 10704. PENALTIES.

(a) GENERAL RULE.—Subsection (c) of section 6652 (relating to returns by exempt organizations and by certain trusts) is amended to read as follows:

"(c) RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS.—

"(1) ANNUAL RETURNS UNDER SECTION 6033.—

"(A) PENALTY ON ORGANIZATION.—In the case of—

"(i) a failure to file a return required under section 6033 (relating to returns by exempt organizations) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), or

"(ii) a failure to include any of the information required to be shown on a return filed under section 6033 or to show the correct information,

there shall be paid by the exempt organization $10 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 return shall not exceed the lesser of $5,000 or 5 percent of the gross receipts of the organization for the year.

"(B) MANAGERS.—

"(i) IN GENERAL.—The Secretary may make a written demand on any organization subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the return shall be filed (or the information furnished) for purposes of this subparagraph.

"(ii) FAILURE TO COMPLY WITH DEMAND.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by the person failing to so comply $10 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

"(C) PUBLIC INSPECTION OF ANNUAL RETURNS.—In the case of a failure to comply with the requirements of subsection (d) or (e)(1) of section 6104 (relating to public inspection of annual returns) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the person failing to meet such requirements $10 for each day during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

"(D) PUBLIC INSPECTION OF APPLICATIONS FOR EXEMPTION.—In the case of a failure to comply with the requirements of section 6104(e)(2) (relating to public inspection of applications for exemption) on the date and in the manner prescribed therefor, there shall be paid by the person failing to meet such requirements $10 for each day during which such failure continues.

"(2) RETURNS UNDER SECTION 6034 OR 6043(b).—

"(A) PENALTY ON ORGANIZATION OR TRUST.—In the case of a failure to file a return required under section 6034 (relating to returns by certain trusts) or section 6043(b) (relating to terminations, etc., of exempt organizations), on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the exempt organization or trust failing so to file $10 for each day during which such failure continues, but the total amount imposed under this subparagraph on any organization or trust for failure to file any 1 return shall not exceed $5,000.

"(B) MANAGERS.—The Secretary may make written demand on an organization or trust failing to file under subparagraph (A) specifying therein a reasonable future date by which such filing shall be made for purposes of this subparagraph. If such filing is not made on or before such date, there shall be paid by the person failing so to file $10 for each day after the expiration of the time specified in the written demand during which such failure continues, but the total amount imposed under this subparagraph on all persons for failure to file any 1 return shall not exceed $5,000.

"(3) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

"(4) OTHER SPECIAL RULES.—

"(A) TREATMENT AS TAX.—Any penalty imposed under this subsection shall be paid on notice and demand of the Secretary and in the same manner as tax.

"(B) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under this subsection for any penalty with respect to any failure, all such persons shall be jointly and severally liable with respect to such failure.

"(C) PERSON.—For purposes of this subsection, the term 'person' means any officer, director, trustee, employee, or other individual who is under a duty to perform the act in respect of which the violation occurs."

(b) WILLFUL FAILURE TO PERMIT PUBLIC INSPECTION.—

(1) IN GENERAL.—Section 6685 (relating to assessable penalty with respect to private foundation annual returns) is amended to read as follows:

"SEC. 6685. ASSESSABLE PENALTY WITH RESPECT TO PUBLIC INSPECTION REQUIREMENTS FOR CERTAIN TAX-EXEMPT ORGANIZATIONS. 26 USC 6685.

"In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of subsection (d) or (e) of section 6104 and who fails to so comply with respect to any return or application, if such failure is willful, shall pay a penalty of $1,000 with respect to each such return or application."

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking out the item relating to section 6685 and inserting in lieu thereof the following:

"Sec. 6685. Assessable penalty with respect to public inspection requirements for certain tax-exempt organizations."

(c) FURNISHING FRAUDULENT INFORMATION.—Section 7207 (relating to fraudulent returns, statements, or other documents) is amended by striking out "subsection (d) of section 6104" and inserting in lieu thereof "subsection (d) or (e) of section 6104".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply— 26 USC 6652 note.

(1) to returns for years beginning after December 31, 1986, and

(2) on and after the date of the enactment of this Act in the case of applications submitted to the Internal Revenue Service—

(A) after July 15, 1987, or

(B) on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987.

SEC. 10705. REQUIRED DISCLOSURE THAT CERTAIN INFORMATION OR SERVICE AVAILABLE FROM FEDERAL GOVERNMENT.

(a) GENERAL RULE.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6711. FAILURE BY TAX-EXEMPT ORGANIZATION TO DISCLOSE THAT CERTAIN INFORMATION OR SERVICE AVAILABLE FROM FEDERAL GOVERNMENT. 26 USC 6711.

"(a) IMPOSITION OF PENALTY.—If—

"(1) a tax-exempt organization offers to sell (or solicits money for) specific information or a routine service for any individual which could be readily obtained by such individual free of charge (or for a nominal charge) from an agency of the Federal Government,

"(2) the tax-exempt organization, when making such offer or solicitation, fails to make an express statement (in a conspicuous and easily recognizable format) that the information or service can be so obtained, and

"(3) such failure is due to intentional disregard of the requirements of this subsection,

such organization shall pay a penalty determined under subsection (b) for each day on which such a failure occurred.

"(b) AMOUNT OF PENALTY.—The penalty under subsection (a) for any day on which a failure referred to in such subsection occurred shall be the greater of—

"(1) $1,000, or

"(2) 50 percent of the aggregate cost of the offers and solicitations referred to in subsection (a)(1) which occurred on such day and with respect to which there was such a failure.

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

"(1) TAX-EXEMPT ORGANIZATION.—The term 'tax-exempt organization' means any organization which—

"(A) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), or

"(B) is a political organization (as defined in section 527(e)).

"(2) DAY ON WHICH FAILURE OCCURS.—The day on which any failure referred to in subsection (a) occurs shall be determined under rules similar to the rules of section 6710(d)."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6711. Failure by tax-exempt organization to disclose that certain information or service available from Federal Government."

26 USC 6711 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offers and solicitations after January 31, 1988.

PART II—POLITICAL ACTIVITIES

SEC. 10711. CLARIFICATION OF PROHIBITED POLITICAL ACTIVITIES.

(a) GENERAL RULE.—The following provisions are each amended by striking out "on behalf of any candidate" and inserting in lieu thereof "on behalf of (or in opposition to) any candidate":

(1) Section 170(c)(2)(D).

(2) Section 501(c)(3).

(3) Paragraphs (2) and (3) of section 2055(a).

(4) Clauses (ii) and (iii) of section 2106(a)(2)(A).

(5) Section 2522(a)(2).

(6) Paragraphs (2) and (3) of section 2522(b).

(b) STATUS AFTER DISQUALIFICATION BECAUSE OF POLITICAL ACTIVITIES.—

(1) IN GENERAL.—Paragraph (2) of section 504(a) (relating to status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying) is amended to read as follows:

"(2) is not an organization described in section 501(c)(3)—

"(A) by reason of carrying on propaganda, or otherwise attempting, to influence legislation, or

"(B) by reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office,".

(2) CLERICAL AMENDMENTS.—

(A) The section heading for section 504 is amended by striking out "SUBSTANTIAL LOBBYING" and inserting in lieu thereof "SUBSTANTIAL LOBBYING OR BECAUSE OF POLITICAL ACTIVITIES".

(B) The table of sections for part I of subchapter F of chapter 1 is amended by striking out "substantial lobbying" in the item relating to section 504 and inserting in lieu thereof "substantial lobbying or because of political activities".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to activities after the date of the enactment of this Act. 26 USC 170 note.

SEC. 10712. EXCISE TAXES ON POLITICAL EXPENDITURES BY SECTION 501(c)(3) ORGANIZATIONS.

(a) GENERAL RULE.—Chapter 42 (relating to excise taxes on private foundations and black lung benefit trusts) is amended by redesignating subchapter C as subchapter D and by inserting after subchapter B the following new subchapter:

"Subchapter C—Political Expenditures of Section 501(c)(3) Organizations

"SEC. 4955. TAXES ON POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS. 26 USC 4955.

"(a) INITIAL TAXES.—

"(1) ON THE ORGANIZATION.—There is hereby imposed on each political expenditure by a section 501(c)(3) organization a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the organization.

"(2) ON THE MANAGEMENT.—There is hereby imposed on the agreement of any organization manager to the making of any expenditure, knowing that it is a political expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who agreed to the making of the expenditure.

"(b) ADDITIONAL TAXES.—

"(1) ON THE ORGANIZATION.—In any case in which an initial tax is imposed by subsection (a)(1) on a political expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the organization.

"(2) ON THE MANAGEMENT.—In any case in which an additional tax is imposed by paragraph (1), if an organization manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the political expenditure. The tax imposed by this paragraph shall be paid by any organization manager who refused to agree to part or all of the correction.

"(c) SPECIAL RULES.—For purposes of subsections (a) and (b)—

"(1) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under subsection (a)(2) or (b)(2) with respect to the making of a political expenditure, all such persons shall be jointly and severally liable under such subsection with respect to such expenditure.

"(2) LIMIT FOR MANAGEMENT.—With respect to any 1 political expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

"(d) POLITICAL EXPENDITURE.—For purposes of this section—

"(1) IN GENERAL.—The term 'political expenditure' means any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

"(2) CERTAIN OTHER EXPENDITURES INCLUDED.—In the case of an organization which is formed primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office (or which is effectively controlled by a candidate or prospective candidate and which is availed of primarily for such purposes), the term 'political expenditure' includes any of the following amounts paid or incurred by the organization:

"(A) Amounts paid or incurred to such individual for speeches or other services.

"(B) Travel expenses of such individual.

"(C) Expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual.

"(D) Expenses of advertising, publicity, and fundraising for such individual.

"(E) Any other expense which has the primary effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

"(e) COORDINATION WITH SECTION 4945.—If tax is imposed under this section with respect to any political expenditure, such expenditure shall not be treated as a taxable expenditure for purposes of section 4945.

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) SECTION 501(C)(3) ORGANIZATION.—The term 'section 501(c)(3) organization' means any organization which (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a).

"(2) ORGANIZATION MANAGER.—The term 'organization manager' means—

"(A) any officer, director, or trustee of the organization (or individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization), and

"(B) with respect to any expenditure, any employee of the organization having authority or responsibility with respect to such expenditure.

"(3) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any political expenditure, recovering part or all of the expenditure to the extent recovery is possible, establishment of safeguards to prevent future political expenditures, and where full recovery is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

"(4) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any political expenditure, the period beginning with the date on which the political expenditure occurs and ending on the earlier of—

"(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

"(B) the date on which tax imposed by subsection (a)(1) is assessed."

(b) ABATEMENT OF FIRST TIER TAX IN CERTAIN CASES.—

(1) Section 4962 (relating to abatement of private foundation first tier taxes in certain cases) is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b) QUALIFIED FIRST TIER TAX.—For purposes of this section, the term 'qualified first tier tax' means any first tier tax imposed by subchapter A or C of this chapter, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).

"(c) SPECIAL RULE FOR TAX ON POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.—In the case of the tax imposed by section 4955(a), subsection (a)(1) shall be applied by substituting 'not willful and flagrant' for 'due to reasonable cause and not to willful neglect'."

(2) Subsection (a) of section 4962 is amended by striking out "any private foundation first tier tax" and inserting in lieu thereof "any qualified first tier tax".

(3) Subsections (a), (b), and (c) of section 4963 are each amended by striking out "4952," and inserting in lieu thereof "4952, 4955,".

(4) The section heading for section 4962 is amended by striking out "**PRIVATE FOUNDATION**".

(5) The table of sections for subchapter D of chapter 42 (as redesignated by this section) is amended by striking out "private foundation" in the item relating to section 4962.

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (e) of section 6213 is amended by striking out "4971" and inserting in lieu thereof "4955 (relating to taxes on political expenditures), 4971".

(2) Paragraph (1) of section 6501(l) is amended by striking out "plan, or trust" and inserting in lieu thereof "plan, trust, or other organization".

(3) Subsection (g) of section 6503 is amended by striking out "4951, 4952,".

(4) Section 6684 is amended by striking out "private foundations" and inserting in lieu thereof "private foundations and certain other tax-exempt organizations".

(5) Paragraphs (2) and (3) of section 7422(g) are each amended by striking out "4952," and inserting in lieu thereof "4952, 4955,".

(6) Subsection (b) of section 7454 is amended by striking out "the burden of proof" and inserting in lieu thereof "or whether an organization manager (as defined in section 4955(e)(2)) has 'knowingly' agreed to the making of a political expenditure (within the meaning of section 4955), the burden of proof".

(7) The chapter heading for chapter 42 is amended by striking out "**BLACK LUNG BENEFIT TRUSTS**" and inserting in lieu thereof "**AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS**".

(8) The table of chapters for subtitle D of such Code is amended by striking out "black lung benefit trusts" in the item relating to chapter 42 and inserting in lieu thereof "and certain other tax-exempt organizations".

(9) The table of subchapters for chapter 42 is amended by striking out the item relating to subchapter C and inserting in lieu thereof the following:

"SUBCHAPTER C. Political expenditures of section 501(c)(3) organizations.
"SUBCHAPTER D. Abatement of first and second-tier taxes in certain cases."

26 USC 4955 note.

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 10713. ADDITIONAL ENFORCEMENT AUTHORITY IN THE CASE OF FLAGRANT POLITICAL EXPENDITURES.

(a) AUTHORITY TO ENJOIN FLAGRANT POLITICAL EXPENDITURES.—

(1) IN GENERAL.—Subchapter A of chapter 76 (relating to civil actions by the United States) is amended by redesignating section 7409 as section 7410 and by inserting after section 7408 the following new section:

26 USC 7409.

"SEC. 7409. ACTION TO ENJOIN FLAGRANT POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.

"(a) AUTHORITY TO SEEK INJUNCTION.—

"(1) IN GENERAL.—If the requirements of paragraph (2) are met, a civil action in the name of the United States may be commenced at the request of the Secretary to enjoin any section 501(c)(3) organization from further making political expenditures and for such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3). Any action under this section shall be brought in the district court of the United States for the district in which such organization has its principal place of business or for any district in which it has made political expenditures. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such organization.

"(2) REQUIREMENTS.—An action may be brought under subsection (a) only if—

"(A) the Internal Revenue Service has notified the organization of its intention to seek an injunction under this section if the making of political expenditures does not immediately cease, and

"(B) the Commissioner of Internal Revenue has personally determined that—

"(i) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

"(ii) injunctive relief is appropriate to prevent future political expenditures.

"(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds on the basis of clear and convincing evidence that—

"(1) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

"(2) injunctive relief is appropriate to prevent future political expenditures,

the court may enjoin such organization from making political expenditures and may grant such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3).

"(c) DEFINITIONS.—For purposes of this section, the terms 'section 501(c)(3) organization' and 'political expenditures' have the respective meanings given to such terms by section 4955."

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 76 is amended by striking the item relating to section 7409 and inserting in lieu thereof the following:

"Sec. 7409. Action to enjoin flagrant political expenditures of section 501(c)(3) organizations.
"Sec. 7410. Cross references."

(b) AUTHORITY TO MAKE IMMEDIATE ASSESSMENTS.—

(1) IN GENERAL.—Part I of subchapter A of chapter 70 (relating to termination of taxable year) is amended by adding at the end thereof the following new section:

"SEC. 6852. TERMINATION ASSESSMENTS IN CASE OF FLAGRANT POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS. 26 USC 6852.

"(a) AUTHORITY TO MAKE.—

"(1) IN GENERAL.—If the Secretary finds that—

"(A) a section 501(c)(3) organization has made political expenditures, and

"(B) such expenditures constitute a flagrant violation of the prohibition against making political expenditures,

the Secretary shall immediately make a determination of any income tax payable by such organization for the current or immediately preceding taxable year, or both, and shall immediately make a determination of any tax payable under section 4955 by such organization or any manager thereof with respect to political expenditures during the current or preceding taxable year, or both. Notwithstanding any other provision of law, any such tax shall become immediately due and payable. The Secretary shall immediately assess the amount of tax so determined (together with all interest, additional amounts, and additions to the tax provided by law) for the current year or the preceding taxable year, or both, and shall cause notice of such determination and assessment to be given to the organization or any manager thereof, as the case may be, together with a demand for immediate payment of such tax.

"(2) COMPUTATION OF TAX.—In the case of a current taxable year, the Secretary shall determine the taxes for the period beginning on the 1st day of such current taxable year and ending on the date of the determination under paragraph (1) as though such period were a taxable year of the organization, and shall take into account any prior determination made under this subsection with respect to such current taxable year.

"(3) TREATMENT OF AMOUNTS COLLECTED.—Any amounts collected as a result of any assessments under this subsection shall, to the extent thereof, be treated as a payment of income tax for such taxable year, or tax under section 4955 with respect to the expenditure, as the case may be.

"(4) SECTION INAPPLICABLE TO ASSESSMENTS AFTER DUE DATE.— This section shall not authorize any assessment of tax for the preceding taxable year which is made after the due date of the organization's return for such taxable year (determined with regard to any extensions).

"(b) DEFINITIONS AND SPECIAL RULES.—

"(1) DEFINITIONS.—For purposes of this section, the terms 'section 501(c)(3) organization', 'political expenditure', and 'organization manager' have the respective meanings given to such terms by section 4955.

"(2) CERTAIN RULES MADE APPLICABLE.—The provisions of sections 6851(b), 6861(f), and 6861(g) shall apply with respect to any assessment made under subsection (a), except that determinations under section 6861(g) shall be made on the basis of whether the requirements of subsection (a)(1)(B) of this section are met in lieu of whether jeopardy exists."

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Clause (v) of section 6091(b)(1)(B) is amended by striking out "section 6851(a)" and inserting in lieu thereof "section 6851(a) or 6852(a)".

(B) Paragraph (1) of section 6211(b) is amended by striking out "section 6851" and inserting in lieu thereof "section 6851 or 6852".

(C) Paragraph (1) of section 6212(c) is amended by striking out "section 6851" and inserting in lieu thereof "section 6851 or 6852".

(D) Subsection (a) of section 6213 is amended by striking out "section 6851 or section 6861" and inserting in lieu thereof "section 6851, 6852, or 6861".

(E) Section 6863 is amended—

(i) by striking out "6851" in subsection (a) and inserting in lieu thereof "6851, 6852,",

(ii) by striking out "6851 or 6861" in subsection (b)(3)(A) and inserting in lieu thereof "6851, 6852, or 6861", and

(iii) by striking out "6851(a) or 6861(a)" and inserting in lieu thereof "6851(a), 6852(a), or 6861(a)".

(F) Section 7429 is amended—

(i) by striking out "6851(a)," each place it appears and inserting in lieu thereof "6851(a), 6852(a),", and

(ii) by striking out "6851," each place it appears and inserting in lieu thereof "6851, 6852,".

(G) Paragraph (3) of section 7611(i) is amended by striking out "or section 6861" and inserting in lieu thereof "section 6852 relating to termination assessments in case of political expenditures of section 501(c)(3), or 6861".

(H) The table of sections for part I of subchapter 70 is amended by adding at the end thereof the following new item:

"Sec. 6852. Termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations."

26 USC 6091 note.

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

SEC. 10714. TAX ON DISQUALIFYING LOBBYING EXPENDITURES.

(a) GENERAL RULE.—Chapter 41 (relating to public charities) is amended by adding at the end thereof the following new section:

26 USC 4912.

"SEC. 4912. TAX ON DISQUALIFYING LOBBYING EXPENDITURES OF CERTAIN ORGANIZATIONS.

"(a) TAX ON ORGANIZATION.—If an organization to which this section applies is not described in section 501(c)(3) for any taxable year by reason of making lobbying expenditures, there is hereby imposed a tax on the lobbying expenditures of such organization for such taxable year equal to 5 percent of the amount of such expenditures. The tax imposed by this subsection shall be paid by the organization.

"(b) ON MANAGEMENT.—If tax is imposed under subsection (a) on the lobbying expenditures of any organization, there is hereby imposed on the agreement of any organization manager to the making of any such expenditures, knowing that such expenditures are likely to result in the organization not being described in section 501(c)(3), a tax equal to 5 percent of the amount of such expenditures, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this subsection shall be paid by any manager who agreed to the making of the expenditures.

"(c) ORGANIZATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to any organization which was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3).

"(2) EXCEPTIONS.—This section shall not apply to any organization—

"(A) to which an election under section 501(h) applies,

"(B) which is a disqualified organization (within the meaning of section 501(h)(5)), or

"(C) which is a private foundation.

"(d) DEFINITIONS.—

"(1) LOBBYING EXPENDITURES.—The term 'lobbying expenditure' means any amount paid or incurred by the organization in carrying on propaganda, or otherwise attempting to influence legislation.

"(2) ORGANIZATION MANAGER.—The term 'organization manager' has the meaning given to such term by section 4955(f)(2).

"(3) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under subsection (b), all such persons shall be jointly and severally liable under such subsection."

(b) BURDEN OF PROOF.—Subsection (b) of section 7454 (as amended by this Act) is amended by striking out "the burden of proof" and inserting in lieu thereof ", or whether an organization manager (as defined in section 4912(d)(2)) has 'knowingly' agreed to the making of disqualifying lobbying expenditures within the meaning of section 4912(b), the burden of proof".

(c) TECHNICAL AMENDMENT.—Paragraph (1) of section 6501(l) is amended by striking out "by chapter 42 (other than section 4940)" and inserting in lieu thereof "by section 4912, by chapter 42 (other than section 4940),".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 41 is amended by adding at the end thereof the following new item:

"Sec. 4912. Tax on disqualifying lobbying expenditures of certain organizations."

26 USC 4912 note.

(e) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Approved December 22, 1987.

Certified April 20, 1988.

100TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 100-495

OMNIBUS BUDGET RECONCILIATION ACT OF 1987

CONFERENCE REPORT

TO ACCOMPANY

H.R. 3545

DECEMBER 21, 1987.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

80-398 WASHINGTON : 1987

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, DC 20402

* * * * *

TITLE X—REVENUES

CONTENTS OF REVENUE PROVISIONS (TITLE X)

PART 1. REVENUE-INCREASE PROVISIONS

I. Individual Tax Provisions

A. INCOME TAX PROVISIONS

1. Deny eligibility of overnight camp expenses for child and dependent care credit

Present law

An income tax credit is available for up to 30 percent of a limited dollar amount of employment-related child and dependent care expenses for a child or other dependent who is under the age of 15, or a physically or mentally incapacitated dependent or spouse (sec. 21).

Eligible employment-related expenses are limited to $2,400 ($4,800 if there are two or more qualifying individuals). The 30-percent credit rate is reduced by one percentage point for each $2,000 (or fraction thereof) of AGI above $10,000, but not below 20 percent for AGI above $28,000.

Expenses eligible for the credit include costs incurred by the taxpayer for day care, nursery school, a housekeeper or other home care, and summer camps, including overnight camps.

House bill

Under the House bill, expenses incurred by a taxpayer for an overnight camp are ineligible for the child and dependent care credit. The provision is effective for taxable years beginning on or after January 1, 1988.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

2. Limitation on deduction for qualified residence interest

Present law

Qualified residence interest (i.e., interest on debt secured by a principal or second residence) is deductible notwithstanding the general rule making personal interest nondeductible. Qualified residence interest is limited to interest on debt up to the amount of the cost of the residence (including improvements), plus debt for educational and medical expenses (up to fair market value).

It is not clear under present law that mobile homes used on a transient basis and boats are specifically excluded from the definition of a second residence.

House bill

The House bill provides that qualified residence interest is limited to (1) debt to acquire or substantially improve a principal or second residence (up to a total debt of $1 million), plus (2) other debt (not in excess of $100,000) secured by a principal or second residence.

Mobile homes used on a transient basis and boats cannot qualify as a second residence.

The provisions apply to taxable years beginning after December 31, 1987. Indebtedness incurred on or before October 13, 1987 (including certain refinancings of that indebtedness) is grandfathered.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill except that the agreement does not contain the provision in the House bill relating to boats and mobile homes.

The conferees anticipate that Treasury regulations will be issued under section 6050H requiring reporting by mortgage interest recipients of any information necessary to enforce the limitation on qualified residence interest.

3. One-year delay in application of two-percent floor to indirect deductions through a regulated investment company

Present law

For taxable years beginning after December 31, 1986, miscellaneous itemized deductions generally are allowable only to the extent that they exceed two percent of the taxpayer's adjusted gross income (sec. 67). The two-percent floor applies with respect to indirect deductions through certain pass-through entities, including regulated investment companies (RICs), commonly called "mutual funds." The two-percent floor does not apply with respect to certain other pass-through entities, including real estate investment trusts, cooperatives, and certain trusts and estates.

House bill

No provision.[1]

Senate amendment.

No provision.

Conference agreement

Under the conference agreement, the two-percent floor applies to indirect deductions through a publicly offered RIC only for taxable years beginning after December 31, 1987.

A publicly offered RIC is a RIC, the shares of which are (1) continuously offered pursuant to a public offering (within the meaning of sec. 4 of the Securities Act of 1933, as amended), (2) regularly traded on an established securities market, or (3) held by or for no fewer than 500 persons at all times during the taxable year. The provision authorizes the Treasury to prescribe regulations decreas-

---

[1] Subtitle C of title X of the House bill contains a provision under which the two-percent floor does not apply to indirect deductions with respect to publicly offered RICs. Subtitle C provisions generally are not included in the conference agreement.

ing the minimum 500-shareholder requirement in the case of RICs that experience a loss of shareholders through net redemptions of their shares.

The provision is effective for taxable years beginning after December 31, 1986.

B. EMPLOYEE BENEFIT PROVISIONS

1. Limitation on taxable benefit option under cafeteria plan

Present law

Under present law, compensation generally is taxable to employees when actually or constructively received. An amount is constructively received by a taxpayer if it is made available to the taxpayer or the taxpayer has an election to receive such amount.

There are various exceptions to this basic principle of constructive receipt. Under one exception, no amount is included in the income of a participant in a cafeteria plan meeting certain requirements solely because, under the plan, the participant has an election to receive a taxable benefit (sec. 125). Nontaxable benefits that may be available under a cafeteria plan include, for example, health coverage, group-term life insurance, and dependent care assistance. The cafeteria plan exception from the principles of constructive receipt generally also applies for purposes of the Federal Insurance Contribution Act (FICA) and the Federal Unemployment Tax Act (FUTA).

House bill

Under the House bill, the cafeteria plan exception to the constructive receipt principle is limited to $500. Thus, for example, if an employee is eligible under a cafeteria plan to reduce her salary by $1,500 to buy health coverage or to take the $1,500 in taxable benefits, the employee is in constructive receipt of $1,000 under the bill, which is the excess of the taxable benefits available over $500. This would apply even if she elected to acquire $1,500 of health coverage under the cafeteria plan. Of course, if the employee in this example elected to receive $1,500 in cash, such employee would only include this $1,500 once; i.e., the employee would not include the $1,000 constructively received and include an additional $1,500 actually received.

The $500 limit applies on an individual basis, rather than a plan basis, so that, for purposes of the limit, all cafeteria plans of all employers in which an individual participates are aggregated. Correspondingly, the limit applies to the individual's taxable year. In addition, the employer is required to report on its employees' Forms W-2 the amount of taxable benefits available but not chosen by any employee.

The $500 limit on the cash option applies under the bill for FICA and FUTA purposes.

This provision applies to taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

2. Definition of active participant for IRA deduction

Present law

Under present law, a taxpayer is permitted to make deductible IRA contributions up to the lesser of $2,000 or 100 percent of compensation (earned income, in the case of a self-employed individual) if—

(1) in the case of a taxpayer who is not married, the taxpayer either (a) has adjusted gross income (AGI) that does not exceed the applicable dollar amount or (b) is not an active participant in an employer-maintained retirement plan for any part of the plan year ending with or within the taxable year;

(2) in the case of married taxpayers filing a joint return, either (a) the couple has AGI that does not exceed the applicable dollar amount or (b) neither spouse is an active participant in an employer-maintained retirement plan for any part of the plan year ending with or within the taxable year; or

(3) in the case of a married taxpayer filing separately, the taxpayer either (a) has AGI that does not exceed the applicable dollar amount or (b) neither spouse is an active participant in an employer-maintained retirement plan for any part of the plan year ending with or within the taxable year.

For purposes of the active-participant rule, an employer-maintained retirement plan means (1) a qualified pension, profit-sharing, or stock bonus plan; (2) a qualified annuity plan (sec. 403(a)); (3) a simplified employee pension (sec. 408(k)); (4) a plan established for its employees by the United States, by a State or political subdivision, or by any agency or instrumentality of the United States or a State or political subdivision (other than an unfunded deferred compensation plan of a State or local government (sec. 457)); (5) a plan described in section 501(c)(18); or (6) a tax-sheltered annuity (sec. 403(b)).

In a recent Tax Court decision (*Porter* v. *Commissioner*, 88 T.C. No. 28 (March 5, 1987)), it was held that Article III judges are not employees of the United States and, therefore, are not active participants in a plan established for its employees by the United States. Whether or not an individual is an employee also is relevant for other purposes under the Code, such as for the exclusion of certain benefits from income and the eligibility for certain deductions.

House bill

Under the House bill, the decision in *Porter* v. *Commissioner* is overturned, and Federal judges are treated as employees for income tax purposes and as active participants for purposes of the IRA deduction limit, effective for years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

C. LIMITATION ON NONRECOGNITION FOR LIKE-KIND EXCHANGE OF REAL PROPERTY

Present law

Gain or loss is not recognized on the exchange of business or investment property for property of a like-kind. In general, any kind of real property is treated as of like kind with all other real estate.

House bill

The amount of gain that a taxpayer can defer from the exchange of real property under this provision will be limited to $100,000 per year. The provision applies to exchanges after October 13, 1987, unless pursuant to a binding contract in effect on that date.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

II. BUSINESS TAX PROVISIONS

A. ACCOUNTING PROVISIONS

1. Repeal of vacation pay reserve

Present law

Under present law, an accrual method taxpayer may elect to deduct an amount representing a reasonable addition to a reserve for vacation pay earned during a year if the amount is paid to employees during the year or within 8½ months after the end of the year.

House bill

The House bill repeals the special election that allows accrual method taxpayers a deduction for additions to a reserve for vacation pay. The amount allowed as a deduction for vacation pay for any taxable year generally is limited to the amount of vacation pay earned during the year to the extent that (1) the amount is paid to employees during the year, or (2) the amount is vested as of the last day of the year and is paid to employees within 2½ months after the end of the year.

The repeal of the vacation pay election is effective for taxable years beginning after December 31, 1987. The adjustment required by the change in method of accounting generally is required to be taken into account ratably over 4 taxable years (i.e., 25 percent per year).

Senate amendment

The Senate amendment is the same as the House bill, except that the adjustment required by the change in method of accounting generally is required to be taken into account as follows: (1) 10 percent for the taxable year of change; (2) 50 percent for the first taxable year beginning after the taxable year of change; (3) 15 percent for the second taxable year beginning after the taxable year of change; and (4) 25 percent for the third taxable year beginning after the taxable year of change. Under the Senate amendment, if Rev. Proc. 84-74, 1984-2 C.B. 736, requires the adjustment to be taken into account over a period of less than 4 taxable years, the adjustment is to be taken into account ratably over the shorter period.

Conference agreement

The conference agreement follows the Senate amendment with modifications. The conference agreement provides that vacation pay earned during any taxable year, but not paid to employees on or before the date that is 2½ months after the end of the taxable year, is deductible for the taxable year of the employer in which it is paid to employees. This provision is an exception to the general rule for deferred compensation and deferred benefits pursuant to which an employer is allowed a deduction for the taxable year of the employer in which ends the taxable year of the employee in which the compensation or benefit is includible in gross income.

A change from the reserve method of accounting for vacation pay to the method required by the conference agreement is treated as a change in method of accounting that is initiated by the taxpayer and made with the consent of the Secretary of the Treasury. The net amount of the adjustment required by the change in method of accounting equals the excess of (1) the amount in the vacation pay account as of the last day of the taxable year immediately preceding the taxable year of change over (2) the amount of accrued vacation pay as of the close of the taxable year immediately preceding the taxable year of change that is paid within 2½ months after the close of such taxable year. This amount is to be reduced by the balance in the suspense account as of the close of the taxable year immediately preceding the taxable year of change.

The net amount of the adjustment as reduced by the balance in the suspense account generally is required to be included in income as follows: (1) 25 percent for the taxable year of change; (2) 5 percent for the first taxable year beginning after the taxable year of change; (3) 35 percent for the second taxable year beginning after the taxable year of change; and (4) 35 percent for the third taxable year beginning after the taxable year of change. As under the Senate amendment, if Rev. Proc. 84-74, 1984-2 C.B. 736, requires the adjustment to be included in income over a period of less than 4 taxable years, the adjustment is to be included in income ratably over the shorter period.

The conferees intend that net operating losses will be allowed to offset the adjustment, tax credit carryforwards will be allowed to offset any tax attributable to the adjustment, and, for purposes of determining liability for estimated taxes, the adjustment will be included in income ratably throughout the year in question.

2. Completed contract method

Present law

Taxpayers engaged in the production of property under a long-term contract must compute income from the contract under the percentage of completion method or the percentage of completion-capitalized cost method. An exception is provided for certain small businesses with respect to construction contracts to be completed within two years.

Under the percentage of completion method, the taxpayer must include in gross income for the taxable year an amount based on the product of (1) the gross contract price and (2) the percentage of the contract completed during the taxable year. The percentage of a contract completed during the taxable year is determined by comparing costs incurred with respect to the contract during the year with the estimated total contract costs.

Under the percentage of completion-capitalized cost method, the taxpayer must take into account 40 percent of the items with respect to the contract under the percentage of completion method. The remaining 60 percent of the items under the contract must be taken into account under the taxpayer's normal method of accounting. For example, if the taxpayer's normal method of accounting is the completed contract method, income from a contract is included and contract costs are deducted upon final completion of the contract. All costs that directly benefit or are incurred by reason of a taxpayer's long-term contract activities must be allocated to its long-term contracts in a manner similar to that provided in Treasury regulations under section 451 for extended period long-term contracts.

House bill

Under the House bill, income from a long-term contract must be reported under the percentage of completion method. A long-term contract is defined in the same manner as under present law. The bill preserves the present-law exceptions for certain construction contracts.

The provision is effective for contracts entered into after October 13, 1987. An exception is provided for certain "qualified ship contracts." A "qualified ship contract" is a contract for the construction in the United States of not more than 5 ships [2] that meet certain other requirements. Such ships must not be constructed (directly or indirectly) for the Federal Government and the taxpayer must reasonably expect to complete such contract within 5 years of the contract commencement date.

Senate amendment

No provision.

Conference agreement

The conference agreement changes the percentage of completion-capitalized cost method of computing income from long-term con-

[2] For this purpose, the term "ship" is intended to include only seagoing vessels.

tracts. Seventy percent (versus 40 percent under present law) of items with respect to such a contract must be taken into account under the percentage of completion method. The remaining 30 percent (versus 60 percent under present law) are taken into account under the taxpayer's normal method of accounting. The look-back method of section 460(b)(3) is applied to the 70 percent taken into account under the percentage of completion method.

For this purpose, a taxpayer's normal method of accounting generally is considered to be the method of accounting it used for long-term contracts prior to February 28, 1986 (the effective date of the percentage of completion-capitalized cost method). Thus, any change in the taxpayer's normal method of accounting requires the consent of the Commissioner of Internal Revenue. It is anticipated that the criteria and methods used by the taxpayer, including those criteria and methods used to determine if an item is "unique," prior to February 28, 1986, in determining if a particular contract was a long-term contract will continue to be used by the taxpayer.

The provision of the conference agreement is effective for contracts entered into after October 13, 1987. The exception for certain "qualified ship contracts" in the House bill is included in the conference agreement.

3. Treatment of past service pension costs under uniform capitalization rules

Present law

In general, uniform capitalization rules govern the inclusion in inventory or capital accounts of all costs incurred in manufacturing, construction, and other types of activities involving the production of real or tangible personal property, or incurred in acquiring or holding property for resale. In the legislation mandating a uniform set of capitalization rules, Congress directed the Treasury Department generally to model the regulations implementing these rules after the regulations issued under section 451. dealing with capitalization of costs in connection with extended period long-term contracts.

The extended period long-term contract regulations require capitalization of all direct costs and an allocable portion of indirect costs such as general and administrative and overhead costs. Temporary and proposed regulations issued by the Treasury Department provide that contributions to a pension or annuity plan are not subject to the uniform capitalization rules to the extent they represent past service costs within the meaning of section 412 (containing rules for actuarial funding of pension plans).[3] Such costs are, subject to other limitations in the Code, currently deductible. If the taxpayer's actuarial funding method does not distinguish between current and past service costs, all pension costs must be treated as current service costs, which are subject to capitalization.

House bill

No provision.

---

[3] Temp. and Prop. Reg. sec. 1.263A-1T(b)(2)(v)(H)(1).

Senate amendment

Under the Senate amendment, past service costs are subject to the uniform capitalization rules. Thus, an allocable portion of all otherwise allowable pension costs, whether relating to current or past services, must be included in the basis of the property produced by the taxpayer or held for resale by the taxpayer.

The provision is effective for taxable years beginning after December 31, 1987. The amount of any section 481 adjustment required by the amendment (that is, the adjustment reflecting pension costs deducted by a taxpayer in taxable years beginning before January 1, 1988) must be included in income over a period not exceeding four years.

Conference agreement

The conference agreement generally follows the Senate amendment with respect to costs allocable to property produced by the taxpayer or held for resale by the taxpayer. The conference agreement also provides that costs allocable to a long-term contract under section 460(c) include an allocable portion of all otherwise allowable pension costs, whether relating to current or past services. The provision does not affect long-term contracts that are not subject to the cost allocation rules of section 460(c), including those construction contracts described in section 460(e).

For costs allocable to property (other than inventory) produced by the taxpayer, the provision is effective for costs incurred after December 31, 1987, in taxable years ending after such date.

A separate rule is provided for costs allocable to property that is inventory in the hands of the taxpayer. In such a case, the provision of the conference agreement is effective for taxable years beginning after December 31, 1987, and is considered to be a change in the taxpayer's method of accounting. Such change in the taxpayer's method of accounting is treated as initiated by the taxpayer, with the consent of the Secretary of the Treasury, and the net adjustment required by section 481 is taken into account over a period not to exceed four years. The conferees intend that the timing of the section 481 adjustment will be determined under the provisions of Revenue Procedure 84-74, 1984-2 C.B. 736. In addition, the conferees intend that (i) net operating loss carryforwards will be allowed to offset any positive section 481 adjustment; (ii) tax credit carryforwards will be allowed to offset any tax attributable to the section 481 adjustment; and (iii) for purposes of determining estimated tax payments, the section 481 adjustment will be recognized ratably throughout the taxable year in question.

For costs allocable to long-term contracts for which section 460 is effective, the provision of the conference agreement applies to costs incurred after December 31, 1987, in taxable years ending after such date. Section 460 generally is effective for contracts entered into after February 28, 1986. Thus, this provision of the conference agreement does not apply to costs incurred with respect to contracts entered into on or before February 28, 1986.

4. Interest on debt used to purchase or carry tax-exempt obligations

Present law

Interest expense allocable to installment obligations of State or local governments

Present law disallows a deduction for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is not subject to tax (tax-exempt obligations). Debt incurred in the business of selling items on the installment method to State and local governments generally is not considered incurred to purchase or carry the resulting tax exempt installment obligations, and, therefore, interest on such debt generally is not disallowed under the interest disallowance rule.

De minimis rule

Under present law, a deduction for interest generally is disallowed only when the related indebtedness is incurred or continued for the purpose of purchasing or carrying tax-exempt obligations. In the case of an individual, interest on indebtedness generally is nct disallowed if during the taxable year the average adjusted basis of the tax-exempt obligations does not exceed 2 percent of the average adjusted basis of the individual's portfolio investments and trade or business assets. In the case of a corporation, interest on indebtedness generally is not disallowed if during the taxable year the average adjusted basis of the tax-exempt obligations does not exceed 2 percent of the average adjusted basis of all assets held in the active conduct of the trade or business. These safe harbors are inapplicable to financial institutions and dealers in tax-exempt obligations.

House bill

Disallowance of interest expense allocable to installment obligations of State or local governments

Under the House bill, a taxpayer that holds one or more tax-exempt installment obligations acquired after December 31, 1987, is denied a deduction for the portion of the taxpayer's otherwise deductible interest expense that is allocable to such tax-exempt installment obligations. The disallowance rule is effective for taxable years ending after December 31, 1987.

De minimis rule

The House bill establishes a statutory de minimis rule for tax-exempt obligations that are held by any taxpayer other than a financial institution. Under this de minimis rule, which applies in lieu of any other de minimis rule prescribed by the Treasury Secretary, interest on indebtedness is not disallowed for any taxable year if the average adjusted basis of tax-exempt obligations does not exceed the lesser of (1) $1 million or (2) 2 percent of the average adjusted basis of all assets held by the taxpayer. The de minimis rule applies to taxable years ending after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

5. Installment sales

Present law

Under present law, a taxpayer who sells property ordinarily must recognize gain or loss at the time of the sale. However, a taxpayer who is eligible to use the installment method may defer the payment of tax and recognize gain from a sale of property in proportion to the payments received.

In general, the installment method may be used to report gain from the sale of personal property by dealers in personal property who regularly sell on the installment plan or from the sale of other property where at least one payment is to be received after the end of the taxable year of the sale.

Use of the installment method is not allowed for sales pursuant to a revolving credit plan and for sales of publicly traded property. In addition, use of the installment method generally is limited under the "proportionate disallowance rule" for dealer sales of real property and dealer sales of personal property eligible to be reported on the installment method, as well as for sales of real property used in the taxpayer's trade or business or held for the production of rental income where the selling price of such real property is greater than $150,000. Under the proportionate disallowance rule, a pro rata portion of the taxpayer's indebtedness is allocated to, and is treated as a payment on, the installment obligations of the taxpayer.

At the election of the seller, installment obligations arising from certain sales of residential lots and "timeshares" are not subject to the proportionate disallowance rule. Rather, such taxpayers may compute their tax liability under the installment method and are required to pay interest on the amount of deferred tax attributable to the use of the installment method.

The installment method may not be used for purposes of the alternative minimum tax for sales that are subject to the proportionate disallowance rule. The installment method may be used, however, for purposes of the alternative minimum tax for sales of residential lots and "timeshares" with respect to which a taxpayer elects to use the installment method and pay interest on the deferred tax.

Generally, if an installment obligation is disposed of, gain (or loss) is recognized equal to either (1) the difference between the amount realized and the basis of the obligation in the case of a satisfaction at other than face value or a sale or exchange of the obligation, or (2) the difference between the fair market value of the obligation at the time of the disposition and the basis of the obligation in the case of any other disposition. The basis of the obligation is equal to the basis of the property sold plus the amount of gain previously recognized. In general, the mere pledge of an installment obligation as collateral for a loan is not treated as a disposition.

House bill

No provision.[4]

Senate amendment

In general

The Senate amendment repeals the installment method for dispositions of property by dealers ("dealer disposition"), effective for dispositions occurring after December 31, 1987. Generally, all payments to be received from a dealer disposition of property are treated as received in the year of disposition.

Definition of dealer disposition

A "dealer disposition" is defined for purposes of the repeal of the installment method as any disposition of personal property by a person who regularly sells or otherwise disposes of property on the installment plan. A dealer disposition also includes any disposition of real property that is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

A dealer disposition does not, however, include certain dispositions of residential lots or "timeshares" if the taxpayer elects to pay interest on the amount of deferred tax attributable to the use of the installment method. Additionally, a dealer disposition does not include a disposition of property used or produced in the trade or business of farming. Thus, the present-law installment method rules applicable to (1) dispositions of residential lots or "timeshares" with respect to which interest is paid and (2) dispositions of property used or produced in the trade or business of farming, are not affected by the amendment.

Effective date.—The repeal of the installment method for dealer dispositions is effective for dispositions occurring after December 31, 1987. The treatment of an installment obligation arising out of a dealer disposition occurring before March 1, 1986, is not affected by the amendment.

An applicable installment obligation arising out of a dealer disposition occurring after February 28, 1986, and before January 1, 1988, continues to be subject to the proportionate disallowance rule for taxable years ending after December 31, 1986, and beginning before January 1, 1988. Any gain from an installment obligation arising out of a dealer disposition occurring after February 28, 1986, and before January 1, 1988, that remains to be recognized as of the first day of the first taxable year beginning after December 31, 1987,[5] is not to be recognized as payments are received (or

[4] Subtitle C of title X of the House bill contains provisions relating to installment sales. Subtitle C provisions generally are not included in the conference agreement.

[5] The amount of gain that remains to be recognized as of the first day of the first taxable year beginning after December 31, 1987, does not include any gain that is taken into account for such taxable year or for a later taxable year under the 1986 Act transition rule for sales of real property by dealers (sec. 811(c)(6) of the 1986 Act). Similarly, the amount of gain that remains to be recognized as of the first day of the first taxable year beginning after December 31, 1987, is not affected by the 1986 Act transition rule that permits the delayed payment of certain tax for

Continued

treated as received under the proportionate disallowance rule) in a later taxable year. Instead, the amount of the gain that remains to be recognized from such installment obligations is to be taken into account as a section 481(a) adjustment over a period beginning with the first taxable year that begins after December 31, 1987. The amount of the section 481(a) adjustment is to be taken into account under the principles of Rev. Proc. 84-74, 1984-2 C.B. 736, but the adjustment period generally is 4 taxable years rather than 6 taxable years. In determining the period that the adjustment is to be taken into account, the application of the proportionate disallowance rule is not to be treated as a new method of accounting.

The Senate amendment does not affect the transition relief provided at the time the proportionate disallowance rule was enacted.

Conference agreement

Treatment of installment sales by dealers

The conference agreement follows the Senate amendment. Thus, the repeal of the installment method for dealer dispositions applies to dispositions occurring after December 31, 1987. The amount of any gain from an installment obligation arising out of a dealer disposition occurring after February 28, 1986, and before January 1, 1988, that remains to be recognized as of the first day of the first taxable year beginning after December 31, 1987, is to be taken into account as a section 481(a) adjustment over a period beginning with the first taxable year that begins after December 31, 1987. The conferees intend that the exception from the proportionate disallowance rule of the Tax Reform Act of 1986 and the disallowance of the installment method for dealer dispositions under the conference agreement for certain sales of property by a manufacturer to a dealer (sec. 811(c)(2) of the 1986 Act) applies to any manufacturer that qualifies under the terms of that exception.

Treatment of certain installment sales by nondealers

In general.—The conference agreement contains several modifications to the present-law installment sale rules that apply to the sale of non-farm real property that is used in a taxpayer's trade or business or that is held for the production of rental income where the selling price of such real property is greater than $150,000. First, the proportionate disallowance rule is repealed for installment obligations arising out of the disposition of such real property. Second, an interest charge is imposed on the tax that is deferred under the installment method to the extent the amount of deferred payments arising from all dispositions of such real property during any year exceeds $5 million. Third, under the conference agreement, if any indebtedness is secured directly by an installment obligation that arises out of the disposition of such property, the net proceeds of the secured indebtedness is treated as a payment on such installment obligation. Finally, in determining alter-

---

sales of personal property by dealers (sec. 811(c)(7) of the 1986 Act). Each of these rules continues to apply to installment obligations arising out of dealer dispositions occurring after February 28, 1986, and before January 1, 1988, in taxable years beginning before January 1, 1988.

native minimum taxable income, the installment method may be used with respect to such dispositions of real property.

Definition of nondealer real property installment obligation.—The provisions of the conference agreement relating to nondealer installment sales apply only to installment obligations that arise out of the disposition of real property that is used in a taxpayer's trade or business or that is held for the production of rental income, where the sales price of the real property is greater than $150,000 ("nondealer real property installment obligations").[6]

The term "nondealer real property installment obligation" does not include any installment obligation that arises out of the disposition by an individual of personal use property or the disposition of any property that is used or produced in the trade or business of farming. Additionally, the term "nondealer real property installment obligation" does not include any installment obligation that arises out of a disposition of a residential lot or "timeshare" if the taxpayer elects to pay interest on the amount of the deferred tax attributable to the use of the installment method. The amount of interest payable with respect to installment obligations arising out of the sale of residential lots or "timeshares" is determined under the present-law rules applicable to such obligations.

Interest charge on deferred tax.—Interest is required to be paid with respect to the deferred tax attributable to a nondealer real property installment obligation that arises during a year and is outstanding as of the close of the year only if the aggregate face amount of all nondealer real property installment obligations that arise during a year and that are outstanding as of the close of that year exceeds $5 million. In determining whether the $5 million threshold has been exceeded for any taxable year, the face amount of installment obligations arising during the year and outstanding as of the close of the year is to be reduced by the amount treated as a payment on such obligations for such taxable year under the pledge rule described below. Furthermore, in applying the $5 million threshold, all persons treated as a single employer under section 52 are treated as one person, except as otherwise provided in Treasury regulations.

If interest is required to be paid with respect to a nondealer real property installment obligation that arises during any year, interest must be paid for any subsequent taxable year if any of the installment obligation is outstanding at the close of that year.

The amount of interest payable with respect to any installment obligation to which the interest rules apply equals the applicable percentage of the deferred tax liability with respect to such obligation multiplied by the underpayment rate under section 6621 in effect for the month with or within which the taxable year ends. For any taxable year, the deferred tax liability with respect to any installment obligation equals the amount of gain under the obligation that has not been recognized as of the close of the taxable year multiplied by the maximum rate of tax in effect for such taxable

[6] For purposes of determining whether the sales price of any real property exceeds $150,000, all sales that are part of the same transaction (or series of related transactions) are treated as a single sale.

year. This rate will vary depending on whether the taxpayer is a corporation or is an individual, estate, or trust.

The applicable percentage with respect to installment obligations arising in a taxable year is the percentage determined by dividing (1) the portion of the aggregate face amount of installment obligations outstanding as of the close of the taxable year in excess of $5 million, by (2) the aggregate face amount of the installment obligations outstanding as of the close of the taxable year. This percentage will not change as payments are made (or deemed made under the pledge rule) in subsequent taxable years.

The interest computed under this provision for any taxable year is payable as additional tax for such taxable year. The interest payable under this provision, however, is treated as interest that is subject to the general rules regarding the deductibility of interest on an underpayment of tax (sec. 163).

The Treasury Secretary is authorized to prescribe regulations that carry out the purposes of the interest rule including such regulations as may be necessary to address the treatment of short taxable years, installment obligations with contingent payments, and pass-through entities. The conferees anticipate that the regulations relating to short taxable years will proportionately reduce the amount of interest payable and the $5 million threshold for any short taxable year. The conferees also anticipate that the regulations relating to contingent payments will address the treatment of contingent payments for purposes of the $5 million threshold and for purposes of determining the amount of gain that remains to be recognized under an installment obligation as of the end of any taxable year. Finally, the conferees anticipate that the regulations relating to pass-through entities will treat the installment obligations of a partnership as owned directly by the partners in proportion to each partner's share in the partnership.

Pledging of nondealer real property installment obligations.— Under the conference agreement, if a nondealer real property installment obligation is pledged as security for an indebtedness, the net proceeds of the loan [7] are treated as a payment received on such installment obligation on the later of the date that the indebtedness is secured or the date that the net proceeds are received by the taxpayer. Gain is recognized with respect to such obligation in an amount equal to the product of the net loan proceeds received and the gross profit ratio applicable to the installment obligation.

Receipt by the taxpayer of payments on the installment obligation subsequent to the time of the pledge generally does not result in recognition of additional gain, except to the extent that the gain that otherwise would be recognized on account of such payments exceeds the gain, if any, recognized as a result of the pledge. The rule relating to nonrecognition of gain from subsequent payments applies regardless of whether or not such payments are used to pay any portion of the indebtedness secured by the installment obligation. The total amount of gain that can be recognized on an obligation as a result of secured loans and the receipt of payments cannot exceed the total gain from the installment sale.

[7] The net loan proceeds are equal to the gross loan proceeds less the direct expenses of obtaining the loan.

For purposes of this rule, indebtedness is secured by an installment obligation to the extent that the payment of principal or interest on the indebtedness is directly secured (either under the terms of the indebtedness or any other arrangement) by an interest in the installment obligation.

Use of installment method for alternative minimum tax purposes.— Under the conference agreement, the installment method may be used in determining alternative minimum taxable income for all nondealer dispositions of property.

Effective dates for sales by nondealers.— The proportionate disallowance rule is repealed for nondealer real property installment obligations arising out of dispositions occurring in taxable years beginning after December 31, 1987. Nondealer real property installment obligations arising out of dispositions occurring after August 16, 1986, in taxable years beginning before January 1, 1988, are subject to the proportionate disallowance rule in any later taxable year for which a taxpayer has allocable installment indebtedness.

The interest charge applies to nondealer real property installment obligations arising out of dispositions occurring in taxable years beginning after December 31, 1987. The pledge rule applies to any nondealer real property installment obligation that is pledged after December 17, 1987, in taxable years ending after that date.

If, for any taxable year to which the proportionate disallowance rule applies, a nondealer real property installment obligation is pledged as security for a loan after December 17, 1987, the net proceeds of the loan are treated as payment on the installment obligation. In applying the proportionate disallowance rule for such year, the face amount of the installment obligation shall be reduced by the net proceeds of the loan and the allocable installment indebtedness for such year is not to include the amount of secured indebtedness.

For taxable years ending after December 31, 1986, a taxpayer may elect, pursuant to such rules as may be prescribed by the Treasury Secretary, to apply the interest rules contained in the conferen agreement to dispositions occurring after August 16, 1986,[8] and the pledge rule to pledges occurring after August 16, 1986. If a taxpayer makes this election, the proportionate disallowance rule is not to apply to installment obligations that arise from dispositions occurring after August 16, 1986.

The provision that allows the installment method to be used in determining alternative minimum taxable income for all nondealer dispositions of property is effective for dispositions occurring in taxable years beginning after December 31, 1986. The present-law alternative minimum tax treatment of installment sales occurring in taxable years beginning before January 1, 1987, is continued.

The conference agreement does not apply to any nondealer real property installment obligation that was specifically provided relief at the time the proportionate disallowance rule was enacted.

[8] Under this election, interest would be charged with respect to installment obligations arising during a year and outstanding as of the close of the year only if the aggregate face amount of installment obligations that arise during the year and that are outstanding as of the close of the year exceeds $5 million.

6. Certain continuing-care facilities

Present law

Under present law, certain loans bearing interest at below-market rates are treated as loans bearing interest at a market rate accompanied by a payment from the lender to the borrower that is characterized in accordance with the substance of the particular transaction (e.g., gift, compensation, dividend, etc.).

An exception from the below-market loan rule is provided for certain loans to certain "continuing care facilities."

House bill

The exception to the below-market loan rules for loans to certain continuing care facilities is repealed. The provision generally is effective for loans made after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

7. Current accrual of market discount on bonds

Present law

In general, present law requires inclusion of market discount on bonds only upon redemption or other disposition of the bond. Thus, a taxpayer who purchases a bond after original issue at a price less than its face amount (or adjusted issue price in the case of a bond originally issued at a discount) does not, absent an election, include in income any portion of the discount prior to disposition of the bond. Except in the case of tax-exempt obligations, market discount that accrues while the taxpayer holds such a bond is treated as ordinary income upon the disposition of the bond up to the amount of the gain realized. Interest on indebtedness incurred or continued to purchase or carry a bond with market discount is deferred to the extent such interest does not exceed the market discount accruing on the bond. Any interest so deferred is allowed when the market discount is recognized.

House bill

Under the House bill, a purchaser of a market discount bond (including a tax-exempt bond) generally must include in income annually the amount of market discount attributable to the year. The amount of the inclusion is computed under the rules of present law relating to the treatment of market discount on disposition of a bond; thus, discount accrues ratably unless the taxpayer elects to accrue on a constant interest basis. The provision does not apply to the extent the market discount on a bond exceeds the amount that would result in the taxpayer's yield to maturity on the bond being equal to three times the applicable Federal rate at the time the bond was purchased. Special rules are provided for transfers of market discount bonds in nonrecognition transactions.

The bill authorizes the Treasury Department to require reporting by brokers regarding transactions involving market discount bonds.

The provision is effective for bonds acquired after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

8. Accrual accounting for certain farm corporations

Present law

Entities engaged in the trade or business of farming generally may use the cash method of accounting for such trade or business. A corporation (other than an S corporation) that has gross receipts in excess of $1 million for any taxable year beginning after 1975 must use an accrual method of accounting unless it is a "family corporation." In general, a "family corporation" is a corporation 50 percent or more of whose stock is owned by members of the same family (sec. 447(c)(2)).[9] Certain closely held corporations substantially owned by two or three families on October 4, 1976, and at all times thereafter also qualify as a family corporation (sec. 447(h)).

A partnership engaged in the trade or business of farming must use an accrual method of accounting if it has a corporate partner and such corporate partner would be required to use an accrual method of accounting in connection with a farming business.

If the entity engaged in the trade or business of farming is a tax shelter, it may not use the cash method of accounting, regardless of whether it is also a "family corporation."

House bill

In general

The House bill requires a family corporation to use the accrual method of accounting unless, for each prior taxable year beginning after December 31, 1985, such corporation (and any predecessor corporation) did not have gross receipts exceeding $25 million. Gross receipts for any taxable year of less than 12 months must be annualized in order to determine if gross receipts exceed $25 million. All corporations that are members of the same controlled group (within the meaning of sec. 1563(a)) are treated as one corporation for the purpose of this test. A family corporation includes those family-owned corporations (sec. 447(c)(2) of present law) and those closely held corporations (sec. 447(h)) that are not required by present law to use the accrual method of accounting.

[9] For this purpose, the members of the same family are an individual, such individual's brothers and sisters, brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing.

Suspense account

If any family corporation is required by this provision of the House bill to change its method of accounting, such corporation is not required to take into income so much of the adjustment under section 481 as is used to establish the opening balance of a suspense account. The initial opening balance of the suspense account is the lesser of the net adjustments that otherwise would have been required to be taken into account under section 481 for the year of change or the amount of such net adjustments determined as of the close of the most recent quarter ending before October 13, 1987.

For example, a calendar year family corporation is required to change to the accrual method of accounting effective for its taxable year beginning January 1, 1988. The net adjustment under section 481 as of December 31, 1987, is $100,000. The net adjustment under section 481 as of September 30, 1987, was $90,000. The opening balance of the suspense account is $90,000 and $10,000 ($100,000–$90,000) is required to be included in income in the taxable year beginning January 1, 1988.

The amount placed in the suspense account is required to be taken into income upon the occurrence of certain events. If the taxpayer fails to meet the definition of a family corporation, the amount of the suspense account is taken into income in the taxable year in which the corporation ceases to be a family corporation. Also, if the gross receipts of the corporation attributable to farming for any taxable year decline to an amount below the gross receipts attributable to farming for the last taxable year for which the cash method of accounting was allowed a portion of the suspense account may be taken into income.[10] The portion taken into income is equal to the current balance of the suspense account multiplied by a fraction, the denominator of which is the lesser of (a) the gross receipts of the taxpayer for the taxable year preceding the year of change to the accrual method, or (b) the gross receipts for the most recent year in which a portion of the suspense account was taken into income under this rule and the numerator of which is the amount used as the denominator in this fraction less the gross receipts for the current taxable year. For purposes of determining the portion of the suspense account required to be taken into income, only gross receipts from farming are taken into account.

Effective date.—The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

In general

The Senate amendment generally parallels the House bill, except that gross receipts of other entities attributed to the family corporation are limited to the family corporation's share of such gross receipts. Also, the portion of the section 481 adjustment used to establish the opening balance of a suspense account is the lesser of (a) the net adjustments that otherwise would have been required to be taken into account under section 481 for the year of change or

---

[10] For this purpose, gross receipts from taxable years of less than 12 months will be annualized.

(b) the amount of such net adjustment as of the beginning of the taxable year preceding the year of change.

Attribution rules

Certain attribution rules apply in determining the amount of gross receipts of a family corporation under the Senate amendment. In the case of a family corporation that is part of a controlled group (within the meaning of sec. 1563(a)), a percentage of the gross receipts for the taxable year of other members of such controlled group is allocated to the family corporation. The percentage used in allocating such gross receipts is equal to the percentage of the fair market value of stock in such other member held, directly or indirectly, by the family corporation on the last day of the taxable year of such other member. For this purpose, stock excluded under section 1563(c) is not considered.

For example, a father and his son own 100 percent of Corporation A (a family corporation) and 60 percent of Corporation B. Corporation A owns an additional 20 percent of Corporation B. The remaining 20 percent of Corporation B is held by an unrelated party. Corporation A and Corporation B are members of the same controlled group. Eighty percent (20 percent direct ownership and 60 percent indirect ownership) of the gross receipts of Corporation B will be included with the gross receipts of Corporation A for the purpose of determining whether Corporation A has gross receipts in excess of $25 million.

The Senate amendment provides that the Secretary of the Treasury will issue regulations to prevent gross receipts from being taken into account of more than once as a result of the attribution rules. For example, assume that Corporation A in the example in the preceding paragraph sells a calf to Corporation B for $100. Corporation B feeds the calf and sells it to unrelated parties for $250. The gross receipts of Corporation B attributable to Corporation A from this transaction would be 80 percent of the difference between $250 and $100, since the $100 of receipts attributable to that stage of the calf's development while held by Corporation A is already taken into account in the gross receipts of Corporation A.

If a family corporation owns, directly or indirectly, any interest in a partnership, estate, trust, or other pass-through entity, the Senate amendment provides that the family corporation must take into account its proportionate share of the gross receipts of such a pass-through entity in determining the gross receipts of the family corporation.

Effective date.—The provision is effective for taxable years beginning after December 31, 1987.

Conference agreement

The conference agreement generally follows the Senate amendment with one modification relating to the recapture of the suspense account where a family corporation is sold outside of the family.

Recapture of suspense account

Under the conference agreement, the balance in the suspense account is required to be included in income in the year in which the corporation ceases to be a family corporation. In addition, the conference agreement generally requires recapture of the suspense account if the required level of control of the corporation is transferred outside the family group that owned the corporation on December 15, 1987. Thus, in the case of a corporation that is a family corporation because at least 50 percent of its shares are owned by a single family (sec. 447(c)(2) of present law and new sec. 447(d)(2)(C)(i)), recapture of the suspense account occurs any time after December 15, 1987, a transfer of stock occurs such that more than 50 percent of that corporation's stock is held by individuals who are not members of the family that held 50 percent or more of the corporation's stock on December 15, 1987. Similarly, in the case of a corporation that was a family corporation because more than 65 percent of its shares are owned by not more than three families (sec. 447(h)), recapture of the suspense account occurs any time, after December 15, 1987, a transfer of stock occurs such that more than 65 percent of that corporation's stock is held by individuals who were not members of the families that held 65 percent or more of the corporation's stock on December 15, 1987.

For example, 100 percent of the stock in a family corporation is owned by an individual and her sisters. If all of the stock is transferred to an unrelated individual and the unrelated individual's brothers, the balance in the suspense account is required to be taken into the income of the corporation in the year of transfer. Nevertheless, if the stock had been transferred to the sons and daughters of the original owners, no portion of the suspense account would be required to be taken into income as a result of the transfer, since the shares were transferred to members of the transferors' family.

In conformance with the House bill and the Senate amendment, these rules are applied to any taxpayer that is a party to any transaction in which there is nonrecognition of gain or loss to any party by reason of subchapter C under regulations prescribed by the Secretary of the Treasury. The conferees anticipate that these regulations will require the inclusion in income of the balance in the suspense account where the ownership of the family corporation is effectively transferred outside of the transferor's family, regardless of whether the transfer is described in section 381.

Effective date.—The provision of the conference agreement is effective for taxable years beginning after December 31, 1987.

9. Amortization of customer base intangibles and similar items

Present law

Taxpayers may take depreciation or amortization deductions for the exhaustion, wear, tear, and obsolescence of property (sec. 167(a)). No such deductions are allowed, however, with respect to property that is not a wasting asset or property whose useful life cannot be estimated with reasonable accuracy. Deductions are generally allowed for the costs attributed to such intangible assets as patents or other statutory or contract rights that exist for a specific, non-extendible period of time. However, because goodwill does not have a determinable useful life, no depreciation deduction is allowed with respect to that intangible asset. Accordingly, the portion of the purchase price of a business that is allocated to goodwill may not be amortized or depreciated. Goodwill has been defined as the expectancy of continued patronage, for whatever reason, or as the probability that old customers will resort to the old place.

A substantial portion of the purchase price of a business is frequently allocated to certain intangible assets that represent the value of the existing customer base, and amortized over the period it is estimated that those customers may be lost. Courts have upheld such deductions in some cases. In other cases, the deductions have been denied on varying grounds, including the similarity of the assets to goodwill or the failure of the taxpayers to establish that the asset had a determinable useful life. The cases permitting or suggesting the possibility of a deduction have not always indicated whether it is necessary to take into account any expectation or evidence that new customers will replace those that die, move away, or otherwise sever their customer relationships.

Generally, costs attributable to the creation or acquisition of an asset that has a useful life of more than a year may not be currently deducted, but must be capitalized. Goodwill typically would have a life extending beyond one year. However, taxpayers deduct currently costs that may contribute to the creation of goodwill or to the replacement of customer base.

If the transferor of a franchise, trademark, or trade name retains certain significant rights, the transfer is not treated as the sale or exchange of a capital asset (section 1253(a)). Section 1253(d)(2) of the Code permits the transferee to deduct a lump sum payment to such a transferor over a period of not more than 10 years, regardless of whether the period of the transfer exceeds 10 years or is for an indeterminate period. Internal Revenue Service private letter rulings have applied this provision to permit taxpayers to deduct over 10 years payments for franchises, trademarks or trade names made to transferors who do not retain significant rights with respect to the assets.

House bill

The bill provides that any amount paid or incurred to acquire customer base, market share, or any renewing or similar intangible item is treated as paid or incurred for intangible property with indeterminate useful life, and therefore is not amortizable or depreciable. Section 1253(d)(2) does not apply to any amount paid or incurred to acquire such assets.

A significant portion of the value attributed to franchises, trademarks or trade names would generally be considered attributed to an asset of indeterminate useful life. In addition, section 1253(d)(2) does not apply to any payment made by the transferee of a franchise, trademark or trade name to a transferor who does not retain any significant rights.

The provision applies to acquisitions after October 13, 1987, unless pursuant to a binding written contract in effect on that date and at all times thereafter. No inference is intended as to prior law.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

10. Election of taxable year other than required taxable year

Present law

Partnerships, S corporations, and personal service corporations generally are required to conform their taxable years to that of their owners, effective for taxable years beginning after December 31, 1986. An exception is made for a partnership, S corporation or personal service corporation that establishes to the satisfaction of the Secretary of the Treasury a business purpose for having a different taxable year.

House bill

In general

The House bill provides an election for a partnership, S corporation or personal service corporation that is otherwise required to change its taxable year to retain the taxable year used by the partnership, S corporation or personal service corporation for its last taxable year beginning in 1986. An election also is provided for such entities to adopt or change to taxable years with limited deferral periods, if such adoption or change does not result in a greater deferral than the year currently in use.

Partners in an electing partnership and shareholders in an electing S corporation are required to make enhanced estimated tax payments. An electing personal service corporation is limited in the amount of deductions it can take for payments to employee-owners unless certain minimum distributions are made to employee-owners before the end of the calendar year.

Taxable years which may be elected

A partnership, S corporation, or personal service corporation is required to use a taxable year determined by statute or regulation, unless it makes an election under this provision. Generally, a partnership, S corporation or personal service corporation may elect a different taxable year only if such taxable year results in a deferral period not longer than three months. The deferral period is the number of months between the close of the taxable period elected and the close of the taxable year otherwise required (the required taxable year). For example, if a taxable year ending September 30 is elected and a taxable year ending December 31 is otherwise required, the deferral period of the taxable year ending September 30 is three months.

In addition, a partnership, S corporation, or personal service corporation may elect a taxable year under this provision that is the same as the entity's last taxable year beginning in 1986. This election is available only if it is made for the entity's first taxable year beginning after December 31, 1986. Such an election is not required to be made prior to the 90th day after the date of enactment of this Act. In the case of a partnership, S corporation, or personal service corporation changing taxable years, an election is available only if the deferral period of the taxable year elected is not longer than the shorter of three months or the deferral period of the taxable year being changed.

A special provision is provided for C corporations that made an election after September 18, 1986 and before January 1, 1987 to be treated as S corporations. If such a former C corporation had a taxable year other than a calendar year at the time of the election to be treated as an S corporation and elected to have a calendar year as its taxable year as an S corporation, it may change to a taxable year that results in a deferral period not longer than the shorter of three months or the deferral period of the taxable year of the C corporation prior to the election to be treated as an S corporation.

The Secretary of the Treasury is directed to prescribe regulations as may be necessary to carry out these provisions, including but not limited to regulations to prevent a taxpayer from obtaining an elective taxable year that would otherwise not be available through a change in the form of any entity.

Effect of election

Partnerships and S corporations.—In the case of an electing partnership or S corporation, the partners or shareholders of such electing entity are required to make enhanced estimated tax payments. Enhanced estimated tax payments are due in four equal installments on the dates provided for the installment payments of estimated tax. The enhanced estimated tax payments are due whether or not the partner or S corporation shareholder otherwise is required to make a quarterly installment payment of estimated Federal tax. Failure to make required enhanced estimated tax payments results in the imposition of underpayment penalties in the same manner as if the enhanced estimated tax payments were required payments of estimated income tax.

The amount of the enhanced estimated tax payment for any partner or S corporation shareholder is an amount equal to the product of the applicable percentage multiplied by the highest rate of tax imposed by section 1 (35 percent for taxable years beginning in 1987) multiplied by the net base year income of the partner or S corporation shareholder. The applicable percentage is determined by the calendar year in which the applicable election year begins. The applicable election year is the year of the partnership or S corporation for which the election is in effect. The applicable percentage is 25 percent for applicable election years beginning in 1987 and increases by an additional 25 percent each year thereafter, so that the applicable percentage is 100 percent for applicable election years beginning in 1990 or thereafter.

The net base year is the year preceding the applicable election year. The net base year income of a partner or S corporation shareholder with respect to any partnership or S corporation is equal to the sum of (a) the deferral ratio times the taxpayer's distributive share of the partnership or S corporation's net income for the base year, plus (b) the excess (if any) of the deferral ratio times the aggregate amount of applicable payments made by the partnership or S corporation to the taxpayer during the base year over the aggregate amount of such payments made during the deferral period.

The deferral ratio is the number of months in the deferral period divided by the number of months in the partnership's or S corporation's taxable year. A partner's distributive share of partnership net income is the amount determined by taking into account the partner's distributive share of items described in sections 702(a) and 704, other than items of credit. An S corporation shareholder's distributive share is the amount determined by taking into account the shareholder's pro rata share of items described in section 1366(a), other than items of credit. In no case may a partner's or S corporation shareholder's distributive share for the purpose of this calculation be less than zero.

Applicable payments are amounts paid or incurred by a partnership or S corporation that are includible in the gross income of the partner or shareholder, other than as part of such partner's or shareholder's distributive share. The amount of such payments made in the deferral period is the amount of such payments made during the fiscal year before the beginning of a required taxable year.

A taxpayer is required to make enhanced estimated tax payments for all electing partnerships or S corporations in which such taxpayer owns shares or an interest. However, a taxpayer required to make aggregate payments of enhanced estimated taxes for the year of $200 or less is excused from making such payments.

An electing partnership or S corporation is required to compute and disclose to its partners or shareholders the enhanced estimated tax amount for each such partner or shareholder for the applicable election year, as well as any other information the Secretary of the Treasury may prescribe to carry out this provision. This does not, however, release the partner or shareholder from any responsibility he may have with regard to the determination of such amount.

Personal service corporations.—An electing personal service corporation is required to meet minimum distribution requirements in the portion of the applicable election year that constitutes the deferral period.[11] The minimum distribution requirements for any applicable election year are met if applicable amounts paid to employee-owners during the deferral period of the applicable election year equal or exceed the lesser of (a) the product of (i) the applicable amounts paid during the preceding taxable year, divided by the number of months in such year, multiplied by (ii) the number of months in the deferral period or (b) the applicable percentage of the adjusted taxable income of the personal service corporation for the deferral period of the applicable election year. For these purposes, the applicable percentage is the average percentage (not to exceed 95 percent) of the adjusted taxable income of the personal service corporation that was paid out in applicable amounts over the prior three taxable years. Adjusted taxable income is the taxable income for the period increased by any amount paid or incurred to an employee-owner that was taken into account in determining taxable income.

If a personal service corporation fails to meet the minimum distribution requirement for any applicable election year, the amount of applicable payments it may deduct for the applicable election year is limited to a maximum deductible amount. The maximum

[11] Since personal service corporations are required to use the calendar year, the deferral period is the portion of the applicable election year before January 1.

deductible amount is equal to the sum of (a) the applicable amounts paid in the deferral period plus (b) the applicable amounts paid in the deferral period divided by the number of months in the deferral period multiplied by the number of months not in the deferral period. Any amount paid or incurred by the personal service corporation that would be deductible but for the maximum deduction amount is treated as paid or incurred in the succeeding taxable year.

Tiered structures

The committee is concerned that the use of the election in the case of tiered structures may not yield appropriate results. Accordingly, the elections provided by this provision are not available to an entity that is part of a tiered structure, except as provided in regulations. An example of such a tiered structure would be a calendar year partnership with partners that are personal service corporations with taxable years ending November 30 where the personal service corporations are in turn owned by calendar year individuals. Except as provided in regulations, neither the partnership nor the personal service corporations described would be allowed to use the election provided by this provision.

Effective Date.—The provision generally is effective for taxable years beginning after December 31, 1986. The requirement that enhanced estimated taxes be paid by partners and shareholders of electing entities is effective for taxable years beginning after December 31, 1987, with respect to applicable election years beginning after December 31, 1986.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification requiring an electing partnership or S corporation, rather than the owners of such an entity, to make additional payments. Such additional payments are treated as payments of tax imposed by subtitle C. The conference agreement also clarifies which tiered structures will be eligible to make the election to use a taxable year other than the required taxable year. Further, the conference agreement provides special rules for S corporations that were previously C corporations and denies a net operating loss carrryback to or from any taxable year of a personal service corporation to which an election applies.

Entity level payments

The conference agreement provides that an electing partnership or S corporation must make a "required payment" for any taxable year for which an election is in effect. The payment is due on April 15th of the calendar year following the calendar year in which the election year begins, unless the Secretary of the Treasury provides for a later date. The "required payment" is the payment of a tax imposed by subtitle C that is due on such date. Willful failure by an entity to comply with these rules results in the cancellation of the election by the entity, effective from the year in which the willful failure occurred. The payment by the electing entity replaces the requirement that the owners of such electing entities make enhanced estimated tax payments included in the House bill.

The "required payment" for an election year is equal to the excess of (a) the product of the applicable percentage of the adjusted highest section 1 tax rate multiplied by the net base year income of the entity over (b) the amount of the required payment for the preceding election year. The adjusted highest section 1 rate is 36 percent for election years beginning in 1987, and the rate of tax imposed by section 1 as of the end of the year preceding the election year, plus one percentage point for all other election years. If the required payment for any election year is negative, the entity is entitled to a refund of such amount.

An entity's net base year income is equal to the sum of the deferral ratio multiplied by the entity's net income for the preceding taxable year, plus the excess of (a) the deferral ratio multiplied by the aggregate amount of applicable payments made by the entity during the preceding year, over (b) the aggregate amount of such applicable payments made during the deferral period of the preceding year. The deferral ratio is the ratio that the number of months in the deferral period of the preceding taxable year bears to the number of months in the entity's preceding taxable year. In the case of a partnership, net income is the amount (not less than zero) determined by taking into account the aggregate amount of the partnership's items (other than credits) described in section 702(a). In the case of an S corporation, net income is the amount (not less than zero) determined by taking into account the aggregate amount of the S corporation's items (other than credits) described in section 1366(a). In the case of an S corporation that was a C corporation for such preceding taxable year, net income is the amount (not less than zero) of its taxable income for such year. Applicable payments are amounts paid or incurred by a partnership or S corporation includible in the gross income of its owner, other than gains from the sale or exchange of property between the owner and the entity and dividends.

An entity does not make a "required payment" if the total of required payments for the current and all preceding election years does not exceed $500. An amount not required to be paid is not considered to be part of the required payment for the preceding election year for the purpose of determining the amount of the required payment for the current election year. For example, the required payment of an entity would be $400 in its first election year and an additional $400 in its second election year before the application of this rule. The entity does not make a required payment for the first election year and makes a required payment of $800 for the second election year.

No interest is due or allowable with respect to the refund due an entity in a year in which it has a negative required payment. The Secretary of the Treasury is directed to prescribe such regulations as may be necessary to carry out this provision, including regulations requiring annualization of years of less than 12 months.

Personal service corporations

The conference agreement generally follows the House bill with regard to the treatment of personal service corporations electing a taxable year other than a required taxable year. If a personal service corporation is denied a deduction for all or part of a payment to an owner-employee, the amount for which the deduction is denied is treated as paid or incurred in the succeeding taxable year. No carryback of a net operating loss is allowed either from or to an applicable election year of a personal service corporation.

Tiered structures

No election to use a taxable year other than a required taxable year may be made by an entity that is part of tiered structure other than a tiered structure comprised of one or more partnerships or S corporations, all having the same taxable year. For example, a June partnership that has traditionally used a taxable year ending June 30 is owned by calendar year individuals and an S corporation that has also traditionally used a taxable year ending June 30. The partnership and S corporation may make elections under this provision to continue to use their taxable years ending June 30, providing the election is made by both entities.

Effective date.—The conference agreement generally has the same effective date as the House bill. A corporation that made an election after September 18, 1986 and before January 1, 1988 (as long as such election has not been revoked) to be treated as an S corporation and to have the calendar year as the taxable year of the S corporation may elect a taxable year under this provision if the deferral period of the taxable year elected is not longer than the shorter of three months or the deferral period of the taxable year used by the corporation prior to its election to be treated as an S corporation.

B. PARTNERSHIP PROVISIONS

1. Certain publicly traded partnerships treated as corporations

Present law

Under present law, a partnership is not subject to tax at the partnership level, but rather, income and loss of the partnership is subject to tax at the partner's level. A partner's share of partnership income is generally determined without regard to whether he receives any corresponding cash distributions. Similarly, partnership deductions, losses and credits are taken into account at the partner level for tax purposes. A corporation, by contrast, generally is subject to tax at the entity level, and distributions with respect to corporate stock generally are subject to tax at the shareholder level.

The Treasury regulations distinguishing partnerships from corporations currently provide that whether a business entity is taxed as a corporation depends on which form of enterprise the entity "more nearly" resembles (Treas. Reg. sec. 301.7701-2(a)). The regulations list six corporate characteristics, two of which are common to corporations and partnerships, and the other four of which are: (1) continuity of life, (2) centralization of management, (3) liability for corporate debts limited to corporate property, and (4) free transferability of interests. The regulations provide that an association is treated as a corporation (rather than a partnership) for Federal income tax purposes if it has more corporate than non-corporate characteristics. The effect of the regulations generally is to classify an entity as a partnership if it lacks any two of these four corporate characteristics, without further inquiry as to how strong or weak a particular characteristic is or how th evaluation of the factors might affect overall resemblance.[1]

Under present law, if an entity is classified as a partnership, income and loss are subject to tax at the partner level rather than at the partnership level without regard to whether the partnership is engaged in active business activities.

House bill

Under the provision, publicly traded partnerships are treated as corporations for Federal income tax purposes. An exception is provided for certain partnerships, 90 percent or more of whose gross income is passive-type income (as defined for purposes of the provision).

Passive-type income

Passive-type income, for purposes of the provision, is defined as certain interest, dividends, real property rents, gains from the sale or other disposition of real property, and income and gains from certain natural resources activities. Also treated as passive-type income is any gain from the sale or disposition of a capital asset or property described in sec. 1231(b) that is held for the production of income that is treated as passive-type income (e.g., typical commodity pools).

Inadvertent terminations

The bill provides relief from classification as a corporation for tax purposes, where a partnership inadvertently fails to meet the requirement that 90 percent of its gross income be passive-type income. Under this relief provision, if (1) the Secretary determines that the failure was inadvertent, (2) the partnership takes steps within a reasonable time to meet the 90 percent requirement, and (3) the partnership and each holder of an interest in the partnership during the failure period agree to make adjustments determined by the Secretary, then the partnership will be treated as continuing to meet the 90 percent requirement during the failure period. A reasonable time, for this purpose, would be one year, unless otherwise determined in regulations.

Publicly traded partnerships

Publicly traded partnerships are defined for purposes of the provision as partnerships whose interests are (1) traded on an established securities market, or (2) offered with the expectation that there will be a secondary market for such interests, or (3) readily

[1] Treas. Reg. secs. 301.7701-2 and -3; *Larson* v. *Commissioner,* 66 T.C. 159 (1976), acq. 1979-1 C.B. 1.

tradable in a secondary market (or the substantial equivalent thereof).

Treatment as a corporation

The bill provides that, in the case of a partnership that is treated as a corporation under this provision, the partnership is treated as contributing all of its assets (subject to all of its liabilities) to a newly formed corporation in exchange for all of the corporation's stock. The stock of the corporaticn is treated as distributed to the corporation in complete liquidation of the partnership. In general, the tax consequences to the partnership, the corporation, and the distributee holders of interests in the partnership who become shareholders in the new corporation are governed by secs. 351 (permitting tax-free contributions to corporations that are controlled immediately after the contribution transaction), 731 and 732 (governing the treatment of liquidating distributions from partnerships). Rules applicable to recognition of income upon recapture of tax benefits also apply.

Income from publicly traded partnerships that are classified as corporations under the bill generally is treated as dividend income. Regardless of whether such income is characterized as income or gain (e.g., depending on whether it represents a distribution of earnings and profits under section 301), income from such entities is properly treated as portfolio income for purposes of the passive loss rule.

The provision is effective after October 13, 1987, except for existing partnerships. An existing partnership is any partnership publicly traded on October 13, 1987.

An existing partnership also includes a partnership with respect to which a registration statement was filed with the Securities and Exchange Commission on or before October 13, 1987, stating in such registration statement as of October 13, 1987, that the partnership will or intends to publicly trade interests or units including by application for listing on any national securities exchange or local exchange or by trading in an over-the-counter market which results in interests or units so registered to be listed on such exchange or available for trading in an over-the-counter market within a reasonable time after such registration becomes effective. The committee does not intend to grandfather partnerships where registration statements filed on or before October 13, 1987, indicate that there is a possibility (e.g., the general partner may determine) that the interests or units may trade in the future, as opposed to indicating a determination that at the time the partnership is registered with the SEC, trading will occur within a reasonable time after the registration becoming effective.

An existing partnership ceases to be treated as such on the first day after October 13, 1987, on which there has been a substantial expansion of the partnership, or the activities of the partnership have been substantially changed. Any partnership not treated as an existing partnership, that becomes publicly traded after October 13, 1987, is treated as a corporation for tax purposes upon being publicly traded (unless the exception relating to passive-type income applies).

The provision becomes effective with respect to partnerships theretofore grandfathered under the provision for taxable years beginning after December 31, 1994.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with modifications.

Under the conference agreement, as under the House bill, a publicly traded partnership is treated as a corporation unless 90 percent or more of its gross income consists of qualifying income.

As under the House bill, the provision does not apply to any partnership that would be described in sec. 851(a) if it were a domestic corporation. Thus, a publicly traded partnership that is registered under the Investment Company Act of 1940 generally is treated as a corporation under the provision. The conference agreement provides an exception to this rule, however, to the extent provided in regulations, in the case of a partnership that is registered under the Investment Company Act of 1940, and a principal activity of which is the buying and selling of commodities or options, futures or forward contracts with respect to commodities (including foreign currency transactions of a commodity pool). Thus, for example, an existing partnership that is required to register under the 1940 Act because it is engaged in the business of investing in securities, and a principal activity of which is the buying and selling of such commodities (or futures, options or forward contracts with respect to such commodities), is treated as a partnership as provided in Treasury regulations.

Passive-type income

Under the conference agreement, passive-type income includes interest, dividends, real property rents, gain from the disposition of real property, and income and gains from certain natural resources activities. Passive-type income also includes gain from disposition of a capital asset or property described in section 1231(b) that is held for the production of income that is passive-type income. In addition, passive-type income includes income and gains from commodities (not described in section 1221(1)) or futures, options or forward contracts with respect to such commodities (including foreign currency transactions of a commodity pool) in the case of partnerships, a principal activity of which is the buying and selling of such commodities, futures, options or forward contracts (i.e., typical commodity pools).

In determining whether 90 percent of a partnership's gross income is passive-type income in the case of the sale or other disposition of real property described in section 1221(1) (i.e., inventory-type property or property held primarily for sale to customers), gross income is not reduced by inventory costs taken into account in determining the gain from the disposition of the real property.

Income and gains from certain activities with respect to minerals or natural resources are treated as passive-type income. Specifically, natural resources include fertilizer geothermal energy, and timber, as well as oil, gas or products thereof. For this purpose, fertilizer, includes plant nutrients such as sulphur, phosphate, potash and nitrogen that are used for the production of crops and phosphate-based livestock feed. For this purpose, oil, gas, or products thereof means gasoline, kerosene, number 2 fuel oil, refined lubricating oils, diesel fuel, methane, butane, propane, and similar products which are recovered from petroleum refineries or field facilities. Oil, gas, or products thereof are not intended to encompass oil or gas products that are produced by additional processing beyond that of petroleum refineries or field facilities, such as plastics or similar petroleum derivatives. Income of certain partnerships whose exclusive activities are transportation and marketing activities is not treated as passive-type income. For example, the income of a partnership whose exclusive activity is transporting refined petroleum products by pipeline is intended to be treated as passive-type income, but the income of a partnership whose exclusive activities are transporting refined petroleum products by truck, or retail marketing with respect to refined petroleum products (e.g., gas station operations) is not intended to be treated as passive-type income.

In determining whether income is treated as passive-type income under the provision, in the case of interest and real property rents, it is not intended that amounts contingent on profits be treated as interest or rent. Interest or rent (or other amounts) contingent on profits involves a greater degree of risk, and also a greater potential for economic gain, than a fixed (or even a market-indexed) rate of interest or rent, and thus is more properly regarded as from an underlying active business activity. Under the provision, the determination of whether real property rents based on gross sales are passive-type income is made in accordance with the rules of section 856(d), without regard to section 856(d)(2)(C). Thus, real property rents based on a fixed percentage of receipts or of gross sales are not excluded from rents that are treated as passive-type income. Passive-type rental income does not include income from rental or leasing of personal property.

Publicly traded partnerships

Under the conference agreement, publicly traded partnerships are defined as partnerships whose interests are (1) traded on an established securities market, or (2) readily tradable on a secondary market (or the substantial equivalent thereof).

For this purpose, an established securities market includes any national securities exchange registered under the Securities Exchange Act of 1934 or exempted from registration because of the limited volume of transactions, and any local exchange. It also includes any over the counter market. An over the counter market is characterized by an interdealer quotation system which regularly disseminates quotations of obligations by identified brokers or dealers, by electronic means or otherwise.

A publicly traded partnership also includes a partnership whose interests are readily tradable on a secondary market (or the substantial equivalent thereof). The conferees intend that this test be applied to encompass in the definition of publicly traded partnerships those partnerships that are not traded on established securities markets, but whose partners are nevertheless readily able to buy, sell or exchange their partnership interests in a manner that is comparable, economically, to trading on established securities markets. The conferees intend that substance rather than form determine whether a partnership is treated as publicly traded; whether public trading takes place on an established securities market or elsewhere is not determinative.

A secondary market is generally indicated by the existence of a person standing ready to make a market in the interest. An interest is treated as readily tradable if the interest is regularly quoted by persons such as brokers or dealers who are making a market in the interest. (See Temp. Treas. Reg. section 15a.453-1(e)(4)(iii).) Thus, for example, an interest is readily tradable in a secondary market where the interest is traded on a market essentially equivalent to an over the counter market.

The substantial equivalent of a secondary market exists where there is not an identifiable market maker but the holder of an interest has a readily available, regular and ongoing opportunity to sell or exchange his interest through a public means of obtaining or providing information of offers to buy, sell or exchange interests. Similarly, the substantial equivalent of a secondary market exists where prospective buyers and sellers have the opportunity to buy, sell or exchange interests in a time frame and with the regularity and continuity that the existence of a market maker would provide.

If interests can be traded in a market that is publicly available, but offers to buy or sell interests are normally not accepted in a time frame comparable to that which would be available on a secondary market, then the interests are not treated as readily tradeable on the substantial equivalent of a secondary market. For example, if interests are quoted and traded on an irregular basis as a result of bid and asked prices listed on a computerized system, and such interests cannot normally be disposed of within the time that they could be disposed of on an over the counter market, then the interests are not considered as readily tradeable on the substantial equivalent of a secondary market.

In addition, it is not intended that partnership interests be treated as readily tradable on a secondary market or the substantial equivalent of a secondary market where there are occasional accommodation trades of partnership interests (e.g., where the general partner or the partnership sometimes purchases interests from other partners, not pursuant to a put or call right, or where the underwriter that handled the issuance of the partnership interests occasionally arranges such accommodation trades. Similarly, where the general partner provides information to its partners regarding such partners' desire to buy or sell interests to each other, or arranges such transfers between partners, without offering to buy or redeem interests or issue additional interests to such partners, a secondary market or the substantial equivalent of a secondary market is not created.

The existence of a buy-sell agreement among the partners, without more, will not cause a partnership to be treated as publicly traded. Nor will the occasional and irregular repurchase or redemption by the partnership, or acquisition by the general partner, of interests in the partnership, cause the partnership to be considered as publicly traded under the provision. A regular plan of redemptions or repurchases, or similar acquisitions of interests in the partnership such that holders of interests have readily available, regular and ongoing opportunities to dispose of their interests, indicates that the interests are readily tradable on what is the substantial equivalent of a secondary market.

The conferees intend that the complicity or participation (express or tacit) of the partnership or the general partner is relevant in determining whether there is public trading of its interests. Thus, for example, if the partnership acts to list its interests on an exchange, it is clearly participating in causing its interests to be publicly traded.

A partnership is considered as participating in public trading of its interests where trading is in fact taking place (even though the partnership may not have taken explicit action to permit trading, such as by listing on an exchange), and the partnership agreement imposes no meaningful limitation on partners' ability to readily transfer their interests. For example, a provision for the discretion of the general partner or the partnership to refuse consent to the transfer of an interest in the partnership (or of rights to income or other attributes of an interest in the partnership) does not, without more, prevent a partnership from being considered publicly traded. Similarly, the discretion of the general partner to refuse consent to a transfer if the transfer would cause a termination of the partnership for Federal income tax purposes does not cause the partnership to be treated as not publicly traded. Likewise, if the general partner must consent to any transfer of an interest in the partnership, but the assignment of rights to income (or other attributes) of the partnership is not so limited, the consent requirement does not cause the partnership to be considered as not publicly traded.

Conversely, if the partnership agreement provides that partnership interests may not be transferred (and rights to partnership income or other attributes may not be assigned), or provides that partners have only a restricted and limited right to transfer partnership interests or assign partnership income or other attributes, then the conferees intend that occasional actual transfers of interests or assignments of rights generally will not cause the partnership to be treated as publicly traded. A partner's right to transfer an interest or assign rights is considered as restricted and limited, for this purpose, where the transfer of interests or assignment of rights is permitted only in circumstances such as death or divorce of a partner, gifts, certain types of transfers to related parties (such as intrafamily transfers or transfers within an affiliated group where the ownership of the interest or rights is effectively unchanged), or in the case of an occasional accommodation transfer by a partner.

If interests in a partnership are not traded on an established securities market, and the general partner and the partnership have the right to refuse to recognize trades in a secondary market or the substantial equivalent thereof, and exercise the right by taking such actions as are necessary so that trades or assignments of rights are not in fact recognized (either by the general partner, the partnership, the underwriter, or the depositary or any other agent of the partnership or general parter), then the partnership interests are not intened to be treated as publicly traded under the provision.

Inadvertent terminations

The relief provision in the case of inadvertent terminations is the same as the House bill, except that the Treasury regulatory authority with respect to adjustments is modified. The conference agreement provides that the partnership may be treated as continuing to meet the 90 percent test with respect to gross income if the partnership agrees to make such adjustments (including adjustments with respect to the partners) as are required by the Treasury Secretary with respect to the period of inadvertent termination (and provided the other two requirements imposed under the House bill and the conference agreement are also satisfied).

Effective date.—The provision is effective for taxable years after December 31, 1987.

The conference agreement provides a grandfather rule similar to the House bill, for partnerships existing on December 17, 1987, and the provision applies to existing partnerships for taxable years beginning after December 31, 1997. A partnership is not treated as an existing partnership if there has been an addition of a substantial new line of business. Dropping a line of business does not cause an existing partnership to cease to be treated as such. For this purpose, a substantial new line of business does not include a line of business which was specifically described as a proposed business activity of the partnership (not including a general grant of authority to conduct any business) in a registration statement or amendment thereto filed on behalf of the partnership with the SEC on or before December 17, 1987, but in which the partnership had not actively engaged on or before December 17, 1987.

As provided in the House bill, an existing partnership includes a partnership that filed a registration statement with the Securities and Exchange Commission on or before December 17, 1987 indicating that the partnership was to be a publicly traded partnership. For this purpose, the tranfer of assets to the partnership and commencement of business, substantially as described or provided for in the registration statement (including subsequent amendments and filings related thereto that do not add descriptions of new lines of business), and the sale of interests in the partnership will not be treated as the addition of a substantial new line of business. It is not intended that the termination (within the meaning of section 708) of such a partnership as a result of the issuance or sale of partnership interests cause the partnership not to be treated as an existing partnership. An existing partnership also includes a partnership that filed a statement with a State regulatory commission on or before December 17, 1987 seeking permission to restructure a portion of a corporation as a publicly traded partnership (whether or not such partnership was actually in existence on December 17, 1987).

2. Treatment of publicly traded partnerships under the passive loss rule

Present law

Under present law, deductions from passive trade or business activities (within the meaning of the passive loss rule (sec. 469)), to the extent they exceed income from such passive activities, generally may not be deducted against other income. Similarly, credits from passive activities generally are limited to the tax attributable to the passive activities. Suspended losses and credits are carried forward and treated as deductions and credits from passive activities in the next year. Suspended losses from an activity are allowed in full when the taxpayer disposes of his entire interest in the activity.

Income from passive activities does not include income such as compensation for services or portfolio income (including interest, dividends, royalties, annuities, and gains from the sale of property held for investment). For this purpose, property held for investment generally does not include an interest in a passive activity.

A passive activity generally is an activity involving the conduct of a trade or business in which the taxpayer does not materially participate. Present law provides that, except as provided in regulations, no interest in a limited partnership as a limited partner is treated as an interest with respect to which the taxpayer materially participates. Present law also provides Treasury regulatory authority to issue regulations requiring net income or gain from a limited partnership to be treated as not from a passive activity. Thus, except to the extent that the Treasury Department may provide in regulations, income from limited partnerships, including publicly traded limited partnerships, may be offset by passive losses from other sources.

House bill

Under the bill, net income from publicly traded partnerships is not treated as passive income for purposes of the passive loss rule. Each partner in a publicly traded partnership treats loss (if any) from the partnership as separate from income and loss from any other publicly traded partnership, and also as separate from any income or loss from passive activities. Net income from publicly traded partnerships is treated as portfolio income under the passive loss rule.

Net losses attributable to the interest in the publicly traded partnership are not allowed against the partner's other income, but rather are suspended and carried forward. Such net losses can be applied against net income from the partnership in the next year (or the next succeeding year in which the holder of an interest in the partnership has net income from the partnership). Upon a complete disposition (within the meaning of the passive loss rule) of the partner's entire interest in the publicly traded partnership, any remaining suspended losses are allowed.

In general, income and loss items attributable to an interest in a publicly traded partnership can offset each other. In the case of publicly traded partnerships with income that is treated as portfolio income (under the passive loss rule as generally applicable) and losses from business activities, the losses are not intended to be applied against the portfolio income. Partners' shares of the loss may not be applied against their shares of that portfolio income. Thus, partners in publicly traded partnerships cannot offset losses from partnership activities against portfolio income within the partnership that could not be offset against portfolio income derived outside the publicly traded partnership.

Under the House bill, partners in publicly traded partnerships are not allowed any amounts under the special $25,000 allowance for rental real estate activities (regardless of whether such amounts would be allowable under the passive loss rule as generally applicable).

Publicly traded partnerships are defined for purposes of the provision as partnerships whose interests are (1) traded on an established securities market, or (2) offered with the expectation that there will be a secondary market for such interests, or (3) readily tradable in a secondary market (or the substantial equivalent thereof).

The intended overall result is that net losses and credits of a partner from each publicly traded partnership be suspended at the partner level, carried forward (not back) and netted only against income from (or tax liability attributable to) that publicly traded partnership, and that suspended losses are allowed upon a complete disposition of the partner's interest in the partnership.

The provision is effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986. Thus, the provision is effective for taxable years beginning after December 31, 1986.

Senate amendment

The Senate amendment is generally the same as the House bill, with two differences.

First, publicly traded partnerships are defined for purposes of the Senate amendment provision as partnerships whose interests are (1) traded on an established securities market, or (2) readily tradable in a secondary market (or the substantial equivalent thereof).

Second, it is intended under the Senate amendment that a partner be entitled to the $25,000 (deduction equivalent) allowance with respect to credits from the partnership as under present law. Thus, a partner in a publicly traded partnership may utilize his share of partnership low income housing credits and rehabilitation credits against tax liability attributable to non-partnership income to the extent of his unused $25,000 (deduction equivalent) allowance.

Conference agreement

The conference agreement follows the Senate amendment, with a technical modification to provide that the $25,000 allowance of (deduction equivalent) credits applies at the partner level, to the extent the amount of such credits exceeds the partner's regular tax liability attributable to income from the partnership. Such credits are allowable under the partner's $25,000 allowance to the extent that the partner has not fully utilized the allowance with respect to losses and credits from passive activities otherwise allowed under present law sec. 469. The term publicly traded partnership has the same meaning for this provision as for the provision under the conference agreement treating certain publicly traded partnerships as corporations.

3. Treatment of publicly traded partnerships for unrelated business tax

Present law

Under present law, tax-exempt organizations are subject to tax on income from unrelated businesses. Certain types of income (such as interest and certain rental income) are, however, not treated as unrelated business income. Present law also provides that a partner's distributive share of income from a partnership retains the same character as in the hands of the partnership. Thus, a tax-exempt organization's share of income from a partnership (including a publicly traded partnership) may be treated as unrelated business income, or not, depending on the underlying character of the income to the partnership.

House bill

The bill provides that a tax-exempt organization's share (whether or not distributed) of the gross income of a publicly traded partnership (that is not otherwise treated as a corporation) is treated as gross income derived from an unrelated trade or business, and taxable to the organization. The organization's share of the partnership deductions are allowed in computing the organization's taxable unrelated business income. The amounts includable or deductible under this provision are based on the income and deductions of the partnership for the taxable year of the partnership ending within or with the taxable year of the organization.

A publicly traded partnership has the same meaning for purposes of this provision as under the provision added by sec. 10211 of the bill (section 7704 of the Code).

The provision is effective with respect to partnership interests acquired after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, except that the provision is effective with respect to partnership interests acquired after December 17, 1987.

4. Treatment of certain partnership allocations

Present law

Under present law, tax-exempt organizations generally are subject to tax on unrelated business income (section 511). In general, income from debt-financed property is treated as unrelated business income (section 514). An exception from the unrelated business income tax is provided in the case of debt-financed real property of a partnership that includes a qualified pension plan, educational organization or title holding company (i.e., a qualified tax-exempt organization) (section 514(c)(9)(C)). The exception applies as long as the property is not leased back to the seller and certain other requirements are met, and as long as the principal purpose of any disproportionate allocation to a tax exempt organization is not the avoidance of income tax.

House bill

The bill provides that the exception from treatment of income from debt-financed real property as unrelated business income is available only if certain requirements are met. In addition to the requirements of present law, the bill requires that either (1) each partner be a qualified tax-exempt organization, or (2) if any partner is not a tax-exempt organization, each allocation to a partner that is a qualified tax-exempt organization be (a) consistent with such organization's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and (b) the allocation has substantial economic effect within the meaning of the partnership tax rules. The provision retains the rule of present law that an interest in a mortgage is not treated as real property.

The provision applies to property acquired after October 13, 1987. An exception is provided for property acquired pursuant to a binding contract in effect on October 13, 1987, and at all times thereafter before the property was acquired.

Senate amendment

No provision.

Conference agreement

In general

The conference agreement generally follows the House bill, but adds a rule permitting certain types of disproportionate allocations provided the allocations met certain requirements.

Disproportionate allocations

Under the conference agreement, income from debt-financed real property of a partnership that includes both tax-exempt and taxable organizations can qualify under the unrelated business income exception if each allocation to a tax-exempt organization that is a partner is a qualified allocation (within the meaning of section 168(h)(6)), or if the partnership meets the requirements of a new rule allowing certain disproportionate allocations (section 514(c)(9)(E)). A partnership satisfies the disproportionate allocation rule if throughout the entire period that a tax-exempt organization is a partner in the partnership (i) no distributive share of overall partnership loss allocable to a taxable partner can exceed such partner's smallest distributive share of overall partnership income for any taxable year, (ii) no distributive share of overall partnership income allocable to a tax-exempt partner can exceed such partner's smallest distributive share of overall partnership loss for any taxable year, and (iii) each partnership allocation has substantial economic effect within the meaning of section 704(b). The conferees also intend that, in order to satisfy the disproportionate allocation rule, the allocation of items of credit and basis must be made in a manner that is consistent with the limitations on the allocation of overall partnership loss.

Under the disproportionate allocation rule, the exception from unrelated business income treatment is available only if the requirements of the rule are satisfied with respect to each partner. That is, the requirements of the provision must be met with respect to disproportionate allocations to each partner, rather than disproportionate allocations to tax-exempt partners as a group and to taxable partners as a group. Unless the partners' distributive shares of net income or loss will satisfy the requirements of the provision in each taxable year in which a tax-exempt organization is a partner in the partnership, the income from the partnership does not qualify under the unrelated business income exception.

This rule permits separate allocation of items of income, gain, loss and deduction rather than requiring that every item be allocated in the same ratio or requiring only allocations of bottom line profit or loss. The determination of whether the requirements of the rule are satisfied must be made on the basis of each partner's distributive share of overall partnership income or overall partnership loss for each taxable year, taking into account any item allocations. Overall partnership income for any year means the amount, if any, by which the items of partnership income and gain for the year exceeds the items of partnership deduction and loss for such year. Overall partnership loss for any taxable year means the amount, if any, by which the items of partnership deduction and loss for the year exceed the items of partnership income and gain for such year.

It is intended that the disproportionate allocation rule be applied by looking to the provisions of the partnership agreement with respect to each partner's distributive share. The partnership agreement is intended to include any side agreements or separate understandings among the partners. If it is not clear under the terms of the partnership agreement that the allocations meet the requirements of the provision, the income of the partnership does not qualify under the unrelated business income exception. Where the agreement permits allocations that do not satisfy the disproportionate allocation rule at the first time the partnership includes a tax-exempt partner, then the income of the partnership does not qualify under the unrelated business income exception.

Changes in, or amendments to, the allocation provisions of the partnership agreement resulting in disproportionate allocations that would not have satisfied the general rule when a tax-exempt organization first became a partner, will cause the income of the partnership not to qualify under the unrelated business income exception at the time of the change, including open years. It is intended that particular scrutiny be applied to changes to the partnership allocation provisions that are not accompanied by changes in the economics of the partnership arrangement (e.g., not accompanied by the admission of new partners or by capital contributions to the partnership), because of the possibility that such changes may have been previously contemplated.

Allocations that are not expressed in percentages (such as allocations based on economic contingencies or allocations of flat dollar amounts) may not qualify under the provision unless it can be shown that in all circumstances they will satisfy the disproportionate disallowance rule. For example, an allocation of the first $500 of overall partnership loss to a partner cannot satisfy the requirements of the provision because it is not clear what percentage of overall partnership loss such an amount would be for any particular taxable year. Conversely, an allocation of 50 percent of overall partnership loss, up to the amount of the partner's capital account, could satisfy the requirements of the provision.

Example.—The operation of the disproportionate allocation rule is illustrated as follows. A partnership is formed by a taxable partner and a tax-exempt partner, and has debt-financed real property. In years 1 through 5 of the partnership, overall partnership income is allocated 60 percent to the tax-exempt partner and 40 percent to the taxable partner, while overall partnership loss is allocated 80 percent to the tax-exempt partner and 20 percent to the taxable partner. In years 6 through 10 of the partnership, overall partnership income is allocated 40 percent to the tax-exempt partner and 60 percent to the taxable partner, while overall partnership loss is allocated 20 percent to the tax-exempt partner and 80 percent to the taxable partner. The allocations do not qualify under the provision, because the tax-exempt partner's smallest share of loss is 20 percent, and this is exceeded by the allocation to him of 60 percent (in years 1 through 5) and 40 percent (in years 6 through 10) of the overall partnership income. The largest share of income that can be allocated to him consistently with the provision is 20 percent. Any portion of partnership income from 0 to 20 percent can be allocated to him, however, consistently with the provision. Similarly, the largest share of loss that can be allocated to the taxable partner is 40 percent (i.e., his smallest share of overall partnership income).

Chargebacks

In addition, the provision permits (except as otherwise provided in regulations) chargebacks of income or loss to particular partners to offset the amount of prior disproportionate allocations of loss or income that were consistent with the general rule. Thus, disproportionate allocations of overall partnership income may be made to a tax-exempt partner, and overall partnership loss to a taxable partner, to offset such a prior disproportionate allocation. The amount of the chargeback cannot exceed the amount of the prior allocation, and must be made in the same ratio as the prior allocation. Thus, chargebacks may be slower, but not faster, than they might otherwise be absent this restriction.

Example.—For example, a partnership allocates each item of partnership income, gain, loss, or deduction 50 percent to the tax-exempt partner and 50 percent to the taxable partner, except that the first $1,000 of overall partnership loss is allocated 80 percent to the tax-exempt partner and 20 percent to the taxable partner. In 1988, the partnership has an overall partnership loss of $1,000, which is allocated $800 to the tax-exempt partner and $200 to the taxable partner. In 1989, the partnership has overall partnership income of $500 that may be disproportionately allocated to the tax-exempt partner to offset the disproportionate allocation of loss to such partner in 1988 without violating the general rule. This income chargeback, however, must be made in the same 80/20 ratio at which the disproportionate allocation of loss was made to comply with the special rule for chargebacks. Thus, no more than $400 of income can be charged back to the tax-exempt partner in 1989 in order to comply with the disproportionate allocation rule.

Preferred returns and guaranteed payments

The provision also grants Treasury regulatory authority to provide for reasonable preferred returns (i.e., priority cash distributions) or reasonable guaranteed payments (within the meaning cf section 707(c)). It is intended that such regulatory authority be exercised consistently with the purpose of the provision to limit the transfer of tax benefits from tax-exempt partners to taxable partners, whether through deferral of income to the taxable partner by virtue of directing income to the tax-exempt partner, or through providing shelter opportunities to the taxable partner by virtue of directing losses and deductions to the taxable partner.

Effective date.—The provision is effective for property acquired by the partnership after October 13, 1987, and for partnership interests acquired after October 13, 1987. An exception is provided for property acquired by, or constructed for, the partnership pursuant to a binding contract in effect on October 13, 1987, and at all times thereafter before the property is acquired.

5. Collection of tax from partnerships

Present law

Under present law, each partnership is required to file a partnership return setting forth the partnership income, deductions, and credits, and each partner's distributive share of these items. In general, each partner is required to treat items on his or her own income tax return consistently with the treatment on the partnership return.

The proper tax treatment of partnership items generally is administratively and judicially determined at the partnership level rather than in separate proceedings with each partner.[2] Upon a determination that the partnership has underreported the amount of net income shown on its return, the Internal Revenue Service may then proceed to assess and collect from each partner any additional income tax owed by that partner resulting from the determination.

House bill

The bill generally provides that the Internal Revenue Service may collect underpayments of tax resulting from administrative or judicial determinations with registered partnerships from the partnership itself, as well as from each partner.[3]

---

[2] These rules were added to the Code in 1982 for taxable years beginning after 1982. Therefore the Internal Revenue Service has had relatively little experience administering partnership level proceedings.

[3] For purposes of this discussion, the term "partner" includes any taxpayer with an underpayment resulting from the partnership determination.

Under the bill, any shortfall of tax resulting from an applicable return adjustment must be paid by the partnership on notice and demand by the Internal Revenue Service in the same manner as a tax imposed on the partnership.

The amount of shortfall in tax for any taxable year equals (1) the applicable percentage of the sum of amount by which the amount of income or gains determined in accordance with the applicable return adjustment exceeds the amount of income or gains shown on the partnership return plus the amount by which the deductions and losses shown on the partnership return exceed the deductions and losses determined in accordance with the applicable return adjustment plus (2) the amount by which the aggregate amount of credits shown on the partnership return exceeds the amount determined in accordance with the applicable return adjustment.[4] For this purpose, the applicable percentage is the highest rate of tax in effect for the taxable year for either individuals (under section 1) or corporations (under section 11). For example, the applicable percentage for a calendar year 1988 partnership would be 34 percent.

The amount of any shortfall in tax for which the partnership is liable is to be reduced by the portion attributable to any item of income, gain, loss, deduction, or credit to the extent the partnership establishes to the satisfaction of the Internal Revenue Service that the item was treated by a partner, either on the partner's original return or an amended return, in accordance with the applicable return adjustment.

This provision will apply to partnerships with interests required to be registered under a Federal or state law regulating securities, or sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities.

The payment by the partnership of any partnership shortfall shall be treated as a payment by each partner of his allocable share of the partnership payment. Each partner's allocable share shall be determined in accordance with the respective interests in the partnership giving rise to partnership shortfall. To the extent the payment by the partnership creates an overpayment with respect to any partner, that partner may file a claim for credit or refund of the overpayment. Under this provision, the partnership has a right to recover any amount paid to the Internal Revenue Service from the partner on whose behalf the payment is made.

This provision applies to taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

[4] The amount of any income, gain, deduction, loss or credit shall be determined as if the partnership were an individual, the elections under section 617(a) and 901 were made, and no amount was excluded under section 108.

6. Study of tax treatment of publicly traded partnerships

Present law

Present law provides that a partnership is not subject to tax at the partnership level, but rather, income and loss of the partnership is subject to tax at the partner's level. A partner's share of partnership income is generally determined without regard to whether he receives any corresponding cash distributions. Thus, under present law, partnerships generally are treated as conduits.

House bill

The bill provides that the Secretary of the Treasury shall conduct a study of the issue of treating publicly traded limited partnerships (and other partnerships which significantly resemble corporations) as corporations for Federal income tax purposes, including the issues of disincorporation and opportunities for avoidance of the corporate tax.

The Secretary is required to submit a report on the study, with such recommendations as the Secretary deems appropriate, to the House Committee on Ways and Means and the Senate Committee on Finance, no later than January 1, 1989.

Senate amendment

The amendment provides that the Secretary of the Treasury or his delegate shall conduct a study of compliance and administrative issues relating to the tax treatment of publicly traded partnerships and other large partnerships.

The Secretary is required to submit a report on the study, with such recommendations as the Secretary deems appropriate, to the House Committee on Ways and Means and the Senate Committee on Finance no later than January 1, 1989.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. Thus, the agreement provides that the Secretary of the Treasury or his delegate shall conduct a study of the issue of treating publicly traded limited partnerships (and other partnerships which significantly resemble corporations) as corporations for Federal income tax purposes, including the issues of disincorporation and opportunities for avoidance of the corporate tax. In addition, the study shall address compliance and administrative issues relating to the tax treatment of publicly traded partnerships and other large partnerships. In connection with these compliance and administrative issues, the study shall examine the issues of imposing collection of tax at the partnership level and withholding of tax at the partnership level, and shall make recommendations as to appropriate means of simplifying and improving procedures for audits of and assessments of publicly traded and other partnerships and their partners.

The Secretary is required to submit a report on the study, with appropriate recommendations, to the House Committee on Ways and Means and the Senate Committee on Finance no later than January 1, 1989. An interim report on the administrative and compliance issues is due May 1, 1988.

C. CORPORATE PROVISIONS

1. Computation of earnings and profits for purposes of intercorporate dividends and stock basis adjustments (overruling of *Woods Investment Co.* case)

Present law

Treasury regulations require a corporation to adjust its basis in the stock of a subsidiary with which it files a consolidated return by reference to changes in the subsidiary's earnings and profits. The parent corporation increases its basis in the stock of a subsidiary by the amount of the undistributed net earning and profits of the subsidiary for the taxable year, and reduces its basis in such stock by the amount of any deficit in earnings and profits, among other adjustments.

At the time the current consolidated return regulations were issued, differences between earnings and profits and taxable income were permanent differences, and adjustments to the basis of the assets of a subsidiary "inside" basis) were reflected immediately as adjustments to the parent corporation's basis in stock of the subsidiary "outside" basis). Subsequently, Congress enacted amendments to the provisions of the Code defining earnings and profits to prevent tax avoidance on distributions to individual shareholders. These amendments created timing differences between the recognition of taxable income and increases in earnings and profits. In a consolidated return context, the amendments had the unintended effect of creating a disparity between the rate at which these items reduce or increase a parent's basis in the stock of its subsidiary, and the rate at which they reduce or increase the group's consolidated taxable income. The resulting disparity between inside and outside basis may allow an inappropriate reduction in gain, or creation of a loss, on the disposition of the stock of the subsidiary.

In *Woods Investment Co.* v. *Commissioner,* 85 T. C. 274 (1985), the Tax Court upheld the taxpayer's right to the benefits conferred by a literal application of the statute and the investment adjustment rules of the consolidated return regulations, suggesting that it was within the authority of the Treasury Department to amend its regulations to address the problem. No amendments have been made to the regulations in this respect.

Where an insolvent consolidated subsidiary realizes cancellation of indebtedness income, the earnings and profits of the subsidiary may be increased by the amount of such income, even though this amount may be excluded from taxable income. If so, the parent corporation's basis in the stock is increased (or its "excess loss account", or negative basis, is reduced) by an amount that has not been reflected in the group's taxable income.

A benefit similar to that at issue in the *Woods* case may exist where the distributor and distributee do not file a consolidated return. Special rules prevent the occurrence of these distortions in certain circumstances. If a 20-percent or more corporate shareholder receives a distribution from another corporation that would otherwise qualify for the dividends received deduction, the taxable income of the shareholder (and its adjusted basis in the stock of the distributing corporation) is determined by ignoring certain adjustments otherwise required in determining the earnings and profits of the distributing corporation (sec. 301(f)). That is, the earnings and profits treatment of the items is conformed to the taxable income treatment. These special conformity rules do not apply, however, to depreciation.

House bill

Under the House bill, solely for purposes of determining gain or loss on disposition, a parent corporation's basis in the stock of a subsidiary with which it files a consolidated return "intragroup stock") is to be determined by computing earnings and profits of the subsidiary without regard to sections 312 (k) and (n). Thus, the parent's basis for purposes of determining gain or loss on disposition of the stock is computed as if, throughout the period of the subsidiary's affiliation with the parent, the subsidiary's earnings and profits had been computed without regard to the special adjustments for depreciation and other items.

In addition, the bill provides that earnings and profits for this purpose do not include any cancellation of indebtedness income of the subsidiary excluded under section 108 to the extent such income did not reduce basis in assets or other tax attributes.

Finally, the bill expands the provision modifying the definition of earnings and profits in the case of distributions to 20-percent or more corporate shareholder to include adjustments for accelerated depreciation (sec. 301(f)).

The amendments relating to the computation of earnings and profits for purposes of the determining basis of intragroup stock and stock of a nonconsolidated subsidiary apply to stock held on or acquired after October 13, 1987. The amendment relating to the computation of earnings and profits of a nonconsolidated subsidiary for purposes of characterizing a distribution generally applies to distributions after October 13, 1987.

Senate amendment

In general, the Senate amendment is the same as House bill, except that the provisions are effective for distributions or dispositions after October 15, 1987. Exceptions to the provisions relating to basis of stock in a subsidiary are provided for dispositions pursuant to a contract that was binding on October 16, 1987.

Conference agreement

The conference agreement follows the Senate amendment, with certain modifications and clarifications.

The rationale of the provision relating to intragroup stock is that generally adjustments to the outside basis of stock should parallel the adjustments made to inside asset basis. Thus, for example, the provision will cause an adjustment to a parent corporation's basis in the stock of a consolidated subsidiary based on the tax depreciation claimed by the subsidiary during the period the subsidiary was a member of the parent's affiliated group, rather than an adjustment based on the depreciation claimed by the subsidiary for earnings and profits purposes. The Treasury Department shall promulgate regulations addressing cases where a prior owner was not subject to this provision.

The conference agreement clarifies that the term intragroup stock includes any property the basis of which is determined in whole or in part by reference to basis of stock in a corporation that was formerly a member of an affiliated group filing consolidated returns. Thus, if stock in a consolidated subsidiary is disposed of in a nonrecognition transaction, the owning member's basis in any stock received in the transaction for purposes of any subsequent disposition will reflect the adjustments required by this provision. The term also includes stock in a corporation that was formerly a member of a consolidated group, but is not a member of the group at the time of the disposition. Thus, for example, if X Corporation sold 50 percent of its wholly owned consolidated subsidiary, Y Corporation, in 1988, and the remaining 50 percent in 1989, the gain on the sale of each block would be computed after making the adjustments prescribed in this provision to the basis of the stock.[5]

The conferees do not intend the application of this provision to require duplication of any downward adjustments to basis otherwise required under the consolidated return regulations. For example, if an owning member is required to reduce its basis in a subsidiary's stock (as of the beginning of a subsidiary's first separate return year after disaffiliation occurs) by the excess of its net positive adjustments with respect to the stock over its net negative adjustments for prior consolidated return years, the provisi on would not require any duplicative reduction in basis.[6]

There is no intention, in requiring these adjustments to basis for the limited purpose of determining gain or loss on disposition, to affect the earnings and profits of the subsidiary or any other member of the group for any other purpose, such as the character of a distribution. Nor is it intended that this provision affect the mechanism by which the consolidated return regulations require earnings and profits of members of a consolidated group to reflect annual increases or decreases in the earnings and profits of all lower-tier subsidiaries.[7] Rather, the provision will require this recomputation of earnings and profits to be made only in the year of the disposition of the subsidiary, immediately before such disposition. Therefore, the existing mechanism for the "tiering" of earnings and profits by reference to basis adjustments in the stock of a subsidiary will be unaffected. There is no intention, however, to preclude the Treasury Department from accomplishing this result directly, by requiring a member to increase its earnings and profits without regard to basis adjustments.

It is intended that this provision apply in the case of any transaction or event that is treated as a disposition of the stock of the subsidiary under the consolidated return regulations, whether or

[5] Likewise, if the first sale occurred before the effective date of this provision and the second occurred after the effective date, the provision would apply in determining the basis of the second block of stock.

[6] See Treas. Reg. sec. 1.1502-32(g). In such a case, the recomputation of earnings and profits without regard to sections 312(k) and (n) should be irrelevant because the subsidiary's earnings and profits increases and deficits during affiliation would have been reversed, and hence no longer reflected in the owning member's basis in the subsidiary's stock.

[7] See Treas. Reg. sec. 1.1502-33(c)(4)(ii), requiring, for taxable years after 1975, adjustment of earnings and profits based on adjustments to basis in stock of subsidiaries.

not there is an actual disposition. Thus, for example, if the stock of a subsidiary becomes worthless or the group ceases to file a consolidated return, the amount of any excess loss account with respect to the subsidiary (and therefore the amount of income recognized by the group) will be determined after making the adjustments prescribed in this provision.[8]

Finally, the conference agreement limits the exception from the requirement that earnings and profits for purposes of this provision not take into account discharge of indebtedness income excluded under section 108. The exception applies where the amount excluded was applied to reduce tax attributes, such as net operating losses, that were immediately reflected in basis under the consolidated return regulations. For example, the exception does not apply where the amount excluded was applied to reduce the basis of property. For periods after the effective date of section 312(l)(1), earnings and profits will not be increased to the extent of such basis reduction by virtue of that provision. For any period during which section 312(l)(1) was inapplicable, and hence earnings and prcfits may have been increased by discharge of indebtedness income notwithstanding a reduction in basis of assets, earnings and profits will be computed without regard to any amount excluded under section 108.

The provisions are generally effective for distributions and dispositions of intragroup stock after December 15, 1987. Exceptions are provided for dispositions of stock after that. Date pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before that date. These exceptions apply only if the stock is disposed of before January 1, 1989.

2. Denial of graduated rates for personal service corporations

Present law

Under present law, a corporation is subject to a tax at the rate of 15 percent on the first $50,000 of taxable income, 25 percent on taxable income over $50,000 but not over $75,000, and 34 percent on taxable income over $75,000. The benefits of the graduated rates are phased out for corporations with income in excess of $100,000.

House bill

The taxable income of a qualified personal service corporation is taxed at a flat rate of 34 percent. A qualified personal service corporation for this purpose is one eligible for relief from the provision requiring C corporations to use the accrual method of accounting (sec. 448). Thus, a personal service corporation is one substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and substantially all of the stock of which is held by employees or retired employees or by their estates.

The provision is effective for taxable years beginning after December 31, 1987.

[8] See Treas. Reg. sec. 1.1502-19(b).

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

3. Limitation on consolidated return pass-through

Present law

Under present law, corporations may file consolidated tax returns if they are members of an affiliated group of corporations. In general, a parent and a subsidiary corporation are members of an affiliated group for this purpose if the parent corporation owns stock of the subsidiary possessing at least 80 percent of the total voting power and value of all the subsidiary stock, excluding certain nonvoting preferred stock (secs. 1501 and 1504 of the Code).

Under the consolidated return regulations, the consolidated tax return of a parent corporation and an affiliated subsidiary generally allows 100 percent of a subsidiary's losses to offset the parent's income, or, conversely, allows 100 percent of a subsidiary's income to be offset by the parent's losses, even though the parent may own less than 100 percent of the subsidiary's stock.

The consolidated return regulations generally require the parent corporation to adjust its basis in the subsidiary stock upward for the parent's allocable share of undistributed earnings and profits of the subsidiary, and downward for the parent's allocable share of its deficits in earnings and profits (though no downward adjustment for earnings and profits deficits is required with respect to preferred stock owned by the parent).

House bill

If a member of an affiliated group of corporations owns less than 100 percent of the stock of a subsidiary that is a member of the group, the House bill denies consolidation of the percentage of the subsidiary's income or loss allocable to stock owned by nonmembers. All classes of stock are counted for this purpose, including nonvoting preferred stock described in section 1504(a)(4) of the Code.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

4. Tax benefited transfers through intercorporate dividends received deduction; preferred stock loss transfers

Present law

Under present law, corporations owning less than 80 percent of the stock of a corporation are entitled to a deduction equal to 80 percent of the dividends received from a domestic corporation. (A

100 percent deduction may apply to dividends received by an 80-percent or more corporate parent).

House bill

Under the House bill, the 80-percent dividends received deduction for any corporation owning less than 80 percent of the stock of the distributing corporation is reduced to 75 percent of the amount to the dividend.

The partial dividends received deduction is eliminated entirely for dividends on stock that has certain non-stock characteristics, or characteristics that enhance the likelihood that the holder may recover the principal amount or maintain a certain dividend level, or both (whether from the issuer or from others on resale or otherwise). Such stock includes any stock that is not counted for purposes of determining whether corporations are entitled to file a consolidated tax return under sections 1504(a) (4) or (5), as well as any stock that is not counted for purposes of determining whether there has been an ownership change for purposes of the special loss limitations of section 382 of the Code (sec. 382(k)(6)).

Senate amendment

No provision.

Conference agreement

The conference agreement generally follows the provision of the House bill reducing the 80-percent dividends received deduction, but with several modifications. First, the 80-percent deduction is reduced to 70 percent of the amount of the dividend. Second, the reduction applies only if the recipient corporation owns less than 20 percent of the voting power and value of stock (as defined in section 1504 of the Code) of the issuing corporation; the 80-percent dividends received deduction is preserved for 20-percent or more (but less than 80-percent) corporate shareholders.

The conference agreement follows the Senate amendment with respect to the elimination of the partial dividends received deduction for dividends on stock with certain non-stock characteristics.

The reduction in the dividends received deduction for less than 20-percent shareholders is effective for dividends received or accrued after December 31, 1987, in taxable years ending after that date.

5. Deduction of interest on corporate acquisition indebtedness

Present law

In general, corporate earnings distributed as dividends on equity are taxed at both the corporate level (when earned by the corporation) and at the shareholder level (when distributed). By contrast, corporate earnings distributed in the form of interest on corporate debt bear no corporate-level tax because interest is deductible by the distributing corporation.

Section 279 of the Code in limited circumstances denies a deduction for interest on corporate acquisitions. The limitation applies to interest in excess of $5 million per year incurred by a corporation with respect to debt obligations issued to provide consideration for the acquisition of stock, or two-thirds of the assets of, another corporation, if each of the following conditions exists: (1) the debt is substantially subordinated; (2) the debt carries an equity participation (for example, includes warrants to purchase stock of the issuer or is convertible into stock of the issuer); and (3) the issuer is thinly capitalized (i.e., has an excessive debt-to-equity ratio) or projected annual earnings do not exceed three times annual interest costs.

House bill

Under the House bill, deductions are denied for interest in excess of $5 million per year incurred by a corporation with respect to debt supporting either (1) the acquisition of 50 percent or more of the stock of another corporation or (2) the redemption by a corporation of 50 percent or more of its own stock. All acquisitions during any three-year period are aggregated in determining whether one of these 50-percent thresholds is met.

The provision applies to any interest on debt incurred or continued (i.e., directly allocable) in connection with the stock acquisition or redemption. It also applies to any other interest indirectly allocable to the acquisition or redemption. In the case of indirectly allocable interest, the limitation terminates five years after the date of the acquisition.

The interest disallowance provision does not apply if the acquisition is a qualified stock purchase within the meaning of section 338, and an election is made under that section to treat the acquisition as an asset acquisition.

The provision is generally effective for acquisitions or redemptions after October 13, 1987. Exceptions are provided for transactions pursuant to a binding written contract in effect on October 13, 1987, and at all times thereafter prior to the date of the acquisition, and for transactions after October 13, 1987, if there was action by the board of directors, shareholder approval, a letter of intent, a tender offer, or public announcement to shareholders in effect on October 13, 1987, and at all times thereafter, provided the acquisition or redemption is completed before January 1, 1989.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

6. Reduction of tax avoidance in certain corporate dispositions ("mirror" subsidiary transactions)

Present law

Gains on certain distributions to a controlling U.S. corporate shareholder (an 80-percent distributee) are not taxed to the distributing corporation in a liquidation (sec. 337). (Gains on liquidating distributions to a controlling foreign corporate shareholder generally are taxed to the distributing corporation (sec. 367(e)).

By contrast, a nonliquidating distribution to a controlling U.S. corporate shareholder causes the distributing corporation to recognize gain, though the gain would be deferred if the two corporations were filing consolidated returns until a disposition of the distributed property or the occurrence of certain other events (sec. 311 of the Code; Treas. Reg. sec. 1.1502-13). A distribution represents a dividend to the recipient to the extent of the current or accumulated earnings and profits of the distributing corporation, and produces recovery of basis or a capital gain to the extent it exceeds such earnings and profits (sec. 301).

If the recipient of a nonliquidating distribution is a corporation that is affiliated with the distributing corporation (for example, generally where the recipient corporation owns stock in the distributing corporation representing 80 percent or more of its vote and value), the recipient is eligible for a 100 percent dividends-received deduction if the distribution is out of earnings and profits of a taxable year on each day of which the distributing and recipient corporations were members of the affiliated group, and if an election is made. If the two corporations file a consolidated return, the dividend is excluded ("eliminated") from the income of the recipient.

Certain distributions in which stock is distributed to a corporation's shareholders are also tax-free to the distributing corporation, provided that certain statutory and other constraints are met, including a condition that the transaction not be a device for the distribution of earnings and profits and certain other requirements (sec. 355).

A sale of stock of a subsidiary to a related corporation is generally "deemed" to be a dividend to the extent of earnings and profits of the two corporations, and the statute provides specific rules for the movement of earnings and profits and other aspects related to such a dividend (sec. 304). In determining whether two corporations are related for purposes of this rule, certain "back attribution" rules apply with the result that a corporation can be deemed to receive a dividend or other distribution from another corporation in which it owns no stock (sec. 318). In some instances the deemed dividend rules may produce tax results more favorable than an actual sale or an actual dividend.

A corporation or other shareholder that surrenders stock in a complete liquidation in exchange for property distributed in a liquidation generally recognizes capital gain or loss, respectively, to the extent that the value of the property received exceeds or is less than the shareholder's basis in its stock of the liquidating corporation. Under a special provision, however, no gain or loss is recognized by the recipient corporation on liquidation of another corporation if the recipient corporation owns 80 percent of the vote and value of the stock of the liquidating corporation (sec. 332). Foreign shareholders generally are not taxed on the receipt of liquidating distributions.

House bill

The House bill generally treats liquidating distributions to an 80-percent or more corporate shareholder in the same manner as nonliquidating distributions. Thus, the distributing corporation recognizes gain as if the property distributed had been sold to the distributee at fair market value.[9] Similarly, the consequences for the shareholder are the same as if a nonliquidating distribution had been made of the subsidiary's assets immediately before the liquidation.

The bill retains the result of present law that no gain or loss is recognized by an 80-percent controlling corporate shareholder on the liquidation of a subsidiary, but with a modification. To the extent of the distributing corporation's current or accumulated earnings and profits (including earnings and profits generated by the recognition of any non-deferred gain on the distribution), the amounts distributed to the recipient corporation are treated as a dividend. Similar treatment applies to a foreign corporation that has a U.S. branch engaging in a U.S. trade or business and that liquidates or otherwise terminates its U.S. business.

The bill provides that a distribution of stock will not qualify for nonrecognition under section 355 of the Code if control of a corporation which was conducting such business was acquired in a taxable transaction within the five-year period ending on the date of the distribution through one or more corporations, including the distributing corporation. In addition, any distribution otherwise qualifying under section 355 will be treated in the same manner as a nonqualifying distribution if it is made to a member of the same affiliated group as the distributing corporation.

The bill modifies the provisions of section 304 of the Code in the case of transactions between members of a group controlled by the same corporation (for this purpose, the bill provides that control is determined without regard to the back-attribution rules of sec. 318(a)(3)(C)). In the case of any sale of stock of one member of the group to another member, the transaction is treated as if the stock that is sold had been distributed to the common parent (determined under section 304 without regard to such back-attribution) and recontributed to the recipient corporation, and as if the cash or other property that is exchanged had likewise been distributed to the common parent and recontributed to the recipient corporation. The bill also provides the Secretary authority to provide regulations making appropriate adjustments to the members' earnings and profits and to the indirect foreign tax credit provisions, including proper adjustments to the earnings pool as well as recognition of the indirect credit.

The House bill is effective for distributions after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows portions of the House bill, with modifications.

As under present law, gain will not be recognized by a corporation on liquidating distributions to a corporate shareholder directly owning 80 percent (by vote and value) of the stock of the distribut-

[9] For purposes of the liquidation rule (unlike a nonliquidating distribution) loss is also recognized; however, no loss in excess of the gain recognized is permitted.

ing corporation. However, under the conference agreement, gain is recognized on any distribution to a corporation that does not meet the 80-percent test by direct ownership. Thus, for example, the distributing corporation recognizes gain on any distribution to a corporation within an affiliated group filing a consolidated tax return if the distributee would be treated as an 80-percent owner for purposes of section 332 solely by reason of the aggregation rules of section 1.1502-34 of the Treasury Regulations.

Treasury Regulations may provide that gain on a distribution to a less than 80-percent owner within an affiliated group filing a consolidated return may be deferred until a recognition event other than the liquidation itself occurs. (Compare Treas. Reg. sec. 1.1502-14(c)(2)).[10] For this purpose, where a portion of the gain on the liquidation is not recognized due to the fact that the liquidating distribution is made to a direct 80-percent corporate owner, the gain on the remaining portions is to be deferred only until the earlier of the time that there is a disposition [10] of the remaining portions or the selling member ceases to be a member of the group. Assume, for example, that a corporation makes a liquidating distribution to two corporate shareholders, one of which (Corporation X) directly owns 80 percent of the stock of the distributee corporation and one of which (Corporation Y) directly owns 20 percent of the stock of the distributee corporation. If there is a direct or indirect disposition of the stock of Corporation X, further deferral would not be permitted for the gains recognized on the liquidating distribution to Corporation Y.

The conference agreement does not modify section 332. Thus, earnings and profits distributed to a corporation that qualifies for nonrecognition treatment under section 332 are not treated as nonliquidating dividend distributions.

Under the conference agreement, in addition to the requirements of present law, section 355 does not apply to any distribution by a corporation if control of the distributing corporation was acquired by a corporate distributee within five years prior to the distribution. For this purpose, all members of an affiliated group are treated as a single corporate distributee.

Under the conference agreement, if stock of a member of an affiliated group is transferred to another member of such group in a transaction described in section 304(a) of the Code, proper adjustments must be made in the bases of intragroup stock and in the earnings and profits of each member of the group to the extent necessary to carry out the purposes of this provision.

As one example, if one subsidiary ("X") in a group sells the stock of its appreciated subsidiary ("Y") to a sister corporation ("Z") in an affiliated group, in a transaction that is treated as a dividend of accumulated earnings and profits of the sister corporation Z to the selling corporation X and a contribution of the transferred corporation Y to the capital of sister corporation Z, adjustments must be made to the stock bases of members of the group so that neither X, Z, nor any other corporation that is part of the same chain of includible corporations (excluding the common parent) may thereaf-

[10] See, e.g., Treas. Reg. sec. 1.1502-13(f).

ter be sold without recognition of the built-in appreciation in the Y stock at the time of the section 304 transaction.

The conference agreement is effective for distributions after December 15, 1987, unless 80 percent of the stock (by vote and value) of the corporation was acquired prior to that date or was acquired after that date pursuant to a binding written contract or tender offer in effect on that date, and the acquisition is completed before January 1, 1989; provided in each transition case the distribution occurs before January 1, 1993. Transition relief is also provided for distributions that were eligible for transition relief from the 1986 Act provision repealing the General Utilities doctrine.

The provision with respect to section 304 applies to transfers after December 15, 1987, when the transfer is between corporations which are members of the same affiliated group on December 15, 1987 or which became members of the same group before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987; provided in each transition case that the transfer occurs before January 1, 1993.

No inference is intended as to the Treasury Department's authority to amend the consolidated return regulations consistent with the purposes of this provision.

7. Special rules for hostile corporate acquisitions and greenmail payments

Present law

Gain on the sale or exchange of corporate stock is generally taxed at regular tax rates. A buyer of a controlling interest in corporate stock may (but is not required to) treat the stock purchase as a taxable purchase of the underlying assets (sec. 338). A deduction is generally allowed for interest paid or incurred during the taxable year.

House bill

Under the House bill, if a corporation makes a qualified stock purchase within the meaning of section 338 and any significant portion of the stock is acquired pursuant to an offer disapproved by a majority of the independent directors of such corporation, the acquiring corporation is treated as having made an election under section 338(a). Accordingly, the target corporation is deemed to have sold all of its assets at fair market value in a taxable transaction. Special rules apply for purposes of determining whether there is a qualified stock purchase and the grossed-up basis of the acquiring corporation's recently purchased stock.

The bill also provides that no deduction is allowed for interest on indebtedness incurred or continued by a corporation to purchase 20 percent or more of the stock of another corporation pursuant to a hostile tender offer.

Finally, the bill provides that a person who receives "greenmail" is subject to a non-deductible 50-percent excise tax on any gain realized on such receipt. Greenmail is defined as any consideration paid by a corporation in redemption of its stock if such stock has been held by the shareholder for less than two years and the shareholder (or any related person or person acting in concert with the shareholder) made or threatened a public tender offer for stock in the corporation during that period.

The treatment of a hostile qualified stock purchase as an asset acquisition under 338 applies to acquisitions after the date of enactment of the provision. The denial of interest deductions with respect to debt incurred in hostile acquisitions applies to debt incurred after the date of enactment. The 50-percent excise tax on gains attributable to the receipt of greenmail applies to amounts received after the date of enactment.

Senate amendment

No provisions.

Conference agreement

The conference agreement adopts only the House bill provision imposing an excise tax on greenmail, with certain modifications; the agreement follows the Senate amendment with respect to hostile qualified stock purchases and interest on acquisition indebtedness.

The greenmail excise tax does not apply if, prior to the redemption, the redeeming corporation offered to purchase the stock of other shareholders for the same consideration and on the same terms that it redeemed the stock of the taxpayer. The provision is intended to apply where a taxpayer otherwise subject to the provision sells his stock to an entity related to the issuing corporation (e.g., a controlled subsidiary).

The provision is effective for transactions after the date of enactment, unless pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.

8. Limitation on NOL carryforwards of corporation following worthless stock deduction by 50-percent shareholder

Present law

A deduction is allowed for any loss sustained during the taxable year as a result of securities held by the taxpayer becoming worthless. It has been held that, notwithstanding the fact that a worthless stock deduction has been claimed by a parent corporation with respect to stock of a nonconsolidated subsidiary, the net operating loss carryforwards of the subsidiary survive and may be used to offset future income of the subsidiary. *Textron, Inc.* v. *United States,* 561 F.2d 1023 (lst Cir. 1977).

Loss carryforwards of a corporation are limited if there is a more-than-50-percent change in the ownership of its stock during the relevant testing period. The amount of losses that may be used annually to offset post-change income of the corporation is equal to a prescribed rate of return on the net value of the corporation at the time of the change of ownership (sec. 382).

House bill

Under the House bill, if a worthless securities deduction is claimed by a shareholder with respect to stock of a loss company, the shareholder is treated as having acquired the stock as of the first day of the succeeding taxable year. The shareholder is also treated as not owning such stock during any prior period. Accordingly, if a worthless stock deduction is claimed during the testing period by persons holding more than 50-percent of a loss corporation's stock, net operating loss carryovers of the corporation arising prior to the change may not be used to offset the corporation's post-change income. The provision applies to stock that becomes worthless in taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with certain modifications.

The provision applies only if a worthless stock deduction is claimed by a shareholder who, at any time during the three-year period ending with the year in which the deduction was claimed, owned 50 percent or more of the stock of the corporation.

The provision is effective for stock treated as becoming worthless in taxable years beginning after December 31, 1987.

9. Tax loss mergers and acquisitions

Present law

Special limitations apply to the use of net operating loss carryforwards (NOLs) following an ownership change of the loss corporation—generally, when there has been an increase of more than 50 percentage points in ownership of a loss corporation by certain persons (sec 382). Built-in losses that are recognized following an ownership change are treated as losses subject to limitations if the net built-in loss exceeds a threshold amount (sec. 382(h)). Depreciation deductions with respect to built-in loss property, however, are not treated as losses subject to limitation following an ownership change. Built-in depreciation deductions may be limited in some circumstances under the consolidated return regulations (Treas. Reg. sec. 1.1502-15).

In the case of certain ownership changes occurring in bankruptcy, the special limitations do not apply. However, 50 percent of the excess of the amount of the indebtedness to certain creditors that was cancelled in the proceeding over the fair market value of stock received by such creditors is applied to reduce the net operating losses of the corporation (sec. 382(l)(5)(C)).

If a loss corporation does not experience an ownership change, the use of its losses may be limited in certain circumstances. For example, in the case of partnerships, regulations that are to be effective with the effective date of the Tax Reform Act of 1986 are to limit the tax benefits that may be derived from transactions in which allocations of partnership income are made to a loss partner or to a corporation that is a member of a consolidated group with NOL carryovers under an arrangement that contemplates the diversion of the economic benefit corresponding to such allocation (or any portion of the economic benefit of the loss corporation's net operating loss) to a higher bracket partner.[11]

Section 269 of the Code may also limit the use of a loss corporation's losses in certain situations where there is a principal purpose of evasion or avoidance of Federal income tax.[12]

House bill

The House bill provides that built-in depreciation is subject to the built-in loss rules of section 382.

The House bill provides that loss carryforwards of a corporation in bankruptcy are reduced by the full amount of the excess of the debt cancelled in the proceeding over the fair market value of the stock given to creditors in exchange for debt.

The House bill provides that loss corporations will be precluded from using their losses to shelter built-in gains of an acquired company recognized within five years of the acquisition. Built-in gains for this purpose includes any item of income which is attributable to periods before the acquisition date.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with respect to built-in depreciation being subject to the built-in loss rules of section 382. The provision is effective for ownership changes occurring after December 15, 1987, unless pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change.

The conference agreement follows the Senate amendment with respect to reducing the loss carryforwards of a corporation in bankruptcy.

The conference agreement generally follows the House bill with respect to loss corporations using their losses to shelter built-in gains of an acquired company recognized within 5 years of the acquisition, but with certain modifications and clarifications. First, the conference agreement clarifies that the provision also applies to companies with built-in gains that are acquired through a liquidation under section 332 or a reorganization under section 368(a)(1)(D). Second, the conference agreement provides an exception to the provision in the case of a consolidation or merger of corporations previously under common control for a 5 year period.

The preacquisition losses that may not be used to shelter built-in gains include built-in losses or items of deduction that have economically accrued prior to the acquisition.

The Treasury Department has regulatory authority to prevent the avoidance of the purposes of the provision through the use of any provision of the Code or regulations, including the provisions of subchapter K. For example (and without limitation), regulations may prevent the use of the so-called "ceiling rule" of section 704(c) of the Code effectively to allocate built-in gain attributable to part-

[11] H. Rep. No. 99-841, 99th Cong., 2d Sess., pp. 194-195 (1986).
[12] See, e.g., *Briarcliff Candy Corporation* v. *Comm.r*, 54 T.C.M. 667 (1987).

ner to another partner which is a loss corporation. In such circumstances, the Treasury Department shall provide an appropriate mechanism for taking the built-in gain into income without permitting the use of such losses. Regulations pursuant to this authority shall not be effective for any transaction prior to the issuance of additional guidance by the Treasury Department relating to (i) the mechanism to be employed for taking built-in gain into income and (ii) the types of transactions that will be subject to the provision.

For purposes of determining whether the 25 percent built-in gain threshold of section 382(h) is satisfied, it is expected that any contribution of property with any purpose of avoiding the threshold will be disregarded. The Treasury Department may prescribe any more specific rules that may be necessary to prevent the evasion of the purposes of the section through contributions of property to the corporation.

The provision is effective for acquisitions after December 15, 1987, unless the transaction was pursuant to a binding written contract in effect on or before December 15, 1987, or a letter of intent or agreement of merger signed on or before December 15, 1987.

10. LIFO recapture on conversion from C corporation to S corporation

Present law

In general, gain realized when a C corporation liquidates is subject to corporate-level tax. If a C corporation elects to convert to S corporation status and holds assets with a net unrealized "built-in gain" (that is, with a value in excess of basis) at the time of its conversion, the built-in gain is subject to a separate corporate-level tax to the extent it is realized within ten years after the conversion (sec. 1374).

The Internal Revenue Service has stated that the inventory method used by a taxpayer for tax purposes shall be used in determining whether goods disposed of following a conversion to S corporation status were held by the corporation at the time of conversion. Thus, a C corporation using the last-in, first-out (LIFO) method of accounting for its inventory which converts to S corporation status is not taxed on the built-in gain attributable to LIFO inventory to the extent it does not invade LIFO layers during the ten-year period following the conversion.

House bill

Under the House bill, if a C corporation uses the LIFO method for its last taxable year before a subchapter S election becomes effective, it must include in income the LIFO recapture amount for such last taxable year. For this purpose, the LIFO recapture amount is defined as the excess of the inventory's value using a (FIFO) flow assumption over its LIFO value at the close of its last taxable year as a C corporation. Appropriate adjustments to the basis of inventory are allowed to reflect any amount included in income under this provision.

The provision applies to S elections made after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with certain modifications.

The tax attributable to the inclusion in income of the LIFO recapture amount is payable in four equal installments. The first installment must be paid by the due date of the return for the electing corporation's last taxable year as a C corporation. The other installments are due by the respective due dates of the corporation's returns for the three succeeding taxable years. No interest is payable on these installments if they are paid by the respective due dates.

The provision applies in the case of S elections made after December 17, 1987. In the case of elections made after that date and before January 1, 1989, the provision does not apply if, on or before December 17, 1987, the board of directors of the corporation adopted a resolution to make an S election, or a ruling request with respect to the business was filed with the Internal Revenue Service expressing an intent to make such an election, It is intended that this transition rule will apply if a request concerning eligibility for small business corporation status was filed on or before that date by the electing corporation, or by a former parent corporation of the electing corporation that was subsequently merged into the electing corporation.

11. Regulated investment companies

Present law

In order to avoid a penalty excise tax, regulated investment companies (RICs), commonly called "mutual funds," must distribute before January 1 of any year at least 97 percent of their ordinary income earned during the prior calendar year and 90 percent of their capital gain net income for the twelve-month period ending on October 31 of that year.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

Under the conference agreement, the distribution required to avoid the penalty excise tax is increased to 98 percent of capital gain net income.

This applies to calendar years beginning after December 31, 1986.

D. CORPORATE MINIMUM TAX

Present law

Corporations are subject to a minimum tax at a 20 percent rate. One-half of the excess of pre-book income over other alternative minimum taxable income is a preference for taxable years beginning before 1990. For taxable years beginning after 1989, three-fourths of the excess of adjusted currrent earnings over other alternative minimum taxable income is a preference.

House bill

One hundred percent of the excess of pre-book income (for taxable years beginning before 1990) and one hundred percent of adjusted current earnings (for taxable years beginning after 1989) over other alternative minimum taxable income will be a preference for corporations. The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

Present law

Corporations are subject to a minimum tax at a 20 percent rate. One-half of the excess of pre-book income over other alternative minimum taxable income is a preference for taxable years beginning before 1990. For taxable years beginning after 1989, three-fourths of the excess of adjusted currrent earnings over other alternative minimum taxable income is a preference.

House bill

One hundred percent of the excess of pre-book income (for taxable years beginning before 1990) and one hundred percent of adjusted current earnings (for taxable years beginning after 1989) over other alternative minimum taxable income will be a preference for corporations. The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

E. FOREIGN TAX PROVISIONS

1. Treatment of South African income

Present law

Foreign tax credits are denied, and deferral of U.S. tax on income of controlled foreign corporations is denied, with respect to operations in countries (1) designated by the Secretary of State as repeatedly providing support for acts of international terrorism; (2) with which the U.S. does not have diplomatic relations, or (3) the government of which the U.S. does not recognize (with certain exceptions).

House bill

The House bill denies foreign tax credits and deferral of U.S. tax on income of a controlled foreign corporation with respect to South African income attributable to the period from January 1, 1988 to the date on which the Secretary of State certifies to the Secretary of the Treasury that the South African Government has taken the steps that trigger termination of the measures in the Comprehensive Anti-Apartheid Act of 1986 to undermine apartheid. The provision is applicable to taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Imported property income

Present law

The United States generally defers tax on income earned by foreign subsidiaries of U.S. companies until the income comes to America, but currently taxes some types of their income (such as passive, shipping, financial, and oil-related income). Separate foreign tax credit limitations prevent cross-crediting, i.e., the use of foreign tax credits imposed on one stream of income to reduce U.S. tax on an unrelated stream of income.

House bill

The House bill places imported property income in a separate foreign tax credit limitation and currently taxes imported property income of U.S.-controlled foreign corporations. It defines imported property income to include income from goods, services, or intangibles destined for U.S. use or consumption. It generally excludes (1) income from property that is exported from the United States, (2) income from financial instruments, and (3) oil income.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

F. INSURANCE PROVISIONS

1. Interest rate used in computing tax reserves for life insurance companies

Present law

Present law provides that, for purposes of determining life insurance company taxable income, life insurance reserves for any contract are the greater of the net surrender value of the contract or the reserves determined under Federally prescribed rules. In no event will the amount of the Federally prescribed tax reserves exceed the amount of the statutory (annual statement) reserves.

In calculating Federally prescribed reserves for any type of contract, present law requires the application of prevailing commissioners' standard mortality and morbidity tables, and also requires the application of an interest rate (discount factor) to take account of the time value of money.

Under present law, the interest rate in computing Federally prescribed reserves is generally the prevailing State assumed rate (generally, the highest assumed interest rate permitted to be used in at least 26 States in computing life insurance reserves for insurance or annuity contracts of that type as of the beginning of the calendar year in which the contract is issued).

By contrast, the interest rate assumption under the present-law rules applicable in calculating tax reserves of property and casualty insurance companies is determined in accordance with the applicable Federal rate.

House bill

Under the House bill, the interest rate to be applied in determining the amount of the life insurance reserves for any contract is the greater of the applicable Federal interest rate or the prevailing State assumed interest rate.

For purposes of the provision, the applicable Federal interest rate is the rate determined under the discounting rules for property and casualty reserves for the calendar year in which the contract is issued.

The prevailing State assumed rate has the same meaning as under present law, except that the election of a rate for nonannuity contracts, and the special rule for determining a rate for certain accident and health contracts if there is no prevailing State assumed rate, are repealed under the provision.

In the case of reserves for contracts that do not involve life, accident, or health contingencies (sec. 807(c)(3)), the interest rate to be applied is the greatest of: (1) the applicable Federal interest rate, (2) the prevailing State assumed interest rate, or (3) the rate assumed by the company in determining the guaranteed benefit.

A conforming change is made for purposes of calculating policy interest (sec. 812(b)(2)(A)).

The provision is effective for contracts issued in taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with a modification permitting companies a one-time election (revocable only with the consent of the Secretary of the Treasury) to apply an updated applicable Federal interest rate every 5 years in calculating life insurance reserves. The election is provided to take account of the fluctuations in market rates of return that companies experience with respect to life insurance contracts of long duration.

In general, under the provision, the interest rate to be applied in determining the amount of the life insurance reserves for any contract is the greater of the applicable Federal interest rate or the prevailing State assumed rate for the calendar year in which contract is issued. Under the election, this rate continues to be applied in the 4 succeeding years after the year the contract is issued. For the 5th through 9th year after the contract is issued, the rate to be applied in determining reserves for such years (but not for any prior years) with respect to the contract is the greater of the applicable Federal interest rate for such 5th year, or the prevailing State assumed rate for the calendar year in which the contract was issued. Thus, the rate for determining life insurance reserves with respect to any contract cannot be lower than the prevailing State assumed rate for the calendar year in which the contract was issued.

For example, in the case of a company making an election under the provision, the company's life insurance reserves for any contract are determined (for the 5th through 9th years after the original contract year) using the applicable Federal interest rate for such 5th year if such rate is greater than the prevailing State assumed rate for the year in which the contract was issued. If the applicable Federal interest rate for such 5th year is lower than the rate used for the preceding 5 years, the company's deduction for additions to reserves for the 5th through 9th years after the original contract year may be greater than it would have been if the company had not made the election to use the updated rate. Similarly, if the rate for such 5th year is higher than the rate used for the preceding 5 years, the company's deduction for additions to reserves for the 5th through 9th years after the original contract year may be smaller than it would have been absent the election, or there may be a reduction in reserves resulting in an inclusion in income for such years.

The use of the updated applicable Federal interest rate under the election does not cause the recalculation of life insurance reserves for any prior year. Thus, for example, if an updated rate is applied to calculate life insurance reserves in the tenth year following the year in which the contract was issued, the amount of the company's life insurance reserves, and its deduction for additions to reserves, for the preceding 10 years are not affected.

Section 807(f), which generally provides a 10-year spread for any change in computing reserves, does not apply to the use of an updated applicable Federal interest rate under the election. Instead, the difference between the opening reserve computed under the old interest rate and the opening reserve computed under the new interest rate is to be taken into account entirely for the year in which the new interest rate applies.

Under the election, no change is made to the interest rate used in determining life insurance reserves if the updated applicable Federal interest rate is less than one-half of one percentage point different from the rate utilized by the company in calculating life insurance reserves during the preceding 5 years. Thus, for example, if the applicable Federal interest rate is 7.5 percent, and the rate utilized by an electing company during the preceding 5 years is 7.6 percent, the company continues to use the 7.6 percent rate during the second 5-year period with respect to reserves for that contract year. This rule parallels the calculation of State assumed rates under the Standard Valuation Law, under which a change of less than one-half of one percentage point does not give rise to a change in the State assumed rate.

The election applies to all contracts issued during the calendar year for which the election is made and any subsequent calendar year unless the election is revoked with the consent of the Secretary of the Treasury.

The provision applies to contracts issued in taxable years beginning after December 31, 1987. The election applies to life insurance reserves with respect to contracts issued in taxable years beginning after December 31, 1987.

2. Treatment of foreign insurance companies

Present law

Under present law, a foreign corporation that is carrying on an insurance business in the United States is generally taxed in the same manner as a U.S. insurance company on its income that is effectively connected with its conduct of a U.S. trade or business.

Income from sources within the United States derived by a foreign corporation carrying on an insurance business in the United States is generally treated as effectively connected with the conduct of its insurance business in the United States. In addition, in the case of a foreign life insurance company, income from sources outside the United States that is attributable to its U.S. business is treated as effectively connected with the conduct of an insurance business in the United States. Foreign property and casualty insurance companies are not subject to this rule.

Under present law, if the surplus of a foreign life insurance company held in the United States is less than a statutorily defined required surplus, then the income that is effectively connected with the conduct of the U.S. insurance business is increased by an imputed amount. This imputed amount is determined by multiplying (1) the excess of the required surplus over the actual surplus by (2) the current investment yield on the U.S. assets of the foreign life insurance company.

House bill

The House bill extends to foreign property and casualty insurance companies the present-law provision for determining whether foreign source income of a foreign life insurance company is effectively connected with the conduct of a U.S. trade or business.

Under this provision, income from sources without the United States that is attributable to a U.S. property and casualty insurance business is treated as effectively connected with the conduct of that trade or business.

The House bill also revises the rules relating to the required surplus of foreign life insurance companies and extends these revised rules to foreign property and casualty insurance companies. Under the House bill, the net investment income of a foreign insurance company that is effectively connected with the conduct of an insurance business in the United States may not be less than the required U.S. assets of the company multiplied by the domestic investment yield applicable to the company for the taxable year.

The required U.S. assets of a foreign insurance company for any year are determined by multiplying the company's total insurance liabilities on U.S. business by the domestic asset/liability percentage applicable to the company. The Secretary is to prescribe for each year a domestic asset/liability percentage for foreign life insurance companies and a separate domestic asset/liability percentage for foreign property and casualty insurance companies. The domestic asset/liability percentage for each type of insurance company equals a fraction, the numerator of which is the assets of the domestic companies of such type and the denominator of which is the total insurance liabilities of the domestic companies of such type.

The Secretary is also required to prescribe a domestic investment yield for foreign life insurance companies and a separate domestic investment yield for foreign property and casualty insurance companies. The investment yield for each type of insurance company equals a fraction, the numerator of which is the net investment income of domestic insurance companies of such type and the denominator of which is the mean of the aggregate assets of the domestic companies of such type.

A foreign insurance company may elect for purposes of the minimum effectively connected net investment income requirement to use its worldwide current investment yield in lieu of the applicable domestic investment yield. The worldwide current investment yield equals a fraction, the numerator of which is the net investment income of the company from all sources and the denominator of which is the mean of the worldwide assets of the company that are held for the production of investment income.

The Secretary is to determine the domestic asset/liability percentage and the domestic investment yield for each type of insurance company on the basis of data derived from a representative sample of domestic insurance companies. For any taxable year, the domestic asset/liability percentage and the domestic investment yield are to be based on data for the second preceding taxable year.

Finally, the House bill clarifies that any person carrying on an insurance business in the United States, whether operating as a partnership, corporation, syndicate, or other entity, is taxable as a U.S. insurance company if such person would qualify as an insurance company for U.S. tax purposes.

The provisions of the House bill relating to the treatment of foreign insurance companies apply for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with several modifications. The conference agreement provides a definition of net investment income for purposes of the minimum effectively connected net investment income requirement. This definition of net investment income applies in determining the actual effectively connected net investment income of a foreign insurance company for any taxable year (i.e., the amount reflected on the U.S. books of the foreign corporation for tax purposes) and also in determining the domestic investment yield and the worldwide current investment yield.

Under the conference agreement, net investment income is defined as gross investment income less the expenses allocable to such income. Gross investment income for this purpose includes interest (including tax-exempt interest), rents, royalties, the total amount of dividends received (i.e., not reduced by the dividends received deduction), and the net gain (or loss) derived from the sale of investment assets. The expenses taken into account for this purpose include not only interest (including interest that is incurred or continued to purchase or carry tax-exempt obligations), taxes (other than Federal income taxes), salaries and other similar items, but also depreciation and depletion, to the extent allocable to gross investment income.

Under the conference agreement, the required U.S. assets of a foreign insurance company for any taxable year are determined by multiplying the mean of the company's total insurance liabilities on U.S. business by the domestic asset/liability percentage applicable to the company. Similarly, the domestic asset/liability percentage for each type of insurance company is determined on the basis of the mean assets and the mean insurance liabilities of domestic companies of such type.

The conference agreement provides regulatory authority to address the treatment of segregated asset accounts. The conferees anticipate that a separate asset/liability percentage will be prescribed for segregated asset accounts similar to the present-law treatment of such accounts. In addition, the Secretary may prescribe the use of an investment yield for segregated asset accounts that is based on the actual earnings of the assets underlying the accounts.

The conference agreement also authorizes regulations that provide appropriate adjustments to the minimum effectively connected net investment income of a foreign insurance company to account for the fact that the domestic investment yield for any year is based on data from the second preceding year. The conferees anticipate that if the actual effectively connected net investment income of a foreign insurance company for any year exceeds the minimum effectively connected net investment income of such insurance company, then such excess is to reduce the amount of net investment income that would otherwise be imputed to the company under this provision for a later taxable year.

The conference agreement further provides regulatory authority to address the treatment of foreign insurance company investments in U.S. subsidiaries.

Under the conference agreement, foreign source income that is attributable to a U.S. trade or business of a foreign property and casualty insurance company is treated as effectively connected with that trade or business. The conferees understand that present regulations under Code section 864, which apply only to life insurance companies, generally look to assets indicated on State insurance reports in determining whether income is attributable to a U.S. trade or business. The conferees believe that those regulations should be reexamined to consider the appropriateness of relying on State insurance rules in determining effectively connected income. The parallel regulations that will be promulgated to cover property and casualty insurance companies should take into account any changes to the existing regulations (covering life insurance companies) that address this concern.

The conferees intend that any new regulations under section 864 should be coordinated with regulations that will be promulgated under the agreement's provision requiring a minimum level of effectively ccnnected investment income (the provision amending sec. 842) so as not to tax the same income twice. Consistent with present law, foreign source income that otherwise would be made effectively connected under the agreement's changes to section 864 will not be treated as effectively connected if it is derived by a controlled foreign corporation and is subpart F income.

If this provision of the conference agreement is found to be in conflict with any existing U.S. income tax treaty, the conferees do not intend to apply the general principle that, in the case of a conflict, a later enacted statute prevails over earlier enacted statutes or treaties. The conferees understand, however, that the Treasury Department believes that the provision does not violate any treaty now in effect. In particular, the Treasury Department believes that the provision does not violate treaty requirements that foreign corporations be taxed only on profits derived from the assets or activities of a corporation's U.S. permanent establishment, that permanent establishments of foreign corporations be taxed only on profits the permanent establishments might be expected to make were they separate enterprises dealing independently with the foreign corporations of which they are a part, or that permanent establishments of foreign corporations be taxed in a manner no more burdensome than the manner in which domestic corporations in the same circumstances are taxed. The conferees similarly believe that this provision does not violate any treaty now in effect.

Several factors are cited by the Treasury Department in support of this view. First, the provision applies to life insurance companies and property and casualty insurance companies in a manner substantially similar to present-law rules covering only life insurance companies. The Treasury Department does not consider those present-law rules to violate U.S. treaties.

Second, the provision attributes to a foreign insurance company an amount of assets determined by reference to the assets of comparable domestic insurance companies, thus reasonably measuring the amount of assets that the U.S. trade or business of a foreign insurance company would be expected to have were it a separate company dealing independently with non-U.S. offices of the foreign insurance company. In addition, a foreign insurance company can elect to determine its investment income based on the company's worldwide investment yield, or utilize the statutory formula based on domestic industry averages. It is well established that use of a formula as an element in determining taxable income does not necessarily violate "separate entity" accounting. The Internal Revenue Code contains a number of provisions that apply fungibility principles to financial assets; use of fungibility principles in these ways is not inconsistent with the arm's-length standard and does not violate U.S. income tax treaties. Similarly, the agreement's provision, which takes into account both the taxpayer's actual investment yield and arm's-length measures of yield and U.S.-connected assets, is appropriate under income tax treaties.

Third, the provision furnishes regulatory authority for the Secretary to provide a relief mechanism, as described above, to mitigate the effects of any increase in tax resulting from the fact that a taxpayer's deemed income from U.S.-connected investments exceeds its actual income from those assets.

The conferees understand that the provision governing foreign insurance companies solves a statutory problem in the context of the broader issue: measuring the U.S. taxable income of a foreign corporation that is effectively connected with its U.S. trade or business. That issue more generally involves the determination of which of the corporation's assets generate gross effectively connected income, and which of its expenses and liabilities are connected with such income. Certain types of assets and liabilities that must, in this process, be attributed in whole or in part to a U.S. trade or business may be particularly suitable for movement among the various trades or businesses of a single foreign corporation, may be fungible with assets and liabilities identified with other trades or businesses of the corporation, or may be usable by more than one such trade or business simultaneously. Financial assets and liabilities tend to fall into these categories.

In some cases, provisions of the Code, such as those governing the amount of U.S.-effectively connected income of a foreign insurance company, are designed to ensure that assets and liabilities that are difficult to assign unambiguously to a single tax jurisdiction are taken into account by the U.S. tax system in a way that reflects economic reality. In other cases, the appropriate resolution is left to regulations. For example, the Code gives the Treasury very broad authority to promulgate regulations to ensure an appropriate allocation and apportionment of expenses, including interest expenses (in effect, to ensure an appropriate allocation of liabilities), to the U.S. trade or business of a foreign corporation (e.g., Code secs. 861(b) and 882(c)(1)(A); Reg. secs. 1.861-8 and 1.882-5). Whether such rules are provided in the Code itself or pursuant to regulatory authority, the consistency of such rules with the treaty obligations of the United States must be determined in the same manner. If a treaty does not provide specific rules for the allocation of expenses, it is consistent with the treaty to make such allocation under the generally applicable principles and provisions of U.S. law. See Rev. Rul. 85-7, 1985-1 C.B. 188. Thus, consistent with the analysis described above, the conferees believe that the current regulatory provisions for determining liabilities allocable to a foreign corporation's U.S. business are fully consistent with the treaty obligations of the United States.

The determination of U.S.-effectively connected income of foreign insurance companies is presently addressed primarily by specific statutory provisions, and the conferees believe that the correction of shortcomings in those rules is appropriately accomplished by amending these provisions. The conferees are aware that analogous rules affecting deductions, namely, rules for the attribution of the financial liabilities of a foreign corporation to the corporation's U.S. trade or business, may also be in need of revision to ensure that such corporations pay sufficient U.S. tax. The conferees believe, however, that this continues to be an issue appropriately addressed by regulations, and that any adjustment of the rules in this area can be accomplished by amending the regulations. The conferees anticipate that the Treasury Department will take steps to amend those regulations insofar as their current practical effect is to permit foreign corporations to allocate excessive amounts of debt and excessive amounts of interest expense toward reducing their U.S.-effectively connected income.

3. Treatment of mutual life insurance company policyholder dividends for purposes of the alternative minimum tax book preference

Present law

Under the present-law provisions for the corporate alternative minimum tax, 50 percent of the excess of the adjusted net book income of a taxpayer over the alternative minimum taxable income of the taxpayer (without regard to book income) is treated as a preference item (the "book income" preference). In general, the book income used in computing the adjusted net book income of a corporate taxpayer is the net income or loss set forth on the taxpayer's applicable financial statement. The applicable financial statement is the statement provided for regulatory or credit purposes, for the purpose of reporting to shareholders or other owners, or for other substantial nontax purposes. Generally, financial statements have the following priority: financial statements required to be filed with the Securities and Exchange Commission; certified audited financial statements; other regulatory statements; and other financial statements used for a substantial nontax purpose. Mutual life insurance companies that are not required to file financial statements with the Securities and Exchange Commission generally determine adjusted net book income on the basis of regulatory statements that are based on statutory accounting principles.

House bill

Under the House bill, in calculating book income for purposes of the book income preference of the corporate alternative minimum tax, mutual life insurance companies may not reduce book income for policyholder dividends paid or accrued during the taxable year by more than the amount allowable in computing life insurance company taxable income under section 801(b) of the Code. Thus, the adjusted net book income will not be reduced by the nondeductible portion of policyholder dividends.

The House bill also provides authority to the Secretary of the Treasury to provide for such adjustments as may be necessary to make the calculation of adjusted net book income in the case of a mutual life insurance company consistent with the calculation of adjusted net book income generally. It is intended that the Secretary will prescribe these rules in a manner that makes the treatment of stock and mutual life insurance companies consistent. For example, it may be appropriate to require mutual life insurance companies to capitalize and amortize acquisition expenses in a manner similar to that provided for purposes of determining adjusted current earnings (sec. 56(g)(4)(F)).

The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with modifications. Under the conference agreement, in determining the adjusted net book income of any mutual life insurance company, a reduction is allowed for policyholder dividends for any taxable year only to the extent such dividends exceed the differential earnings amount determined for such taxable year. Thus, the reduction of adjusted net book income of a mutual insurance company for policyholder dividends does not include the amount that is not deductible by virtue of section 809 (including the recomputation amount determined under sec. 809(f)) in determining the company's life insurance company taxable income under section 801(b).

The conference agreement also provides that the Treasury regulatory authority to make additional adjustments to the calculation of adjusted net book income in the case of mutual life insurance companies applies to any life insurance company. The regulatory authority is intended to be exercised to make the book income of mutual life insurance companies and stock life insurance companies that file financial statements reflecting a method of accounting other than generally accepted accounting principles ("GAAP") more consistent with the book income of life insurance companies that file GAAP statements.

The conferees intend that the adoption of this provision is not to create any inference with respect to the ongoing Treasury study on segment balance which was mandated by the 1984 Act.

4. Treatment of certain insurance syndicates

Present law

Pursuant to a closing agreement entered into during 1980 between the Internal Revenue Service and the member underwriters of various insurance and reinsurance syndicates of the United Kingdom, the members of the syndicates are subject to tax as individuals and premiums received in any taxable year are not taken into account by the members until the third taxable year after the year of receipt.

House bill

The House bill terminates the closing agreement entered into between the Internal Revenue Service and the members of the syndicates. Any such syndicate that is engaged in a U.S. business is to be taxed as a domestic insurance company for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment, but requires the Treasury Department to conduct a study of the proper Federal income tax treatment of the income derived by members of insurance and reinsurance syndicates.

Since the 1980 closing agreement was entered into, Congress has made substantial changes to the rules governing the taxation of insurance income and the sourcing of income. For instance, the 1984 Act substantially revised the tax treatment of life insurance companies. The 1986 Act required discounting of loss reserves and changed the treatment of unearned premiums of property and casualty insurance companies. The 1986 Act also substantially modified the rules governing the source of income, particularly those rules governing transportation activities and ocean activities. The Subchapter S Revision Act of 1982 codified the rule that an insurance company is not permitted to operate as an S corporation, which means that two levels of tax generally are imposed on U.S. individuals that earn insurance income.

The conferees intend the study to take into account the foregoing and other changes in the law, and that the Treasury Department explore whether the agreement, which imposes only one level of tax, creates a disparity between U.S. underwriters who are members of syndicates formed in the United States and U.S. underwriters who are members of syndicates formed in the United Kingdom.

The results of the study are to be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate before April 1, 1988. The Treasury Department is also required to renegotiate the closing agreement before January 1, 1990, to implement the conclusions reached in the study.

G. TREATMENT OF NET INVESTMENT INCOME OF TRADE ASSOCIATIONS

Present law

In general, present law imposes a tax (the UBIT) on the unrelated business taxable income of otherwise tax-exempt organizations, including trade associations, chambers of commerce, and other organizations described in section 501(c)(6). Under special rules, the UBIT generally does not apply to certain investment income, such as dividends, interest, royalties, rental income, and income on certain dispositions of property (sec. 512(b)). However, in the case of tax-exempt social clubs, voluntary employees' beneficiary associations (VEBAs), and certain other mutual benefit associations, the UBIT generally applies under present law to all income—including investment income—other than "exempt function income," such as membership receipts (sec. 512(a)(3)).

House bill

In the case of section 501(c)(6) organizations ("trade associations"), dividends, interest, royalties, rental income, other items of income described in sections 512(b) (1), (2), or (3), and gain (or loss) on certain dispositions of property described in section 512(b)(5) are treated as derived from an unrelated trade or business, and deductions directly connected with earning such income are allowed in computing unrelated business taxable income. However, the UBIT will not apply to any such income that is set aside to be used exclusively for charitable purposes, or to certain "rollover" gain on disposition of property used directly in performing the association's exempt functions.

The provision is effective for taxable years beginning after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

III. Estimated Tax Provisions

1. Corporate estimated tax reform

Present law

Under present law, a corporation that fails to pay an installment of estimated income tax on or before the due date generally is subject to a penalty computed at the rate of interest for tax underpayments. The penalty may not be waived.

The penalty is computed by applying the underpayment interest rate to the amount of the underpayment of the installment for the period of the underpayment. The amount of the underpayment is the difference between the payments made on or before the due date of each installment and 90 percent of the total tax shown on the return for the year, divided by the number of installments that should have been made. The penalty on underpayments of estimated tax that are between 80 percent and 90 percent of the actual tax due is imposed at three-quarters of the full rate.

There are generally three exceptions to the penalty. No penalty is imposed if the installment is based on the lesser of (1) the preceding year's tax liability, if a return showing a liability for tax was filed for the preceding year; (2) the tax computed by using the facts shown on the prior year's return under the current year's tax rates; or (3) 90 percent of the taxes which would be due if certain income already recognized during the current year was annualized. Large corporations may not use exceptions (1) and (2) described above. A large corporation is defined as a corporation having at least $1 million of taxable income in any of the three prior taxable years. Under present law, no penalty is imposed if the estimated tax required to be paid is less than $40.

House bill

The House bill consolidates all the corporate estimated tax rules into one section of the Code, similar to the estimated tax provision enacted in 1984 for individuals. Also, several modifications are made to present law.

Under the bill, the underpayment penalty with respect to any installment applies to the difference between payments made by the due date of the installment and the lesser of an installment based on (1) 90 percent of the tax shown on the return, or (2) 100 percent of the tax shown on the preceding year's return. As under present law, exception (2) generally is not available to a large corporation, except that a large corporation could use that exception for purposes of making its first estimated payment for any taxable year. Thus, both large and small corporations may base their first estimated tax payment of any taxable year on 100 percent of the tax shown on the preceding year's return. In determining whether a corporation is a large corporation because its taxable income exceeds $1 million, net operating loss and capital loss carryforwards and carrybacks are disregarded. The safe harbor of the previous year's facts and the current year's rates is eliminated under the bill.

In addition, the full rate of the penalty is imposed with respect to any payment only to the extent the total payments for the year up to the required installment are below 90 percent of the taxes which would be due if the income already received during the current year was placed on an annual basis. Thus, the "cliff" effect of the penalty under present law is eliminated under the bill. Additionally, the reduced rate of the penalty for underpayments that are between 80 and 90 percent is eliminated. Any reduction in a payment resulting from using the annualization exception must be made up in the subsequent payment if the corporation does not use the annualization exception for that subsequent payment.

Finally, no penalty is imposed if the tax shown on the return for any taxable year is less than $500.

This provision applies to taxable years beginning after December 31, 1987.

Senate amendment

The Senate amendment is the same as the House bill, except that the Senate amendment also provides a special transition rule for 1988. For taxable years beginning in 1988 only, both large and small corporations may base their first and second estimated tax payments for that taxable year on 100 percent of the tax shown on the preceding year's return.

Conference agreement

The conference agreement follows the House bill, except that there is a modification to the provision providing that any reduction in a payment resulting from using the annualization exception must be made up in the subsequent payment if the corporation does not use the annualization exception for that subsequent payment. The modification is that the amount required to be made up in the subsequent payment is 90 percent of the amount otherwise required to be made up.

2. Revised withholding certificates required to be put into effect more promptly

Present law

If an employee furnishes to his or her employer a withholding allowance certificate (Form W-4 or W-4A) that replaces an existing certificate, the employer must make the certificate effective no later than the first status determination date that is at least 30 days after the date the employee furnishes the certificate to the employer. The status determination dates are January 1, May 1, July 1, and October 1 of each year.

Employers may elect to make replacement certificates effective earlier than they are required to statutorily; most employers elect to do so.

House bill

The House bill requires employers to give effect to replacement withholding allowance certificates (Form W-4 or W-4A) no later than the start of the first payroll period ending on or after the thirtieth day after the day on which the employee furnishes the certificate to the employer. Employers are permitted to continue to elect to give effect to replacement withholding allowance certificates on any date between the date it is furnished by the employee and the statutorily mandated effective date.

The provision applies to replacement withholding allowance certificates furnished after the day 30 days after the date of enactment of the bill.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

3. Estimated tax penalties for 1987

A. DELAY OF INCREASE IN CURRENT YEAR LIABILITY TEST FOR INDIVIDUALS

Present law

Individuals owing income tax who do not make estimated tax payments are generally subject to a penalty (Code sec. 6654). In order to avoid the penalty, individuals must generally make quarterly estimated tax payments that equal at least the lesser of 100 percent of the prior year's tax liability or 90 percent of the current year's tax liability. Amounts withheld from wages are considered to be estimated tax payments.

The Tax Reform Act of 1986 increased from 80 to 90 percent the proportion of the current year's tax liability that taxpayers must pay to avoid the penalty. This was effective for taxable years beginning after December 31, 1986.

House bill

The House bill delays for one year this increase from 80 to 90 percent. Thus, for taxable years beginning before January 1, 1988, individuals may avoid the estimated tax penalty by making quarterly estimated tax payments that equal at least the lesser of 100 percent of the prior year's tax liability or 80 percent of current year's tax liability. For taxable years beginning after December 31, 1987, individuals may avoid the estimated tax penalty by making quarterly estimated tax payments that equal at least the lesser of 100 percent of the prior year's tax liability or 90 percent of the current year's tax liability.

The increase from 80 to 90 percent is effective for taxable years beginning after December 31, 1987 (instead of taxable years beginning after December 31, 1986).

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

B. CORPORATIONS MAY USE 1986 TAX TO DETERMINE CERTAIN ESTIMATED TAX INSTALLMENTS DUE BEFORE JULY 1, 1987

Present law

Under present law, a corporation that fails to pay an installment of estimated income tax on or before the due date generally is subject to a penalty computed at the rate of interest for tax underpayments. The penalty may not be waived.

The penalty is computed by applying the underpayment interest rate to the amount of the underpayment of the installment for the period of the underpayment. The amount of the underpayment is the difference between the payments made on or before the due date of each installment and 90 percent of the total tax shown on the return for the year, divided by the number of installments that should have been made.

No estimated tax penalty is imposed if the installment is based on the lesser of (1) the preceding year's tax liability, if a return showing a liability for tax was filed for the preceding year; (2) the tax computed by using the facts shown on the prior year's return under the current year's tax rates; or (3) 90 percent of the taxes which would be due if certain income already recognized during the current year were placed on annual basis. Large corporations may not use exceptions (1) and (2) described above. A large corporation is defined as a corporation having at least $1 million of taxable income in any of the three prior taxable years.

Present law does not give explicit authority to the Treasury to provide alternative estimated tax rules for corporations.

The Treasury has issued regulations, applicable to estimated tax payments due before July 1, 1987, that permit corporations to base those estimated payments on 120 percent of 1986 taxable income with certain modifications.

House bill

The House bill provides two safe harbors for corporate estimated tax payments due before July 1, 1987. First, all corporations, including large corporations, are permitted to base those estimated tax payments on 100 percent of the 1986 tax liability. Second, statutory authorization is provided for the safe harbor provided in the Treasury regulations.

Under the first safe harbor, no penalty for the underpayment of estimated tax for a taxable year beginning in 1987 will be imposed on a large corporation (as defined in sec. 6655(i)(2) of the Code) for any payment due on or before June 15, 1987, if the corporation's estimated tax payments meet the present law requirements (of sec. 6655(d)(1)) applicable to other corporations allowing payments to be based on the tax shown on the prior year's return. Thus, large corporations are expressly authorized to utilize the estimated tax safe harbor of paying the preceding year's tax liability for estimated tax installments for the taxable year beginning in 1987 that are also due on or before June 15, 1987. A corporation may take advantage of this rule only to the extent that the underpayment of estimated tax is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987. This relief is available for the first two payments of a calendar year corporation and for the first payment of a fiscal year corporation whose taxable year begins on or before March 1, 1987.

The provisions are effective for corporate estimated tax installments for 1987 that were due before July 1, 1987.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

IV. Estate and Gift Taxes

1. Extension of 1987 tax rates

Present law

Under the estate and gift taxes, a single rate schedule is applied to an individual's cumulative gifts and bequests. The generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate.

For 1987, the estate and gift tax rates are 55 percent on taxable transfers over $3 million. For transfers occurring after 1987, the maximum estate and gift tax rate is scheduled to decline to 50 percent for taxable transfers over $2.5 million.

House bill

The House bill makes permanent the estate and gift rates applicable in 1987.

Senate amendment

The Senate amendment defers the scheduled decline in estate and gift tax rates for two years (through 1989).

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with the modification that the scheduled decline is deferred for five years. Thus, the maximum rate declines to 50 percent for decedents dying, and gifts made, after December 31, 1992.

2. Graduated rates and unified credit

Present law

The estate and gift taxes are unified, so that a single graduated rate schedule is applied to an individual's cumulative gifts and bequests. A unified credit of $192,800 is deducted from the gross gift or estate tax in arriving at the net tax payable. The $192,800 credit in effect exempts the first $600,000 of transfers from gift and estate taxation.

House bill

The House bill phases out the benefit of the unified credit and graduated rates for transfers exceeding $5 million. The gift and estate tax liability for taxable transfers in excess of $5 million is increased by five percent of such excess until the benefit of the unified credit and graduated brackets is recaptured.

Senate amendment

No provision.

Conference agreement

The benefit of the unified credit and graduated rates is phased out for transfers exceeding $10 million. The gift and estate tax liability for taxable transfers in excess of $10 million is increased by five percent of such excess until the benefit of the unified credit and graduated brackets is recaptured.

The rate adjustment for decedent dying, and gifts made, after December 31, 1987, and before December 31, 1992, occurs for cumulative taxable transfers between $10,000,000 and $21,040,000. Once the maximum adjustment applies, the 55 percent rate becomes the rate of taxation. The rate adjustment for decedents dying, and gifts made, after December 31, 1992, occurs for cumulative transfers between $10,000,000 and $18,340,000, after which the rate of taxation becomes 50 percent.

This provision does not otherwise affect the structure of the unified credit. Thus, gifts made prior to December 31, 1987, are counted in determining the amount of the unified credit subject to the phase-out. Therefore, even though a person makes gifts valued at

$600,000 prior to December 31, 1987, he is subject to the full 5 percent rate adjustment on transfers after 1987.

Pre-effective date gifts are counted toward cumulative transfers for purposes of determining the rate adjustment for transfers made after the effective date, but the tax rate on pre-effective date gifts remains unchanged. Thus, if a person makes $9 million in gifts prior to the effective date and $4 million in transfers after that date, $3 million of transfers are subject to the adjustment. If a person makes $22 million in gifts prior to the effective date, no transfers after that date are subject to the rate adjustment.

This provision does not affect the maximum Federal estate tax rate for purposes of computing the generation-skipping transfer tax. That rate is 55 percent for generation-skipping transfers made before December 31, 1992, and 50 percent thereafter.

3. State death tax credit

Present law

A dollar-for-dollar credit is allowed against the Federal estate tax for any estate, inheritance, legacy, or succession taxes paid to a State with respect to any property included in the gross estate.

House bill

The House bill repeals the credit for State death taxes and enacts an estate tax deduction for such taxes.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

4. Special valuation rules: minority discounts and estate freezes

Present law

Minority discounts

Numerous courts have found that blocks of corporate stock constituting a minority interest are usually worth less than a proportionate share of the value of the corporate assets. No special burden of proof must be met for a court to make such a finding. Courts have allowed a minority discount even where related persons together own a majority interest in the corporation.

Valuation freezes

Where an individual retains enjoyment of, or the right to income from, transferred property, his gross estate includes the full value of such property. Nonetheless, a decedent's estate does not include the full value of stock of a corporation previously owned by a decedent where the decedent gives his children common stock in the corporation but keeps control over, and the income from, the corporation through retention of preferred stock in that corporation.

House bill

Minority discounts

Under the House bill, the value of stock in a corporation is deemed to be equal to its pro rata share of all the stock of the same class in such corporation, unless a different value is established by clear and convincing evidence. In determining whether a different value can be established, all stock held, directly or indirectly, by an individual or by members of such individual's family is treated as held by one person. Similar rules apply in the valuation of interests in entities other than corporations and of property other than corporate stock.

Valuation freezes

Under the House bill, if a person holds a substantial interest in an enterprise and, in effect, transfers a disproportionate share of the potential appreciation in the enterprise, then the transferred property shall be included in his gross estate.

A person holds a substantial interest in an enterprise if such person owns, directly or indirectly, ten percent or more of the voting power in, or income of, the enterprise.

Transfers for full and adequate consideration to persons other than family members are exempted.

The estate freeze provision is effective for decedents dying after December 31, 1987.

Senate amendment

No provision.

Conference agreement

Minority discounts

The conference agreement follows the Senate amendment.

Estate freezes

The conference agreement follows the House bill, with the following modifications.

In general.—Under the conference agreement, if any person holds a substantial interest in an enterprise and in effect transfers after December 17, 1987, property having a disproportionately large share of the potential appreciation in such person's interest in the enterprise while retaining a disproportionately large share in the income of, or rights in, the enterprise, then the retention of the retained interest is treated as a retention of the enjoyment of the transferred property. The value of the transferred property is includible in a decedent's gross estate if the decedent retained the retained interest for his life, for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death. In addition, that value is includible if the retained interest is disposed of during the 3-year period ending on the date of the decedent's death.[1] For purposes of this provision, an

[1] It may be includable even if the retained interest is sold for its fair market value during the 3-year period. See *United States* v *Allen,* 293 F.2d 916 (10th Cir. 1961).

individual and such individual's spouse shall be treated as one person.

For example, if, after December 17, 1987, a person who holds all the preferred and common stock in a corporation transfers the common stock and retains the preferred stock until his death, the common stock is includible in his estate. Likewise, a similar transaction undertaken by transferring a partnership interest with greater rights to appreciation than the retained interest will result in the transferred interest being included in the estate.

If a share of appreciation borne by the transferred property is disproportionately large, but only with respect to part of the transferred property, only that part of the transferred property is included in the estate. Thus, if a person who owns a substantial interest in an enterprise and whose only holdings in the enterprise consist of 100 shares of common stock and 100 shares of preferred stock transfers 80 shares of the common stock and 20 shares of the preferred stock, only 60 shares of the transferred common stock are included in his estate under this provision.

The provision only makes certain property includible in the estate; it does not affect the valuation of such property for estate tax purposes.

Definitions

Substantial interest.—A person holds a substantial interest in an enterprise if such person owns, directly or indirectly, 10 percent or more of the voting power or income stream, or both, in the enterprise. For these purposes, an individual shall be treated as owning any interest in an enterprise owned, directly or indirectly, by any member of such individual's family. Interests held indirectly by a person include interests held by an entity in which such person has an interest.

Enterprise.—Under the conference agreement, an enterprise includes a business or other property which may produce income or gain.

Family.—Family means, with respect to any individual, such individual's spouse, any lineal descendant of such individual or of such individual's spouse, any parent or grandparent of such individual, and any spouse of any of the foregoing. Relationship by legal adoption is treated as one by blood.

Transfer.—A transfer encompasses, but is not limited to, all transactions whereby property is passed to or conferred upon another, regardless of the means or device employed in its accomplishment.

Disproportionately large share of potential appreciation.—A disproportionately large share of potential appreciation is any share of appreciation in the enterprise greater than the share of appreciation borne by the property retained by the transferor.

Rights.—Rights in the enterprise include voting rights, conversion rights, liquidation rights, warrants, options, and other rights of value.

Sales of interests

Sales for full and adequate consideration, other than those to family members, are exempted from the provision. Appropriate adjustments in the value of the estate will be made for sales which are not exempted. Thus, when an interest is sold for less than full and adequate consideration, the amount included in the estate will be reduced by the value of the consideration received by the decedent. Sales to family members will be deemed to be for less than full and adequate consideration for this purpose.

Effective date.—The provision is effective for decedents dying after December 31, 1987. However, it does not apply to transfers completed before December 18, 1987. Thus, for example, when a person who owns all the common and preferred stock in an enterprise transfers all the common stock after December 17, 1987, while retaining the preferred stock, the provision applies, even though the two classes of stock existed prior to December 18, 1987. If, in that situation, all the common stock is transferred prior to December 18, 1987, the provision does not apply to the transferor (or his spouse), even if either the common or preferred stock is transferred in subsequent transactions after December 17, 1987, so long as that transferor or his spouse does not reacquire any common stock.

5. Estate tax deduction for sales to an ESOP

Present law

The Tax Reform Act of 1986 (sec. 1172 of the Act and sec. 2057 of the Code) adopted a special provision allowing partial relief from estate taxes through an estate tax deduction for sales of employer securities to an employee stock ownership plan (ESOP) or an eligible worker-owned cooperative. This provision was adopted for a temporary period of time to encourage transfers of employer securities to ESOPs. The provision permits a deduction from the gross estate of a decedent equal to 50 percent of the proceeds received from a qualified sale of employer securities.

IRS Notice 87-13 (January 5, 1987) provided that the estate tax deduction for transfers to an ESOP or worker-owned cooperative is not available unless (1) the decedent directly owned the employer securities immediately before death, and (2) after the sale, the employer securities are allocated to plan participants or are held for future allocation in connection with an exempt loan under section 4975 or in connection with a transfer of assets from a defined benefit plan under the rules of section 4980(c)(3). Except in the case of a bona fide business transaction, employer securities are not treated as allocated or held for future allocation to the extent that such securities are allocated or held for future allocation in substitution of other employer securities that had been allocated or held for future allocation.

House bill

The bill confirms the positions taken in IRS Notice 87-13 and further clarifies and restricts the availability of the deduction. Thus, the bill (1) provides that the deduction is available in the case of sales of employer securities to tax-credit ESOPs, (2) limits the deduction to. sales of nonpublicly traded securities, (3) permits the sale of any assets listed as securities on the estate tax return, (4) limits the deduction to 50 percent of the taxable estate and the maximum reduction in estate taxes to $750,000, (5) imposes holding period requirements for the decedent and the ESOP, (6) prohibits the deduction in the case of securities acquired with assets transferred from another plan of the employer, and (7) imposes certain excise taxes on an ESOP or worker-owned cooperative for a failure to satisfy the allocation and holding period requirements.

The confirmation of the IRS Notice is effective as if included in the Tax Reform Act of 1986. The other provisions are effective with respect to sales of securities to ESOPs after February 26, 1987, except that the ESOP holding period requirement generally applies to dispositions of securities by the ESOP after February 26, 1987. Securities subject to the ESOP holding period requirement are qualified employer securities, which for this purpose includes employer securities sold before February 27, 1987, for which a deduction was allowed.

Senate amendment

The Senate amendment is the same as the House bill, except that the provisions (other than the confirmation of the IRS Notice) are effective with respect to sales of securities to ESOPs after February 27, 1987, and that the ESOP holding period requirement generally applies to dispositions of securities by the ESOP after February 27, 1987. Securities subject to the ESOP holding period requirement are qualified employer securities, which for this purpose includes employer securities sold before February 27, 1987, for which a deduction was allowed.

Conference agreement

The conference agreement follows the House bill.

V. Excise Taxes; User Fees

A. EXCISE TAXES

1. Telephone excise tax: 3-year extension

Present law

A 3-percent excise tax is imposed on amounts paid for local telephone service, toll (long-distance) telephone service, and teletypewriter exchange service. This tax is scheduled to expire after December 31, 1987.

House bill

The House bill extends the present 3-percent telephone excise tax for 3 years, through December 31, 1990.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

2. Collection of diesel fuel and certain other motor fuels taxes on sales to retailers

Present law

The excise taxes on diesel fuel, special motor fuels, and nongasoline aviation fuel generally are imposed on the sale of the taxable fuel by a retail dealer to the ultimate consumer of the fuel (sec. 4041). Under an exception, retail dealers may elect to have wholesale distributors collect and pay the diesel fuel tax when the fuel is sold to the retailer.

House bill

The excise tax on taxable fuels, which are defined as diesel fuel, taxable special fuels, and nongasoline aviation fuels, is to be imposed on sale of the fuels to any taxable fuel retailer.

Taxable special fuels include special motor fuels (other than gasoline or diesel fuel) that are sold for use as a fuel in a motor vehicle or motorboat. Nongasoline aviation fuels means any liquid on which tax would be imposed if sold for use in an aircraft in noncommercial aviation.

Collection of the excise tax on the sale of any taxable fuel by wholesale dealers is made mandatory for all sales. The provisions of present law permitting tax-free sales for certain exempt purposes are repealed.

Any taxable fuel that is held on January 1, 1988, by a dealer for sale is subject to a floor stocks tax at the rate applicable under this section to that fuel.

The provision is effective on January 1, 1988.

Senate amendment

The Senate amendment generally is the same as the House bill, with the following differences.

The Treasury Department is authorized to prescribe regulations for purposes of making refunds or allowing credits of the non-gasoline fuels excise taxes. In addition, Treasury is authorized to require information reporting and registration from such persons in the distribution chain of these fuels as is deemed necessary to prevent evasion of the tax.

The Senate amendment also requires that amounts equivalent to revenues raised by the floor stocks taxes be transferred to the Highway Trust Fund or the Leaking Underground Storage Tank (LUST) Trust Fund.

The provision is effective on January 1, 1988.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment, but includes several modifications. First, the tax on special motor fuels continues to be imposed at the retail level. In the case of the taxes on diesel fuel and nongasoline aviation fuels, tax technically is imposed on the sale (or earlier use) of a taxable fuel by the producer thereof. The term producer is defined, however, to include wholesale distributors and other intermediate persons in the chain of distribution of the taxable fuel. All persons who are producers of a taxable fuel must register with the

Treasury Department and satisfy such bonding requirements as Treasury may prescribe. Therefore, a wholesale distributor may buy fuels without payment of tax only upon satisfaction of these requirements.

In general, like the House bill and Senate amendment, all provisions permitting exempt sales beyond the wholesale level are repealed. Treasury is, however, given discretionary authority to exempt from tax certain sales where the purchaser demonstrates to the satisfaction of Treasury that the fuel will be used in a nontaxable use and also registers and posts such bond as Treasury may require. This authority is to be exercised on a case-by-case basis. Sales that may be exempted include (1) diesel fuel sold for use as a fuel in a diesel-powered train, (2) aviation fuel sold for use as a fuel in an aircraft in commercial aviation, (3) taxable fuels sold for industrial use other than as a motor fuel, and (4) taxable fuel sold for exclusive use of any State, a political subdivision of a State, or the District of Columbia.[2] As under the House bill and the Senate amendment, sales of fuel that Treasury determines is destined for use as heating oil may be made without payment of tax. All other exemptions from these taxes must be realized through refund procedures following purchase of the fuels tax-paid.

The conference agreement grants Treasury broad authority to ensure compliance generally with the provisions of the agreement. Specifically, Treasury may, in its discretion, require information reporting by and registration of any person in the distribution chain of any taxable fuel (including, e.g., any distributor of fuel destined for use as heating oil).

These provisions of the conference agreement are effective on and after April 1, 1988, with a floor stocks tax being imposed as was provided under the House bill and the Senate amendment on all persons holding non-tax-paid fuels on April 1, 1988.

3. Extension of termination date for coal excise tax rate

Present law

A manufacturer's excise tax is imposed on the sale or use of domestically mined coal by the producer (sec. 4121). Effective April 1, 1986, the tax rate was increased (by 10 percent) to $1.10 per ton of coal from underground mines, and 55 cents per ton of coal from surface mines, but not to exceed 4.4 percent of the sales price.

Under present law, the tax rate is scheduled to revert to the pre-1982 rate of 50 cents per ton on underground coal and 25 cents per ton on surface coal (but not to exceed two percent of price) on the earlier of January 1, 1996 or the first January 1 as of which there is (1) no balance of repayable advances from the general fund to

[2] States and local governmental units eligible to apply to the Treasury for approval to buy fuels without payment of tax generally include those governmental units that are permitted to buy tax-free under present law (sec. 4221(a)(4)). The conferees are aware that repeal of automatic tax-free sales of these fuels to States and local governments may, in certain cases, result in a temporary additional cost on certain of these entities, but determined that general concerns about compliance with these taxes outweigh that possibility. The discretionary exemption included in the agreement reconciles these compliance concerns with any potential burden on States and local governments. The conferees intend that in determining which governmental units may purchase taxable fuels without payment of tax under the agreement, the Treasury Department is to attempt to minimize any such costs to the extent consistent with the increased compliance objectives of the conference agreement.

the Black Lung Disability Trust Fund, and (2) no unpaid interest on such advances.

Amounts equal to the revenues collected from the coal excise tax are appropriated automatically to the Trust Fund. Present law also authorizes repayable advances from the general fund to the Trust Fund. The Trust Fund pays certain black lung disease benefits in cases where no coal mine operator is found specifically responsible for the individual miner's disease.

House bill

No provision.

Senate amendment

The Senate amendment extends the termination date for the present-law coal excise tax rate from January 1, 1996 to the earlier of (1) January 1, 2014 or (2) the date the Trust Fund achieves solvency (as defined under the present-law termination provision). The extension of the termination date for the present-law coal excise tax rate is effective from January 1, 1996 to January 1, 2014, subject to earlier termination under the solvency provision described above.

Conference agreement

The conference agreement follows the Senate amendment.

4. Highway excise tax exemptions for private buses

Present law

Receipts from excise taxes on motor fuels and tires are deposited in the Highway Trust Fund. Receipts of the Trust Fund are used to finance expenditures which are authorized from the Highway Trust Fund. Exemptions from these excise taxes are provided for several purchasers of fuels, including private operators of transit buses and certain private school buses and buses used by section 501(c)(3) organizations.

Private bus operators are exempt from the excise tax on tires. Intercity common carrier buses and qualified local buses are exempt from the 9-cents-per-gallon highway taxes on gasoline and special motor fuels. Qualified local buses are also exempt from the 15-cents-per gallon diesel fuel tax. In addition, private intercity buses receive a 12-cents-per-gallon refund (or credit) of the 15-cents-per-gallon highway diesel fuel tax. No exemption is available for buses engaged in transportation that is not scheduled and is not along regular routes, unless the seating capacity of the bus is at least 20 adults (not including the driver).

House bill

The House bill repeals the motor fuels and tires excise tax exemptions for buses, including buses used by sec. 501(c)(3) organizations. This repeal does not affect the exemptions of governmentally owned and operated mass transit buses or of public school buses.

This provision is effective on January 1, 1988.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

B. USER FEES

1. Internal Revenue Service fees

Present law

The Internal Revenue Service (IRS) currently provides written responses to questions of individuals, corporations, and organizations relating to their tax status or the effects of particular transactions for tax purposes. The IRS responds to these inquiries through the issuance of letter rulings, determination letters, and opinion letters. The IRS currently does not charge a fee for issuing letter rulings, determination letters, or opinion letters.

House bill

The House bill requires the IRS to charge a fee for each request for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The amount of the fee is to vary based on the type of request. In addition, the IRS is authorized to provide exemptions and reduced fees. The IRS may vary the amount of the fee or provide exemptions or reduced fees only if the average fee charged during a fiscal year for requests in any category is not less than the fee listed for that category.

The amount of the fee is payable in advance and is refundable only if the IRS refuses to respond to the request. The fee is not refundable if the person making the request withdraws the request prior to the issuance of the ruling, opinion, or determination.

The provision applies to requests filed on or after the first day of the second calendar month that begins after the date of enactment. The provision does not apply to requests filed after September 30, 1990.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, except that the average fee for each type of request is not to be less than the amount determined under following table:

Category	*Fee*
Employee plan ruling and opinion	$250
Exempt organization ruling	350
Employee plan determination	300
Exempt organization determination	275
Chief counsel ruling	200

2. Extension and increase in certain alcohol, tobacco, and firearms occupational taxes

Present law

Producers and manufacturers

Occupational taxes are imposed on the producers or manufacturers of firearms and alcohol products. Brewers currently pay $110 per year for each brewery operated by them, except any brewer of fewer than 500 barrels a year pays $55 per year. Manufacturers and importers of National Firearms Act (NFA) firearms pay a $500 per year occupational tax for each place of business, except a person who manufactures or imports only weapons classified as "any other weapons" pays, e.g., a tax of $25 per year.

No occupational taxes are imposed on distillers, wineries, or tobacco manufacturers.

Dealers

Dealers in NFA firearms generally are subject to an annual occupational tax of $200 per place of business. Dealers in only "any other weapons" are subject to an annual tax of $10 per place of business.

Wholesale liquor dealers pay an annual business occupational tax of $255 per place of business. Wholesale beer dealers pay $123 annually per place of business.

Retail liquor dealers pay an annual occupational tax of $54 per place of business. For retail beer dealers, the tax is $24 per place of business. Limited retail dealers in distilled spirits are taxed at $4.50 per month, and the tax is $2.20 per month for limited retail dealers in beer and wine only.

Other occupations

Persons permitted to use distilled spirits without payment of tax, or who deal in or use specially denatured distilled spirits, must obtain permits under present law, but no occupational tax is imposed on these persons with respect to this activity.

Drawbacks (refunds) are permitted of the distilled spirits tax in certain cases. Persons receiving drawbacks of this tax for distilled spirits to be used for nonbeverage purposes are subject to an occupational tax based on the amount of alcohol used. The tax ranges from $25 per year for drawbacks that do not exceed 25 proof gallons to $100 per year for drawbacks exceeding 50 proof gallons.

House bill

Producers and manufacturers

Producers and manufacturers occupational taxes are increased to annual amounts of $1,000 per place of business for producers of all taxable alcoholic beverages (distilled spirits, wine, and beer), manufacturers of all taxable tobacco products, and for producers of firearms. A lower rate of $500 per year applies to businesses having gross receipts of less than $500,000 in the preceding taxable year. For purposes of this reduced rate, all members of a controlled group of corporations (substituting 50 percent for the general 80 percent test of common ownership) are treated as one business.

Dealers

The firearms dealer occupational tax is increased to $500 per year per place of business.

Alcoholic beverage wholesale dealer occupational taxes are combined and imposed at an increased, uniform rate of $500 per year per place of business.

Retail dealers in alcoholic beverages pay an increased annual occupational tax at a uniform rate of $200 per year per place of business. Present law occupational taxes on limited retail dealers are repealed. The retail dealer occupational tax is extended to all persons required to acquire permits for tax-free use of distilled spirits. Occupational tax rates for persons receiving drawbacks of the distilled spirits tax for spirits used in nonbeverage products are combined and imposed at a rate of $500 per year per place of business.

Effective dates.—These provisions are effective on January 1, 1988.

Occupational taxes generally are imposed for a 12-month period, covering the period July 1 through June 30. Taxpayers are liable for payment for a full 12-month period of these new taxes on July 1, 1988. Taxpayers who paid the present law occupational taxes on July 1, 1987, are subject to an adjustment of tax for the period January 1 through June 30, 1988. The adjustment makes these taxpayers liable for 50 percent of the excess of the applicable new annual tax rate over the applicable present-law tax rate. Persons initially subject to an occupational tax as a result of the bill are liable for 50 percent of the applicable new annual occupational tax rate on January 1, 1988.

Senate amendment

The Senate amendment is the same as the House bill, except occupational taxes due on January 1, 1988, under the effective date provision, are payable on April 1, 1988.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, including the special due date for January 1, 1988, payments of occupational taxes contained in the Senate amendment.

VI. Other Revenue—Increase Provisions

A. APPLICATION OF TARGETED JOBS TAX CREDIT FOR WAGES PAID DURING PERIOD OF LABOR DISPUTE

Present law

A tax credit is available to employers of individuals from one or more of nine targeted groups. The nine groups consist of individuals who are recipients of payments under means-tested transfer programs, economically disadvantaged (as measured by family income), or disabled. The credit equals 40 percent of the first $6,000 of qualified first-year wages (85 percent of up to $3,000 of wages in the case of disadvantaged summer youth employees). The employer's deduction for wages must be reduced by the amount of the credit.

There is no provision in present law specifically disallowing the targeted jobs credit to an employer when members of a targeted group, whose wages otherwise qualify for the credit, are hired to perform employment services in a labor dispute situation.

The credit is scheduled to expire as of December 31, 1988.

House bill

An employer is not entitled to the targeted jobs tax credit with respect to certain wages if the employer's plant or facility is involved in a strike or lockout. Specifically, the credit is not available for wages paid to a targeted-group individual who performs the same or substantially similar services as those of employees participating in or affected by the strikes or lockcut.

This provision applies with respect to amounts paid or incurred on or after January 1, 1987, for services rendered on or after such date.

Senate amendment

No provision.

Conference agreement

The Senate amendment follows the House bill.

B. ILLEGAL FEDERAL IRRIGATION SUBSIDIES

Present law

The Federal Government makes available water from reclamation and irrigation projects for agricultural purposes. Pursuant to the Reclamation Reform Act of 1982, this water must be provided at "full cost" in certain situations. In other situations, the amount charged for the water may be less than its full cost. If water is provided at less than full cost, the difference between the full cost amount and that actually charged for the water is not an item of income for Federal income tax purposes.

House bill

Gross income includes any illegal Federal irrigation subsidy received by a taxpayer during the taxable year. An illegal Federal irrigation subsidy is the excess (if any) of the amount required by law to be paid for any Federal irrigation water delivered to, or for the benefit of, the taxpayer over the amount paid for such water. Federal irrigation water is any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982. A taxpayer receiving an illegal water subsidy is required to include the amount of such subsidy in gross income in the taxable year in which such water is provided. No deduction is allowed with regard to any amount included in income as a result of this provision.

The provision is effective for water delivered to the taxpayer after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. The conferees intend that the amount considered paid for Federal irrigation water for the purposes of this provision includes all amounts paid for such water, whether or not paid in the same taxable year as the water is delivered.

C. COMPIANCE PROVISIONS

1. Escheat of refunds

Present law

Although under present law unclaimed Federal tax refunds remain in the General Fund of the Treasury, no provision of the Code expressly requires that such unclaimed refunds escheat (revert) to the Federal Government. Some States have sued the Federal Government, asserting that unclaimed Federal tax refunds escheat to the State. If the States win these cases, the Federal Government would be required to pay these amounts out of the General Fund of the Treasury to the States.

House bill

The House bill provides that unclaimed Federal tax refunds remain in the General Fund of the Treasury. This provision is effective upon the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. IRS funding for better compliance

Present law

During the 1986 filing season, the IRS processed 110 million Federal tax returns. Gross revenue receipts amounted to $782.3 billion, including $497 billion of individual and corporate income tax receipts.

Almost 55 million requests for assistance were handled under the IRS program of taxpayer assistance. Also, more than one million returns were examined by IRS personnel as part of its enforcement efforts.

House bill

The House bill includes a sense of the Congress Resolution stating that (1) Congress should increase outlays for the IRS for fiscal year 1989 by $0.7 billion and for fiscal year 1990 by $0.8 billion; (2) the IRS should offer improved taxpayer assistance and enforcement efforts by using these increases in areas recommended by the "Dorgan Task Force Report"; (3) the IRS should be one of the first

Federal agencies to utilize the new Gramm-Rudman option of a two-year budget cycle; and (4) increased funding should be provided for compilation and analysis of statistics of income and research.

Also, the IRS must issue a public report by April 15, 1989, on the extent of the tax gap and the measures that could be undertaken to decrease the tax gap. The IRS must also report annually on the improvements being made in the audit rate, taxpayer assistance, and enforcement efforts.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

D. TAX-EXEMPT BONDS

1. Tax-exempt bonds to acquire nongovernmental output property

Present law

States and local governments generally may issue tax-exempt bonds to finance the acquisition, construction, and operation of governmentally owned and operated output facilities. Such bonds are not subject to the State private activity bond volume limitations.

House bill

The House bill generally provides that bonds used to finance acquisition of nongovernmental output property by a State or a local governmental unit are private activity bonds and the interest thereon is taxable. Nongovernmental output property is defined as property that prior to its acquisition has been used (or held for use) by any person other than a State or a local governmental unit (e.g., by an investor-owned utility, a cooperative, or the Federal Government) in connection with an output facility. As under present law, output property includes, e.g., facilities such as electric and gas generation, transmission, distribution, and other related facilities.

The House bill includes two exceptions. First, bonds to acquire such output property for the furnishing of electric energy and gas may be issued as tax-exempt private activity bonds, subject to the applicable State private activity bond volume limitation and generally to all other provisions of the Internal Revenue Code governing tax-exempt exempt-facility bonds. Second, bonds to acquire such output property for the furnishing of water are no subject to the new restrictions imposed by the House bill.[3]

The provision applies to bonds (including refunding bonds) issued after October 13, 1987. A transitional exception is provided for acquisitions pursuant to contracts that were binding on October 13, 1987, and at all times thereafter, and for a project-specific acquisition.

Senate amendment

No provision.

---

[3] Facilities for the furnishing of water are not defined as output facilities under sec. 141(b)(4).

Conference agreement

The conference agreement follows the House bill in treating as taxable private activity bonds all bonds issued to acquire nongovernmental output property unless the bonds are issued to acquire such property for the furnishing of electric energy and gas (and are issued as tax-exempt exempt-facility bonds) or are issued in connection with the furnishing of water, with several modifications.

Exceptions to general restrictions

Two exceptions are included pursuant to which bonds to acquire nongovernmental output property will not be subject to the new restrictions contained in the conference agreement.

Existing service areas.—Under the first exception, the acquisition of nongovernmental output property by a State or a local governmental unit to meet existing or increased capacity demands within a service area throughout which the acquiring entity has provided the same type of service for at least 10 years immediately preceding the date of the acquisition is not subject to the new restrictions. For example, a governmental authority that provides electricity to a city may use tax-exempt bonds subject only to present-law rules to acquire existing investor- or Federally owned generation and transmission facilities when those facilities will be used to provide output service within the service area throughout which the authority actually has provided electric service during a 10-year minimum service period, described below.[4]

This exception does not apply to those cases where the increase in demand arises from sales outside the existing service area through direct arrangements or through wheeling arrangements with another provider. For example, if a manufacturer built a manufacturing plant outside a governmental output authority's existing service area, but contracted with the authority for electricity, the plant's demand for electricity could not be counted as in demand within the existing service area.

Annexations.—A second exception permits the acquisition of existing nongovernmental output property without regard to the new restrictions in the conference agreement where a governmental unit served by an existing governmental output authority annexes certain contiguous territory in a general governmental purpose annexation, and seeks to expand its electric, gas, or other output service to that annexed territory as part of the annexation. An annexation is treated as being for general governmental purposes if it involves the transfer of voter registration and property tax rolls as well as responsibility for extension of general governmental services (e.g., police and fire protection and sewer and water services) on the same basis as those services are provided to other residents of the governmental unit.

---

[4] For example, bonds issued by a governmental output authority to finance construction of a nuclear generation plant to meet capacity requirements for an existing service area (or expansions thereof qualifying for the exception for certain annexations, described below) may be treated as satisfying the exception even if the bonds are issued after it is reasonably anticipated that the interest in the new plant will be traded for an interest in another previously privately owned, coal-fired generation plant.

This exception applies only if (1) the annexed area is no greater than 10 percent of the geographic area of the governmental unit or (2) the output capacity of the governmental authority increases by no more than 10 percent as a result of the acquisition of output property to service the annexed area. Both determinations are made as of the last day of the calendar year immediately before the year in which the annexation occurs. Thus, in the case of a city comprised of 90 square miles, up to 9 square miles of additional territory may be annexed and the extension of output services to that 9 square miles (e.g., through acquisition of an existing privately owned distribution system) could qualify under this exception. An area larger than 9 square miles could be annexed and increased capacity acquired, provided that the increase in capacity did not exceed 10 percent of the output capacity of the governmental authority allocable to the area already served by the annexing governmental entity.

The conferees are aware that cities and other governmental units may annex additional territory on a recurring basis and intend that the 10-percent restrictions be applied separately with regard to each such annexation, provided that such recurring annexations are general purpose annexations.

Further, this exception is available only where service in the annexed area is made available directly to all members of the general public by the acquiring governmental output authority. Thus, for example, the acquisition of output capacity to serve a single, or limited group of, industrial users either directly or through wheeling arrangements with another provider currently serving those users, is subject to the restrictions of the conference agreement.

Rules for applying exceptions

10-year minimum service requirement.—The two exceptions described above generally are available only to governmental authorities that satisfy a 10-year minimum service requirement on actually providing service to their service areas. In applying this rule, a service area to which such an authority actually was providing service (as opposed to being authorized to provide service) on October 13, 1987, is treated as having been served for 10 years. Further, an existing service area does not include any area, which although identified as such in State or local law, has not been actively served during at least a substantial part cf the last year.

The conferees recognize that many cities with existing governmental output systems may expand over a 10-year period and as part of that growth may annex neighboring territory in general purpose governmental annexations. Subject to the restrictions in the preceding paragraph on actually serving an area, if such a governmental authority extends its services into such annexed areas in an annexation qualified under the exception described above, the governmental authority is deemed to have satisfied the ten-year minimum service requirement for purposes of future acquisitions if it has served a core area within its total area of actual service with the same type of service for the 10 years immediately preceding the year in which the existing nongovernmental output property is acquired.

Governmental authorities without generation facilities.—The conferees recognize that some existing governmental output systems only provide distribution services, or that they may produce output sufficient to meet only a part of the demand of their service area. The conference agreement does not preclude such a governmental authority from continuing to serve its function by purchasing capacity necessary to meet the existing demand (and reasonable projected future demand, subject to the restrictions described below) of its service area through acquisitions of nongovernmental output property without regard to the new restrictions contained in the agreement.

Excess capacity and the sale of such capacity outside the service area.—The conference agreement does not preclude a governmental authority from acquiring reasonable amounts of capacity beyond the authority's current demand needs while qualifying under either of the two exceptions provided in the agreement. However, no capacity beyond that necessary to meet current output demands may be acquired if that capacity will be used in a manner that gives rise to an amount of private use of bond proceeds sufficient to characterize the bonds issued as part of the issue used to acquire the facilities as private activity bonds.

Under present law, sales of output capacity to nongovernmental entities pursuant to certain output or requirements contracts are not treated as a private business use if the sales occur pursuant to certain power pooling and exchange arrangements or certain spot sales of output capacity, in which case such sales are treated as sales to the general public. Under these rules, exchange agreements that provide for "swapping" of power between governmentally owned and operated utilities and investor-owned utilities do not give rise to a private business use where (1) the swapped power is in approximately equivalent amounts determined over periods of one year or less, (2) the power is swapped pursuant to an arrangement that does not involve output-type contracts, and (3) the purpose of the arrangements is to enable the respective utilities to satisfy differing peak load demands or to accommodate temporary outages. Additionally, spot sales of excess power capacity for temporary periods, other than by virtue of output contracts with specific purchasers, are not treated as private business use of bond proceeds. For purposes of this rule, a spot sale is a sale pursuant to a single agreement that is limited to no more than 30 days' duration (including renewal periods).

Treatment of joint action power agencies.—The conferees are aware that governmental entities may join together to form a governmental joint action agency to supply output services to their citizens. The conference agreement provides that, in applying the exceptions to the new restrictions contained therein, such agencies are to be pierced and the participating governmental units treated as directly providing power within their respective jurisdictions. For example, in applying the 10-year minimum service restriction, the provision of service within each participant's retail service area is determinative. In this case, the joint action agency need not have provided service for the last 10 years as long as the participating governmental entities satisfy the 10-year minimum service requirement. Similarly, if towns A, B, and C who own a joint action agency seek to avail themselves of the exception for annexations, the exception applies only if the area to be annexed is contiguous to the town annexing it and satisfies the size or capacity limits with respect to that town. On the other hand, an extension of service to town D, as a new member of the agency, would not qualify under the exception.

Definition of nongovernmental output property

The conference agreement clarifies that property is treated as nongovernmental output property only if the property is used or held for use as such by a person other than a State or local government after October 13, 1987. Thus, the fact that property that was previously used by a person other than a State or a local governmental unit will not result in its acquisition being subject to the restrictions in the conference agreement if, before October 13, 1987, another governmental unit, from which the property currently is purchased, acquired the property. As under the House bill, however, if property is constructed for an investor-owned utility, that property is treated as nongovernmental output property. This determination is made without regard to whether the investor-owned utility actually placed the property in service.

The conference agreement further clarifies that nongovernmental output property may be either tangible property or intangible property. Thus, bonds issued to finance acquisition of stock or debt of an existing output company are subject to the restrictions of the agreement, in the same manner as bonds issued to finance an asset buy-out (including intangible assets such as rate deferrals).

Property that, prior to the bond-financed acquisition, has been used as nongovernmental output property, is not subject to the new restrictions in the agreement if the acquiring governmental unit uses the property in another type of use. Thus, for example, acquisition of a garage previously used by an investor-owned utility may be financed with tax-exempt bonds without regard to the new restrictions if the building is acquired to be used as a bus garage by the acquiring governmental unit's public transit system. On the other hand, property that was constructed for use as a nuclear generating plant may not be acquired with the intent to mothball the plant (nothwithstanding that the plant is not used as output property subsequent to the bond-financed acquisition).

Finally, the conference agreement clarifies that street lighting installed in a municipal area that may because of historical practice be owned by an investor-owned utility is not output property. Thus, the municipality could acquire such lighting without regard to the new restrictions included in the agreement.

Effective date.—The conference agreement follows the House bill, with a clarification that tax-exempt bonds issued to acquire nongovernmental output property before October 13, 1987, may be refunded (including advance refunded) subject to the same restrictions as apply to the refunding of such bonds under present law.

The conferees additionally wish to clarify that the term binding contract for purposes of the general transitional exception in the House bill does not include an option to purchase output property. Rather, as provided under the general transitional exceptions in Titles II and XIII of the Tax Reform Act of 1986, a binding contract exists only if both parties to a transaction are bound to complete the sale/purchase of specifically identified property.

2. Tax-exempt bonds issued by Indian tribal governments

Present law

Indian tribal governments generally are treated like States under the Internal Revenue Code. However, tribal governments may issue tax-exempt bonds only if the proceeds are used in the exercise of an "essential governmental function." Unlike States, tribal governments may not issue tax-exempt private activity bonds.

Treasury Department regulations have defined an "essential governmental function" to include any projects for which Federal assistance to Indian tribes may be provided, thereby including some commercial and industrial activities not generally conducted by States and local governments with general taxing powers.

House bill

The House bill clarifies that for Indian tribal governments an "essential governmental function" does not include any function which is not customarily performed by States and local governments with general taxing powers.

The provision applies to bonds (including refunding bonds) issued after October 13, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification permitting Indian tribal governments to issue as tax-exempt private activity bonds certain bonds for tribal manufacturing facilities[5] as an exception to the general rule that tribal governments may issue tax-exempt bonds only for essential governmental functions which States and local governments customarily perform. The conferees adopted this limited exception in recognition of the unique responsibilities of Indian tribal governments in managing historical tribal resources and land held in trust by the Federal Government, and limited its scope to bonds designed to foster employment opportunities on these tribal lands as part of the performance of this unique responsibility.

For a bond to qualify under this exception, no person other than the issuing Indian tribal government may use the bond proceeds (or be responsible for debt service on the bonds) in a manner resulting in violation of the private business use and private payment

[5] A facility which does not qualify as a manufacturing facility for purposes of this provision may nonetheless be financed with tax-exempt bonds issued by a tribal government provided that the facility satisfies the "essential governmental function" standard (i.e., the facility is comparable to facilities that are customarily acquired or constructed and operated by States and local governments. For example, a building used for offices for a tribal government itself would be comparable to State or local government office buildings, and therefore, could be financed with tax-exempt bonds. As another example, a lodge owned and operated by a tribal government may be eligible for tax-exempt financing if it is comparable to lodges customarily owned and operated by State park or recreation agencies.

tests that determine generally whether a bond is a private activity bond (sec. 141(a)). Additionally, no person other than the issuing Indian tribal government may be a principal user of the bond proceeds or bond-financed property in a manner violative of the restrictions on participation in qualified small-issue bonds by franchisors, etc. (sec. 144(a)(6)(B)). Bonds issued by Indian tribal governments under this exception are not subject to State volume caps, but are subject to all other Internal Revenue Code provisions that apply to private activity bonds (and the interest thereon). The conference agreement accomplishes this by treating bonds issued under this exception as qualified small-issue bonds.[6]

The following requirements apply specifically to these bonds:

(1) 95 percent or more of the proceeds of the bonds must be used to finance property that is acquired, constructed, or improved by and operated by the Indian tribal government issuing the bonds; [7]

(2) the bond-financed property must be of a character subject to allowance for depreciation and must be part of a manufacturing facility; [8]

(3) the bond-financed property must be located on Indian tribal which has been held in trust by the United States for the issuing tribe for at least five years immediately preceding issuance of the bonds and at all times when the bonds are outstanding); [9] and

(4) an employment test must be satisfied.

The employment test requires that for every $20 of bonds outstanding, at least $1 in FICA wages must have been paid during the preceding year to a member [10] of the issuing tribe employed at the manufacturing facility financed by the bonds.[11] It must be reasonably expected that the employment test will be satisfied when the bonds are issued. Further, the employment test is applied at the end of each calendar year that all or part of the bond issue is outstanding, beginning two years after the date of original issuance of the bonds. If the test is not satisfied as of any of these annual determination dates, the issuing tribal government must redeem bonds in an amount sufficient to meet the test within 90 days. Otherwise, interest on the bonds is taxable as of January 1 of the year following the December 31 when that determination of noncompliance is made.

---

[6] Despite their treatment as qualified small-issue bonds, many of the restrictions generally applicable to such bonds under sec. 144(a) do not apply to these bonds. For example, bonds qualifying for tax-exemption under this exception are not subject to the termination date or the special size limits generally applicable to qualified small-issue bonds.

[7] The conferees intend that this requirement be treated as satisfied if the property is owned by a wholly-owned Indian corporation or other entity, which owns the property on behalf of the issuing tribal government. In addition, property financed with the bonds may be owned by a joint venture entered into between two or more Indian tribal governments.

[8] The term manufacturing facility is defined in the same manner under this exception as that term is defined for purposes of the exception permitting issuance of qualified small-issue bonds. (*See* sec. 144(a)(12)(C).)

[9] Qualifying land held in trust by the United States for a tribe includes, e.g., trust land located on a reservation or elsewhere in Indian country (e.g., Oklahoma).

[10] Members of the issuing tribe include a tribal member's spouse, even if such spouse is not a member of the issuing tribe.

[11] If two or more Indian tribes jointly financed a manufacturing facility under this provision, the employment test is met by a pro rata apportionment of FICA wages by tribe according to the relative participation of each tribe.

The employment test is to be applied with respect to the establishment (as that term is used in the *Standard Industrial Classification Manual*) of which the bond financed property is a part, not with respect to the specific bond financed property itself. For example, if bonds were issued to finance additional equipment at an existing saw mill, all wages paid to Indian employees working at the saw mill would count for purposes of the employment test. Wages paid to lumberjacks working at locations different from the saw mill would not count even if they were paid by the same tribal enterprise.

These provisions apply to bonds (including refunding bonds) issued after October 13, 1987.

PART 2. TECHNICAL CORRECTIONS

House bill

The House bill contains technical, clerical, and conforming amendments to the Tax Reform Act of 1986 and other recently enacted tax legislation (subtitle B of Title X of the House bill).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

PART 3. MISCELLANEOUS TAX PROVISIONS

House bill

The House bill contains miscellaneous tax provisions (subtitle C of Title X of the House bill).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

PART 4. TAX-EXEMPT ORGANIZATIONS' LOBBYING AND POLITICAL ACTIVITIES

A. DISCLOSURE REQUIREMENTS

1. Disclosure by certain tax-exempt organizations of nondeductibility of contributions

Present law

Only certain categories of tax-exempt organizations are eligible to receive tax-deductible charitable contributions for Federal income tax purposes (sec. 170(c)). Present law does not require other types of tax-exempt organizations, such as certain lobbying groups or political action committees, to state in solicitations for "contributions" or "donations" that such amounts are not deductible as charitable contributions.

House bill

The House bill requires that certain fundraising solicitations by a tax-exempt organization, other than by an organization eligible to receive tax-deductible charitable contributions, must contain a conspicuous and easily recognizable statement that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes. The disclosure requirement applies to a solicitation if: (1) the soliciting organization normally has gross receipts in excess of $100,000 per year, (2) the solicitation is part of a coordinated fundraising campaign soliciting more than 10 persons during the year, and (3) the solicitation is made in written form, by television or radio, or by telephone.

A penalty of $1,000 is imposed on the organization for each day there was a failure to comply, unless the failure was due to reasonable cause; the maximum penalty for any one year is $10,000. A higher penalty, not subject to this maximum, applies if the failure to comply was due to intentional disregard.

The provision is effective for solicitations made after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification that the provision is effective for solicitations made after January 31, 1988.

2. Public inspection of exemption application and annual information returns of tax-exempt organizations

Present law

The annual information return of a tax-exempt organization is disclosable to the public through requests to the IRS. (Names of contributors to public charities, however, are not disclosable.) In addition, private foundations must make current annual returns available for public inspection at their principal office.

An exemption application filed by a tax-exempt organization, and the IRS determination of its exempt status, are disclosable to the public through requests to the IRS.

House bill

Information returns.—The House bill provides that a tax-exempt organization (other than a private foundation) must make available for public inspection, generally at the organization's principal office, a copy of its three most recent annual information returns. (Names of contributors to the organization need not be disclosed.) The returns also must be available for inspection at certain regional or district offices of the organization. Private foundations remain subject to the present-law disclosure requirements.

Annual information returns of tax-exempt organizations continue to be disclosable to the public through requests to the IRS. The bill does not modify the requirements for filing returns.

The provision is effective for annual returns for years beginning after December 31, 1986.

Exemption application.—The House bill provides that a tax-exempt organization must make a copy of its exemption application, and the determination of exempt status, available for public inspection at the organization's principal office (and at certain regional or district offices).

Penalty.—Any person under a duty to comply with the inspection provisions who, without reasonable cause, fails to make annual information returns or exemption applications available for public inspection is subject to a penalty of $10 for each day the disclosure requirement was not satisfied. A maximum penalty of $5,000 applies for all failures to disclose any one annual information return. (There is no maximum penalty for failures to disclose any one exemption application.) Additional penalties apply if the failure to permit public inspection was willful.

The provisions are effective on or after the date of enactment, unless the exemption application was submitted to the IRS on or before July 15, 1987, and the organization does not possess a copy of such application.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill, with a modification that the provision with respect to inspection of exemption applications applies 30 days after the date of enactment.

3. Additional information on annual information returns of section 501(c)(3) organizations

Present law

Except for churches and certain other organizations, any tax-exempt organization must file an annual information return with the IRS, setting forth the organization's items of gross income, receipts, and disbursements, plus certain other information related to the administration of the tax law.

A tax-exempt charitable organization described in section 501(c)(3) must also provide certain additional information relating to contributions received by the organization and compensation paid to its employees.

A tax-exempt organization which, without reasonable cause, fails to file a required annual information return is subject to a penalty of $10 a day for each day the failure continues, with a maximum penalty of $5,000 with regard to any one return. In addition, the organization's managers are subject to a similar penalty if, without reasonable cause, they refuse to file the return after demand from the IRS.

House bill

The House bill requires tax-exempt charitable organizations described in section 501(c)(3) to include in their annual returns information about direct and indirect transactions or relationships between such organizations and other tax-exempt organizations not described in section 501(c)(3)—e.g., certain lobbying groups—or political organizations described in section 527.

The IRS may issue regulations or forms requiring the furnishing of any such information for purposes of preventing diversion of funds from a charitable organization's exempt purpose or misallocation of revenues or expenses between organizations.

The House bill expands the scope of the penalty provisions to apply to cases where a tax-exempt organization files an annual information return but, without reasonable cause, fails to furnish on the return any required information, or furnishes incorrect information. The maximum penalty imposed on an organization with respect to one return may not exceed the lesser of $5,000 or five percent of the organization's gross receipts for the year.

The additional information must be furnished on annual returns for years beginning after December 31, 1987. The penalty for failing to provide required or correct information applies to returns for years beginning after December 31, 1986.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

4. Required disclosure that certain information or services sold by tax-exempt organizations are available free from the Federal Government

Present law

There is no tax penalty under present law if a tax-exempt organization selling certain information or services to the public fails to disclose that such information or services could be obtained free (or for nominal charge) directly from the Federal Government.

House bill

The House bill imposes a penalty on a tax-exempt organization (including a sec. 527(e) political organization) that sells to individuals certain information or routine services that could be readily obtained free of charge (or for a nominal charge) from the Federal Government and fails to make an express statement (in a conspicuous and easily recognizable format) that the information or services can be so obtained if such failure is due to intentional disregard of the disclosure requirement. Such an intentional failure subjects the organization to a penalty equal to the greater of (1) $1,000 for each day the failure occurred or (2) 50 percent of the aggregate cost of solicitations made by the organization that failed to include the required disclosure.

The provision is effective for solicitations made after December 31, 1987.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification that the provision is effective for solicitations made after January 31, 1988.

B. POLITICAL CAMPAIGN ACTIVITIES AND LOBBYING ACTIVITIES OF SECTION 501(C)(3) ORGANIZATIONS

Clarification of prohibited political campaign activities

Present law

An organization does not qualify for tax-exempt status as a charitable organization under section 501(c)(3), and is not eligible to receive tax-deductible charitable contributions, unless no substantial part of its activities is carrying on propaganda or otherwise attempting to influence legislation, and unless the organization does not participate in, or intervene in, any political campaign on behalf of a candidate for public office. Treasury regulations interpret the prohibition on political campaign activities to prohibit any such activities either on behalf of or in opposition to any candidate for public office.

House bill

The House bill clarifies that the statutory provision disqualifying organizations that engage in political campaign activities from tax-exempt status under section 501(c)(3), and from eligibility to receive tax-deductible charitable contributions, applies with respect to campaign activities in opposition to, as well as on behalf of, a candidate for public office.

The statutory clarification applies with respect to activities occurring after the date of enactment. (Treasury regulations also apply the same rule with respect to prior activities.)

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Status of organization after loss of exemption under section 501(c)(3) because of political campaign activities

Present law

Present law provides that a charitable organization that loses its tax-exempt status under section 501(c)(3) because of its lobbying activities may not be treated thereafter as a tax-exempt social welfare organization under section 501(c)(4). If a charitable organization loses its tax-exempt status under section 501(c)(3) on account of prohibited political campaign activities, the organization may be eligible to be automatically reclassified as tax-exempt under section 501(c)(4).

House bill

The House bill provides that an organization that ceases to qualify for tax-exempt status under section 501(c)(3) by reason of participating or intervening in a political campaign on behalf of, or in opposition to, a candidate for public office cannot thereafter qualify as a tax-exempt organization described in section 501(c)(4). The provision applies with respect to activities occurring after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

3. Excise taxes on political expenditures of charitable organizations

Present law

A private foundation described in section 501(c)(3) (but not a public charity described in that section) is subject to an excise tax equal to ten percent of any expenditure to influence the outcome of any specific public election cr for any other noncharitable purpose (sec. 4945). An additional excise tax equal to 100 percent of the political expenditure is imposed on the foundation if the expenditure is not "corrected" (meaning that the foundation must recover the expenditure to the extent possible and establish safeguards to prevent such expenditures in the future).

If a private foundation is liable for the excise tax, an excise tax equal to 2½ percent of the expenditure (not to exceed $5,000 per expenditure) is imposed on any manager who, without reasonable cause, agreed to the expenditure knowing that it was a political expenditure. An additional excise tax equal to 50 percent of the expenditure (not exceeding $10,000 per expenditure) is imposed on a foundation manager who refuses to agree to correction of the expenditure.

Any charitable organization (including a private foundation) ceases to qualify for tax-exempt status under section 501(c)(3), or for eligibility to receive tax-deductible charitable contributions, if it participates or intervenes in any political campaign for or against a candidate for public office.

House bill

The House bill extends the penalty tax structure applicable under present law to private foundations so that if any charitable organization described in section 501(c)(3) makes a political expenditure (as defined below), the organization is subject to an excise tax equal to ten percent of the amount of the expenditure. An additional excise tax equal to 100 percent of the political expenditure is imposed on the organization if the expenditure is not "corrected" (meaning that the organization must recover the expenditure to the extent possible and establish safeguards to prevent future political expenditures).

Under the bill, an excise tax equal to 2½ percent of the expenditure (not to exceed $5,000 per expenditure) is imposed on any manager of the organization who, without reasonable cause, agreed to the expenditure knowing that it was a political expenditure. (As under the present-law excise taxes, the IRS has the burden of proof as to whether the manager knowingly participated in the political expenditures.) An additional excise tax equal to 50 percent of the political expenditure (not exceeding $10,000 per expenditure) is imposed on any manager who refuses to agree to correction of the expenditure.

In general, "political expenditure" is defined as any expense of participating or intervening in a political campaign for or against a candidate for public office. The House bill also provides that solely in the case of an organization formed or availed of substantially for purposes of promoting the candidacy or potential candidacy of an individual for public office, the term "political expenditure" includes, for purpcses of the excise tax, certain types of expenditures (such as travel expenses of such individual) specified in the bill.

The adoption of the excise tax sanction does not modify the present-law rule that an organization is not tax-exempt under section 501(c)(3), or eligible to receive tax-deductible charitable contributions, if the organization engages in any political campaign activities.

The provisions apply for taxable years beginning after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the modifications described below.

The conference agreement provides that the Internal Revenue Service is not to assess, or is to abate or refund, any initial (first-tier) excise tax on political expenditures if the organization or manager establishes to the satisfaction of the IRS that (1) the political expenditure was not willful and flagrant and (2) that the political expenditure was corrected (meaning that the expenditure is recovered to the extent possible and safeguards are established to prevent future political expenditures).

The conference agreement includes modifications to the House bill provision that enumerates certain expenditures as political expenditures for purposes of the excise tax in the case of an organization that is formed, or effectively controlled by a candidate or prospective candidate which organization is availed of, primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office. The enumerated expenditures specified in the modified provision are (1) amounts paid or incurred to such individual for speeches or other services; (2) travel expenses of such individual; (3) expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual; (4) expenses of advertising, publicity, and fundraising for such individual; and (5) any other expense which has the primary effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

The fifth category includes, for example, expenditures for voter registration, voter turnout, or voter education activities that under present law constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office—i.e., that under present law constitute political campaign activities that are inconsistent with tax-exempt status under section 501(c)(3) and with eligibility to receive tax-deductible charitable contributions under section 170(c)(2). Conversely, the fifth category does not include (and the excise tax does not apply to) expenditures for voter registration, voter turnout, or voter education that under present law do not constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office—i.e., that under present law constitute activities that are consistent with tax-exempt status under section 501(c)(3) and with eligibility to receive tax-deductible charitable contributions under section 170(c)(2). Thus, the conference agreement does not in any way change the present-law rules as to the types of voter registration, voter turnout, and voter education activities in which a charitable organization may engage consistent with tax-exempt status under section 501(c)(3) and eligibility to receive tax-deductible charitable contributions under section 170(c). (The special rules in section 4945(f) applicable to voter registration activities of private foundations continue to apply only to private foundations.) For example, neutral voter education activities as described in Rev. Rul. 78-248, 1978-1 C.B. 154, continue to constitute activities that are consistent with status as a tax-exempt charitable organization, and do not result in imposition of the excise tax.

As noted above, the conference agreement modifies the House bill provision enumerating certain expenditures as political expenditures for purposes of the excise tax, so that the provision applies only in the case of an organization formed, or effectively controlled by a candidate or prospective candidate which organization is availed of, primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office. The conferees intend that, for purposes of this provision, an organization is to be considered as effectively controlled by a candidate or prospective candidate only if the individual has a continuing, substantial involvement in the day-to-day operations or management of the organization. An organization is not to be considered as effectively controlled by a candidate or a prospective candidate merely because it is affiliated with such candidate, or merely because the candidate knows the directors, officers, or employees of the organization. Likewise, the effectively controlled test is not met merely because the organization carries on its research, study, or other educational activities with respect to subject matter or issues in which the individual is interested or with which the individual is associated.

The conferees intend that the determination of whether the primary purposes of an organization described in the provision are promoting the candidacy or prospective candidacy of an individual for public office is to be made on the basis of all relevant facts and circumstances. The factors to be considered include whether the surveys, studies, materials, etc. prepared by the organization are made available only to one individual (the candidate) or are made available to the general public; and whether the organization pays for speeches and travel expenses for only one individual, or for speeches or travel expenses of several persons. The fact that a candidate or prospective candidate utilizes studies, papers, materials, etc. prepared by the organization (for example, in speeches by the individual) is not to be considered as a factor indicating that the organization has a purpose of promoting the candidacy or prospective candidacy of such individual where such studies, papers, materials, etc. are not made available only to that individual.

4. Additional enforcement authority in the case of flagrant political expenditures by charitable organizations

Present law

Under present law, the IRS does not have authority to make immediate tax assessments or to seek a court injunction against continuing political expenditures of a charitable organization even if the organization is flagrantly violating the prohibition on any political campaign activities. The IRS has such enforcement authority to remedy other violations of the tax law.

House bill

The House bill authorizes the IRS to make an immediate determination and assessment of income tax, or of the excise tax on political expenditures, for the current or preceding taxable year of a charitable organization described in section 501(c)(3) if the IRS finds that (1) the organization has made political expenditures, and (2) such expenditures constitute a flagrant violation of the prohibition against making political expenditures.

The IRS also is given authority to seek an injunction from a Federal district court prohibiting a charitable organization from further making political expenditures. The injunction action may be instituted only if the IRS has notified the organization of its intention to seek an injunction if the making of political expenditures does not immediately cease, and only if the Commissioner personally determines that (1) the organization has flagrantly participated or intervened in a political campaign, and (2) injunctive relief is appropriate to prevent future political expenditures.

The provisions are effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

5. Excise tax on disqualifying lobbying expenditures of certain charitable organizations

Present law

A tax-exempt private foundation described in section 501(c)(3) is subject to an excise tax equal to ten percent of any expenditure to carry on propaganda or otherwise to attempt to influence legislation, or for any other noncharitable purposes (sec. 4945). If the foundation is liable for the excise tax, any manager of the foundation who, without reasonable cause, agreed to making the expenditure knowing it was a taxable expenditure is subject to an excise tax equal to 2½ percent of the expenditure (not exceeding $5,000 per expenditure).

Certain public charities described in section 501(c)(3) may elect to have the amount of permitted lobbying expenditures they may make measured under the arithmetical tests set forth in section 501(h). If lobbying expenditures exceed the allowable amounts under that section, an excise tax is imposed on the organization equal to 25 percent of the excess lobbying expenditures. If the electing organization's lobbying expenditures normally are more than 150 percent of the allowable amounts, the organization is disqualified from tax-exempt status.

Except where section 501(h) applies, any charitable organization (including a private foundation) ceases to qualify for tax-exempt status, or eligibility to receive tax-deductible charitable contributions, if more than an insubstantial part of its activities consists of lobbying.

House bill

The House bill imposes an excise tax equal to five percent of the lobbying expenditures of certain charitable organizations if (and only if) the organization ceases to qualify for tax-exempt status under section 501(c)(3) by engaging in more than an insubstantial amount of lobbying activities. The tax does not apply to (1) charitable organizations that have elected to be subject to the lobbying limitations of section 501(h), (2) churches or certain church-related organizations that are not eligible to elect the section 501(h) rules, or (3) private foundations (which are subject to the section 4945 excise tax on lobbying activities).

If an organization whose exempt status has ceased is liable for the excise tax, any manager of the organization who, without reasonable cause, agreed to making the lobbying expenditures knowing that the expenditures could result in revocation of the organization's tax-exempt status is subject to a tax equal to five percent of such lobbying expenditures. As under the present-law excise taxes, the IRS has the burden of proof as to whether the manager knowingly participated in the lobbying expenditures.

The provisions are effective for taxable years beginning after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the following modification relating to a manager's liability for the tax. Under the conference agreement, if an organization whose exempt status has been revoked is liable for the new excise tax on lobbying expenditures, a tax equal to five percent of such lobbying expenditures is imposed on any manager of the organization who agreed to the making of the expenditures, knowing that such lobbying expenditures were likely to result in revocation of the organization's tax-exempt status, unless the manager's agreement was not willful and was due to reasonable cause. The burden of proof as to whether the manager knowingly participated in the lobbying expenditures is on the Internal Revenue Service. The fact that the excise tax is imposed on an organization does not itself establish that any manager of the organization is subject to the excise tax.

The reasonable cause exception to the tax applicable to managers is to be applied in the same manner as the present-law reasonable cause exception to the excise tax liability of managers of a private foundation under section 4945 (see Treas. Reg. sec. 53.4945-1). Thus, a manager is liable for the excise tax under the conference agreement only if the IRS shows that, in agreeing to the making of the lobbying expenditures, the manager knew that such expenditures constituted lobbying expenditures and knew that as a result of such expenditures the organization was likely to lose its tax-exempt status under section 501(c)(3), and only if the manager failed to obtain an opinion of counsel concerning the expenditures that would protect the manager under the reasonable cause exception.

APPENDIX—ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS OF CONFERENCE AGREEMENT—FISCAL YEARS 1988-90

[Millions of dollars]

Item	1988	1989	1990	1988-90
PART 1.—REVENUE PROVISIONS				
I. Individual Tax Provisions:				
A. Income Tax Provisions:				
1. Child and dependent care credit: Deny credit for overnight camp expenses	11	106	112	229
2. Limit interest deduction: Home equity debt in excess of acquisition debt capped at $100,000; total for qualified residence debt capped at $1 million	8	31	54	93
3. One-year delay in application of 2% floor to indirect deductions through regulated investment companies	−239			−239
B. Employee Benefit Provisions: Modify definition of active participant for IRA rules	(1)	(1)	(1)	(1)
II. Business Tax Provisions:				
A. Accounting Provisions:				
1. Repeal vacation pay reserve	614	885	1,639	3,138
2. Repeal completed contract method	417	773	975	2,165
3. Require capitalization of pension past service liability	91	153	173	417
4, Repeal installment method for dealers	1,593	2,750	1,942	6,285
5. Repeal cash method of accounting for farms with receipts over $25 million	27	42	45	114
6. Changes in required taxable years for partnerships, S corporations, and personal service corporations	31	(1)	3	34
B. Partnership Provisions:				
1. Portfolio income	77	127	170	374
2. Other publicly-traded partnership provisions	22	42	60	124
3. Treatment of tax-exempt partners	28	97	111	236
4. Study of publicly-traded partnerships				
C. Corporate Provisions:				
1. Modify computation of earnings and profits for intercorporate dividends and basis adjustments (overrule Woods Investment Company case)	34	208	450	692
2. Denial of graduated rates for personal service corporations	75	125	140	340
3. Dividend received deduction to 70%	219	381	426	1,026

APPENDIX—ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS OF CONFERENCE AGREEMENT—FISCAL YEARS 1988-90—Continued

[Millions of dollars]

Item	1988	1989	1990	1988-90
4. Reduction of tax avoidance in certain corporate dispositions	37	94	273	404
5. Greenmail and hostile corporate takeovers	([1])	([1])	([1])	([1])
6. Limitations on net operating loss carryforwards of corporations following worthless securities deduction by shareholders	5	8	9	22
7. Tax loss mergers and benefit acquisitions	26	44	48	118
8. LIFO recapture on conversion from C corporation to S corporation	58	129	185	372
9. Regulated Investment Companies capital gains distribution	240	12	15	267
D. Pensions: Modify funding rules [2]	679	1,502	992	3,173
E. Foreign Tax Provisions: Treatment of South African income	20	23	14	57
F. Insurance Provisions:				
1. Interest rate used in computing reserves for life insurance and annuity contracts	43	154	208	405
2. Treatment of investment income of foreign insurance companies	11	27	39	77
3. Minimum tax treatment of mutual life insurance companies	25	57	61	143
III. Estimated Tax Provisions	806	117	79	1,002
IV. Estate and Gift Taxes:				
1. Freeze estate and gift rates at 55%	21	176	232	429
2. Modify rates and unified credit	2	23	31	56
3. Valuation of property (estate tax freezes & minority discount)	6	46	57	109
4. ESOP estate tax deduction	1,226	1,553	1,862	4,641
V. Excise Taxes:				
1. Telephone tax: 3-year extension	1,324	2,266	2,472	6,062
2. Collect diesel fuel and special motor fuels taxes on sales to retailer	215	230	200	645
3. Extension of termination date for coal excise tax rate				
VI. Other Revenue—Increase Provisions:				
A. Targeted Jobs Tax Credit	4	2	2	7
B. Illegal Federal Irrigation Subsidies as Gross Income	([1])	([1])	([1])	1
C. Compliance Provisions:				
1. Escheat of refunds	10	10	10	30
2. IRS funding				
D. Tax-Exempt Bond Provisions:				
1. Limitation on issuance of tax-exempt bonds to acquire existing output facilities	9	70	162	241
2. Limitation on issuance of tax-exempt bonds by Indian tribes	6	18	29	53
VII. Employment Taxes (Title IX):				
1. Railroad retirement taxes	144	182	183	509
2. FUTA tax: 3-year extension	715	1,009	1,033	2,757
3. FICA taxes:				
a. Expand employer share of FICA tax to include all cash tips	184	281	302	767
b. Expand FICA tax to inactive duty reservists, certain agricultural employees, family members, and group-term life insurance includible in wages	187	255	275	717
VIII. Vaccine Compensation Tax and Trust Fund (Title IX) [3]	67	89	−5	151
Subtotal: Part 1.—Revenue Provisions	9,078	14,097	15,068	38,243
PART 2.—USER FEES (Title IX)				
I. Internal Revenue Service	46	60	60	166
II. Extensions and increases in certain Alcohol, Tobacco, and Firearms occupational taxes	167	106	106	379
III. Customs Service	122	152	591	865
Subtotal: Part 2.—User Fees	335	318	757	1,410
Grand Total	9,413	14,415	15,825	39,653

[1] Gain of less than $500,000.
[2] Estimates represent the net effects of full-funding rules and underfunding rules.
[3] Estimate net of outlay amounts.

From the Committee on the Budget, for consideration of the House bill (except Title X), and the Senate amendment (except subtitle B of Title IV), and modifications committed to conference:

WILLIAM H. GRAY III,
BUTLER DERRICK,
MARTIN FROST,
ED JENKINS,
PAT WILLIAMS,
JAMES L. OBERSTAR,
WILLIAM F. GOODLING,

From the Committee on the Budget, for consideration of Title X of the House bill, and subtitle B of Title IV of the Senate amendment, and modifications committed to conference:

ED JENKINS,

From the Committee on Agriculture, for consideration of Title I and section 5003 of the House bill, and Title VIII and sections 2101 through 2113, 2301, 3001, and 9005 of the Senate amendment, and modifications committed to conference:

DE LA GARZA,
ED JONES,
CHARLIE ROSE,
JERRY HUCKABY,
DAN GLICKMAN,
CHARLIE STENHOLM,
LEON E. PANETTA,
ED MADIGAN,
ARLAN STANGELAND,
ROBERT F. SMITH,
TOM LEWIS,
WALLY HERGER,

From the Committee on Armed Services, for consideration of section 5001 of the Senate amendment, and modifications committed to conference:

LES ASPIN,
BEVERLY BYRON,
WILLIAM L. DICKINSON,

From the Committee on Banking, Finance and Urban Affairs, for consideration of Title II of the House bill, and sections 9006, 9007, 9010, and 9012 of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
FRANK ANNUNZIO,
MARY ROSE OAKAR,
ROBERT GARCIA,

From the Committee on Banking, Finance, and Urban Affairs, for consideration of Title X of the Senate amendment, and modifications committed to conference:

FERNAND ST GERMAIN,
MARY ROSE OAKAR,

From the Committee on Education and Labor, for consideration of Title III and subtitle E and section 9602 of Title IX of the House bill, and Part VI of Title IV, Title VI, and sections 4111, 4112, and 9008 of the Senate amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
(except for the pension provisions)
WILLIAM D. FORD,
(except for the pension provisions)
JOSEPH M. GAYDOS,
(except for the pension provisions)
WILLIAM L. CLAY,
(except for the pension provisions)
PAT WILLIAMS,
(except for the pension provisions)
DALE E. KILDEE,
(except for the pension provisions)
MAJOR R. OWENS,
(except for the pension provisions)
JAMES M. JEFFORDS,
WILLIAM F. GOODLING,
TOM COLEMAN,
MARGE ROUKEMA,

From the Committee on the Budget, for consideration of Title III and subtitle E of Title IX of the House bill, and part VI of subtitle B of title IV and subtitle A of Title VI of the Senate amendment:

DELBERT LATTA,
CONNIE MACK,
DENNY SMITH,

From the Committee on Energy and Commerce, for consideration of subtitles A, B, and C of Title IV, parts 2 through 4 of subtitle C of Title IX, and sections 1052 and 9602 of the House bill, and subparts II through V of part A, subparts I (except sections 4086 and 4091) and II of part B of subtitle A of Title IV and sections 4001(q), 4002(b), 4002(c), 4051, 4111 through 4113, 9010, and 9011 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,
CARDISS COLLINS,
MIKE SYNAR,
RON WYDLER,
JIM SLATTERY,
BOB WHITTAKER,
(only for the Medicaid provisions)
TOM TAUKE,
(only for the Medicaid provisions)

From the Committee on Energy and Commerce, for consideration of sections 4301, 5001, and 6201 of the House bill, and subtitle A of Title II and Title III (except sections 3001 and 3003) of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHILIP R. SHARP,
AL SWIFT,
MICKEY LELAND,
JIM COOPER,
JIM SLATTERY,
NORMAN F. LENT,
CARLOS MOORHEAD,
BILL DANNEMEYER,
(only for section 6201 of the House bill)
JACK FIELDS,

From the Committee on Energy and Commerce, for consideration of section 9033 of the House bill, and section 4583 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
TOM LUKEN,
JAMES J. FLORIO,
BILLY TAUZIN,
JERRY SIKORSKI,
RICK BOUCHER,
JIM SLATTERY,
NORMAN F. LENT,
BOB WHITTAKER,
TOM TAUKE,
MIKE BILIRAKIS,

From the Committee on Interior and Insular Affairs, for consideration of sections 4301 and 5001 of the House bill, and sections 2001 through 2009 and 3010 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEO MILLER,
AUSTIN J. MURPHY,
BRUCE F. VENTO,
ED MARKEY,
(only for purposes of NRC user fees)
NICK RAHALL,
(only for purposes of NRC user fees)
DON YOUNG,
MANUEL LUJAN, Jr.,
ROBERT J. LAGOMARSINO,
RON MARLENEE,

From the Committee on Interior and Insular Affairs, for consideration of sections 5002 through 5004 of the House bill, and sections 2101 through 2113 and 9009 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEORGE MILLER,
PHILIP R. SHARP,
ED MARKEY,
AUSTIN J. MURPHY,
NICK RAHALL,
DON YOUNG,
MANUEL LUJAN, Jr.,
ROBERT J. LAGOMARSINO,
RON MARLENEE,

From the Committee on Interior and Insular Affairs, for consideration of section 5005 of the House bill, and sections 2201 through 2203 and 2301 of the Senate amendment, and modifications committed to conference:

MO UDALL,
GEO MILLER,
PHILIP R. SHARP,
ED MARKEY,
SAM GEJDENSON,
BRUCE F. VENTO,
DON YOUNG,
MANUEL LUJAN, Jr.,
ROBERT J. LAGOMARSINO,
RON MARLENEE,

From the Committee on the Judiciary, for consideration of the bankruptcy provisions contained in sections 9432 and 9433 of the House bill, and sections 4553(e), 4558, and 4559 of the Senate amendment, and modifications committed to conference:

HAMILTON FISH, Jr.,
BILL DANNEMEYER,
CARLOS J. MOORHEAD,
HENRY J. HYDE,

From the Committee on Merchant Marine and Fisheries, for consideration of Title VI of the House bill, and sections

1002, 2002 (insofar as that section would add a new section 409 (c) and (d) to the Nuclear Waste Policy Act of 1982), 2008, and 3001 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
MIKE LOWRY,
EARL HUTTO,
BOB DAVIS,
DON YOUNG,
(except for sections 2002 and 2008 of the Senate amendment)
NORMAN F. LENT,
(except for sections 2002, 2008, and 3001 of the Senate amendment)
NORMAN D. SHUMWAY,
BILL HUGHES,
(solely for section 3001 of the Senate amendment)

From the Committee on Post Office and Civil Service, for consideration of Title VII of the House bill, and Title V (except section 5002) of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
MICKEY LELAND,
GARY L. ACKERMAN,
GENE TAYLOR,
FRANK HORTON,

From the Committee on Public Works and Transportation only for consideration of subtitle A of Title VI of the House bill:

JAMES J. HOWARD,
ROBERT A. ROE,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY NOWAK,
NICK RAHALL,
JOHN PAUL HAMMERSCHMIDT,
BUD SHUSTER,
ARLAN STANGELAND,
NEWT GINGRICH,

From the Committee on Government Operations, for consideration of sections 5002 and 9003 of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
JOHN CONYERS,
CARDISS COLLINS,
GLENN ENGLISH,
HENRY A. WAXMAN,
TED WEISS,
FRANK HORTON,
ROBERT A. WALKER,
WILLIAM F. CLINGER,
AL MCCANDLESS,

From the Committee on Science, Space, and Technology, for consideration of sections 2002 (insofar as that section would add new sections 403(i) and 410 to the Nuclear Waste Policy Act of 1982), 2006, and 2008 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
GEORGE E. BROWN, Jr.,
JAMES H. SCHEUER,
TIM VALENTINE,
JIM CHAPMAN,
SID MORRISON,
LAMAR SMITH,
ERNEST KONNYU,

From the Committee on Veterans' Affairs, for consideration of Title VIII of the House bill, and Title VII of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
MARCY KAPTUR,
GERALD B.H. SOLOMON,

From the Committee on Ways and Means, for consideration of Title III, subtitle A of Title IV, and Title IX of the House bill, and subtitle A of Title IV (except subpart V of Part A and Subpart II of Part B) and subtitle A of Title VI and section 8309 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
THOMAS J. DOWNEY,
BILL GRADISON,
BILL FRENZEL,
(only for the pension provisions)
RICHARD T. SCHULZE,
(only for the pension provisions)

From the Committee on Ways and Means, for consideration of Title X of the House bill, and subtitle B of Title IV of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM M. GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
ANDREW JACOBS, Jr.,
THOMAS J. DOWNEY,

From the Committee on Ways and Means, for consideration of Title X of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
THOMAS J. DOWNEY,
JOHN J. DUNCAN,

As additional conferees, for consideration of the House bill (except Title X), and the Senate amendment (except subtitle B of Title IV), and modifications committed to conference:

THOMAS S. FOLEY,
DICK CHENEY,
Managers on the Part of the House.

From the Committee on the Budget:

LAWTON CHILES,
ERNEST F. HOLLINGS,
J. BENNETT JOHNSTON,
JIM SASSER,
DON RIEGLE,
J.J. EXON,
FRANK R. LAUTENBERG,
PETE V. DOMENICI,
RUDY BOSCHWITZ,
BOB DOLE,

From the Committee on Agriculture, Nutrition, and Forestry:

PAT LEAHY,
JOHN MELCHER,
DAVID PRYOR,
RICHARD G. LUGAR,
THAD COCHRAN,

From the Committee on Armed Services:

SAM NUNN,
JOHN GLENN,

From the Committee on Banking, Housing, and Urban Affairs:

WILLIAM PROXMIRE,
ALAN CRANSTON,
PAUL SARBANES,

From the Committee on Commerce, Science, and Transportation:

FRITZ HOLLINGS,
DANIEL K. INOUYE,
WENDELL H. FORD,
JACK DANFORTH,

From the Committee on Energy and Natural Resources:

J. BENNETT JOHNSTON,
DALE BUMPERS,
WENDELL FORD,
JOHN MELCHER,
JEFF BINGAMAN,
TIM WIRTH,
DON NICKLES,

From the Committee on Environment and Public Works;
QUENTIN N. BURDICK,
GEORGE MITCHELL,
MAX BAUCUS,
JOHN BREAUX,
ROBERT T. STAFFORD,
JOHN H. CHAFEE,
DAVE DURENBERGER,

From the Committee on Finance:
LLOYD BENTSEN,
SPARK M. MATSUNAGA,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
DAVID L. BOREN,
BILL BRADLEY,
GEORGE MITCHELL,
BOB PACKWOOD,
JOHN C. DANFORTH,
JOHN H. CHAFEE,
JOHN HEINZ,

From the Committee on Governmental Affairs:
JOHN GLENN,
LAWTON CHILES,
JIM SASSER,
DAVID PRYOR,
TED STEVENS,
(except I do not concur with the budget reduction allocations pursuant to the Summit agreement)
WARREN B. RUDMAN,

From the Committee on Labor and Human Resources:
TED KENNEDY,
CLAIBORNE PELL,
PAUL SIMON,
ORRIN HATCH,
ROBERT T. STAFFORD,
DAN QUAYLE,

From the Committee on Veterans' Affairs:
ALAN CRANSTON,
SPARK M. MATSUNAGA,
FRANK H. MURKOWSKI,

Managers on the Part of the Senate.

U.S. GOVERNMENT PRINTING OFFICE : 1989 O - 237-780 : QL 3