

bank makes loans with funds that it has obtained from deposits or other borrowings. Corporate taxes are paid by the bank only on the portion of the interest income received that is not paid out as interest to its depositors or other creditors.

Traditional securitizations typically involve the use of a special purpose financing vehicle as the holder of the loans, and issue debt securities instead of raising funds from bank deposits, but the tax principle is the same. That is, assuming that the financing vehicle is a corporation, corporate taxes are paid only on the portion of the interest income received that is not paid out to the holders of debt instruments issued by the entity. As a result, the key tax issue is determining how best to structure the transaction so that the securities qualify as debt, rather than as an ownership interest in the special purpose entity.

With REMICs, or similar entities structured under the tax law as fixed investment trusts or partnerships, the task of securitizing loans becomes much easier because 100 percent of the income paid out to investors is passed through without the imposition of an intervening corporate tax. This complete pass-through treatment is available regardless of whether the securities are classified as debt or as equity. Thus, the problem of determining how best to structure a security so that it satisfies the business objectives of the parties and still qualifies as debt for tax purposes is eliminated.

**FASITs and Asset Securitization.**—Like the REMIC provisions before it, the FASIT legislation will help make loan securitization easier by creating a new pass-through structure specifically designed for loan securitization. Unlike REMICs, FASITs will be available for all types of loans or other instruments treated as debt for Federal income tax purposes.

Although the FASIT itself will not be subject to any tax, its net income will be included in the United States income tax return of its owner or owners, and thus will, in virtually all cases, be subject to corporate income tax. The only exception is a provision intended to facilitate small business loan securitizations, which allows businesses operated as partnerships or S corporations to retain ownership of FASITs used to securitize loans to their customers, such as trade receivables.

Loans will be transferred or sold to the FASIT so that it can issue securities backed by loans it has acquired. As with REMICs, FASITs will be permitted to issue securities that qualify as debt of the FASIT for Federal income tax purposes even though they are issued in non-debt form for State law purposes. This latter point reflects the fact that the assets of the FASIT are the sole source of payments on the securities, and that any risk of loss on the assets that is borne by the owners of the FASIT has been limited to a reasonably estimable amount. At the same time, treating such certificates as debt of the FASIT for tax purposes means that the portion of FASIT income passed through to the holders of the certificates is not included in the FASIT income that is passed through to the corporate owners of the FASIT.

The FASIT legislation makes the rules for qualifying securities as debt, based upon their economic substance, clearer and more straightforward. In so doing, FASIT makes the tax rules governing the most advanced type of securitization structures more accessible to a

wider variety of issuers and their tax counsel, thus creating a more liquid and more efficient marketplace.

In addition to making the applicable legal rules and standards more accessible, FASIT will also ease some of the common law rules that are generally perceived as governing these types of transactions.

Under current case law, securities purporting to qualify as debt for tax purposes generally must have a high investment grade rating of "A" or better. Under the FASIT legislation, debt securities can be issued as long as they do not have a yield that is more than 5 percentage points higher than the yield on Treasury obligations with a comparable maturity, which will permit more subordinated debt securities to be issued. Even debt securities at the top end of that yield limitation are still fundamentally debtlike, as the 5 percentage point standard is borrowed from current tax law rules governing when certain high yield discount bonds will be subject to special rules deferring accrued interest deductions. (See, section 163(e)(5), Internal Revenue Code of 1986.) These rules effectively assume that obligations yielding 5 points more than Treasury bonds could and do qualify as debt. Thus, FASIT legislation will not be authorizing the issuance of debt securities that are fundamentally different from debt securities that are currently outstanding in the markets.

The yield limitation, which limits how much income can be passed through to the holders of FASIT debt instruments, is important because all remaining income—the income associated with the true equity like risk of investing in a pool of loans—will be taxable to the U.S. banks or other U.S. corporations that retain or acquire the ownership interests of the FASIT. Securitization has been driven by economic, not tax considerations. Consequently, we have exercised great care to ensure that this legislation contains no loopholes or gimmicks. Strong antiabuse provisions are also included to prevent any gamesmanship.

Not only is this legislation devoid of any loopholes, it actually raises \$92 million over 10 years. When a loan or an asset is transferred by the bank to the FASIT, there is an immediate recognition of gain. For example, assume that a loan will generate \$10 of income each year over a 10-year period. When the loan is transferred to the FASIT, the present value of the entire \$100 of income generated by the loan is recognized. In effect, this phenomenon is identical to an acceleration of estimated taxes, and the result is that the revenues lost by relieving the burden of the corporate level tax on the entity level is more than offset.

Mr. Speaker, this FASIT legislation promises to be a great benefit to the Nation's small businesses, which often have difficulty gaining access to needed capital. We have seen the tremendous success of REMIC in developing a secondary market for home mortgages. If FASIT is even half as successful as REMIC, we will have enacted the most important legislation in history for small business.

In addition to helping small business and others gain access to capital, this legislation protects the taxpayer from being forced to finance possible future bailouts of the banking industry. This legislation will promote safety and soundness of the banking system and spread the risks of loans throughout the capital markets rather than allowing them to be

concentrated in one area, with the Federal Government the ultimate guarantor.

This legislation also simplifies the tax rules governing securitization of asset-backed securities and creates a single vehicle available for all forms of non-mortgage debt and, eventually, FASITs may even supplant REMICs as the vehicle of choice for all securitizations.

Finally, unlike many worthy tax measures which seem beyond our grasp because of budgetary constraints, this legislation actually raises money without raising taxes.

I am proud to have introduced this fine piece of legislation, and I urge my colleagues to join with me to see that FASIT is enacted in 1995.

GEN. COLIN POWELL—REMARKS  
ON THE U.S.-FLAG MERCHANT  
MARINE

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, June 30, 1995

Mr. SOLOMON. Mr. Speaker, a strong Merchant Marine Fleet is vital to our national defense and economy. Without a strong fleet, the United States would become dependent on foreign ships, thus endangering its ability to respond to crisis situations overseas.

On June 15, 1992, Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, delivered the commencement address to the U.S. Merchant Marine Academy. In his remarks, General Powell talked about the strategic importance of the U.S.-flag merchant marine and American merchant mariners. His statements clearly rebut the comments made in the Wall Street Journal and by other critics demeaning both the role played by the merchant marine during the Persian Gulf war and the need to maintain a strong maritime industry to meet future national defense needs. General Powell said the following:

Since I became Chairman of the Joint Chiefs of Staff, I have come to appreciate first hand why our merchant marine has long been called the nation's fourth arm of defense.

The American seafarer provides an essential service to the well-being of the nation, as was demonstrated so clearly during Operations Desert Shield and Desert Storm. Merchant Marines . . . worked side-by-side with soldiers, sailors, airmen, Marines and Coast Guardsmen to get the job done that needed to be done. . .

Fifty years ago today, U.S. merchant vessels operated by your forbears were battling the frigid seas of the North Atlantic to provide the lifeline to our allies in Europe. The sacrifice of those mariners was essential to keeping us in the war until we could go on the offensive. . . In World War II, enemy attacks sank more than 700 U.S. flag vessels and claimed the lives of more than 6,000 civilian seafarers. . .

For too many years, the pivotal contribution of the merchant marine to our victory in World War II has been overlooked. But now the situation has begun to be rectified. America is eternally grateful to all those who served in our merchant marine over the years for their efforts, their commitment and their sacrifice in defense of our beloved America. They are second to none. . .

Sealift was the workhorse of our deployment and sustainment operations. Ninety-Five percent of all equipment and supplies

reached the Persian Gulf by ship. . . . We also activated the Ready Reserve Force for the first time. By late February, there were some 500 merchant marines employed by the Military Sealift Command serving in the Gulf on the high seas. . . .

The war in the Persian Gulf is over, but the merchant marine's contribution to our nation continues. In war, merchant seamen have long served with valor and distinction by carrying critical supplies and equipment to our troops in far away lands. In peacetime, the merchant marine has another vital role—contributing to our economic security by linking us to our trading partners around the world and providing the foundation for our ocean commerce.

The United States today remains the world's leader, with global interests and responsibilities. We are a maritime nation. Our strategy demands that we have access to foreign markets, to energy, to mineral resources, and to the oceans. We must be able to project power across the seas.

This means that not only do we need a strong Navy, but a strong maritime industry as well. For, as the brilliant naval strategist Alfred Thayer Mahan once wrote, "Sea power in the broad sense . . . includes not only the military strength afloat, that rules the seas or any part of it by force of arms, but also the peaceful commerce and shipping from which a military fleet naturally and healthfully springs, and on which it securely rests." . . .

Our strategy requires us to be able to project power quickly and effectively across the oceans to deal with the crisis we couldn't avoid or protect. Sealift will be critical to fulfilling this strategic requirement. We learned a lot of valuable lessons from our lift operations in support of Desert Shield/Desert Storm. Many of these were incorporated into our new Mobility Requirements Plan—a blueprint for what we believe is needed to fulfill our armed forces' lift requirements in support of our new strategy. . . . The plan also acknowledges that the merchant marine and our maritime industry will be vital to our national security for many years to come. . . .

The key to investment, the one that really matters, is our investment in quality people. . . . Few occupations require the high standards U.S. seamen must meet and the demonstrated skills they must acquire to pursue their career. It is your skills and those of your buddies in the Armed Forces that will help America maintain its position of leadership in the world.

I am here to tell you that we still need you. Do not let anyone suggest to you otherwise.

Mr. Speaker, General Powell was right when he said that America needs a strong merchant marine fleet to maintain our position as a world leader on the oceans. I urge every Member of this House to work toward strengthening our merchant marine fleet.

#### TRIBUTE TO GERALDINE GEORGE-FOUSHEE

#### HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, June 30, 1995

Mr. PAYNE of New Jersey. Mr. Speaker, I rise today to join my constituents in paying tribute to a longtime friend and a dedicated public servant, Mrs. Geraldine George-Foushee. Gigi, as we all know her, has dedicated her professional life to law enforcement

and service to her community. A Newark resident who graduated from Newark's public schools, she went on to earn a masters degree in social work. Gigi served her community as a police officer with the Newark Police Department and later as a detective in the Essex County Sheriff's Office.

Gigi Foushee was the first African-American woman to serve as deputy mayor for the city of Newark and the first to serve as executive director of Newark's Alcohol Beverage Control Board. In 1991, Gigi achieved another first, she became the first African-American woman in New Jersey's history to be appointed warden of the Essex County Jail, the largest jail in New Jersey.

She was recently appointed by Chief Justice Robert N. Wilentz, of the New Jersey Supreme Court, to serve as a member of the New Jersey Supreme Court Task Force on Minority Concerns. Gigi continues to participate in numerous committees and task forces which are committed to addressing the concerns of the people of this community. As a result of her activities and accomplishments, she has received numerous community and law enforcement awards.

Gigi Foushee is a mother, a wife, and an excellent role model for our young people. Her service to this community will always be appreciated and remembered. She is an inspiration to us all. Mr. Speaker, I ask that all of my colleagues join with me in recognition of a truly extraordinary woman, Mrs. Geraldine "Gigi" Foushee.

#### AMTRAK NEEDS LABOR REFORM

#### HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, June 30, 1995

Mr. SHUSTER. Mr. Speaker, I commend to my colleagues the following editorial, which appeared in the Altoona Mirror, a newspaper in my 9th Congressional District of Pennsylvania. Concise and to the point, the piece describes why, without significant and immediate labor reforms, Amtrak may well find itself without any Federal funding this year. This editorial is a solid enunciation of the issue and I commend it to my colleagues and anyone else interested in the future of Amtrak.

#### AMTRAK NEEDS LABOR REFORMS

The freedom to make good business decisions, not government subsidies, offers Amtrak the best chance at long-term survival.

Despite Sen. Arlen Specter's words of support for Amtrak in Altoona, the nation's passenger railroad could derail without the reforms being supported by U.S. Rep. Bud Shuster. Those reforms would reduce Amtrak's overgenerous severance package and allow the railroad to contract out for non-food services, such as equipment repair.

Amtrak has an absurd severance package under which workers are eligible for each year they work, up to a total of six years, if they are laid off or moved more than 30 miles from their current job assignment.

This means Amtrak wants to abandon an unprofitable line, it may wind up paying employees for six years even though they are not working.

A bill backed by Shuster would reduce the maximum severance package to six months.

The other major reform would allow Amtrak to contract out work, other than food

service. Currently the passenger railroad is prohibited by hiring outside contractors if it would affect a member of the bargaining unit.

Amtrak's repair facilities need to be upgraded at a cost of hundreds of millions of dollars. The General Accounting Office estimates \$260 million is needed for Amtrak's primary maintenance shops in Beach Grove, IN.

This is money that Amtrak doesn't have and the Federal government does not need to spend. The nation's freight railroads, such as Conrail, have the capacity to do some of Amtrak's repairs on a contract basis.

Why should American taxpayers be forced to fork over \$260 million to complete a major upgrade at just one of Amtrak's repair facilities when private companies should do their work?

Unfortunately, not everyone sees the need for immediate changes.

Shuster last week stopped discussion on the reform legislation after 38 members of the committee moved to give Amtrak and its unions 270 days to negotiate new contract provisions.

This would just continue to drag Amtrak's problems out. If Amtrak and its unions can not reach an agreement in 270 days, then President Clinton would appoint a Presidential Emergency Board, which would have 60 days to review the matter. Then the dispute would go to Clinton. He can take whatever time is needed, possibly years, before making a decision.

Amtrak may not have that long. The passenger railroad's federal funding is \$993 million for the current fiscal year. The House Appropriations Subcommittee on Transportation has cut the amount to \$728 million for the next year and made the money contingent on passage of legislation offering significant labor reforms.

Without changes, Amtrak could find itself without any federal money, which would virtually kill the passenger rail service and undermine the unemployment and retirement systems for all railroad employees. This could be disastrous.

We agree that the United States needs a passenger railroad, but the only way to guarantee that is to free Amtrak of the shackles that keep it from making the best business decisions. That's what the legislation supported by Shuster does and why it should be enacted.

#### INTRODUCTION OF THE EFFICIENT FLEET MANAGEMENT ACT OF 1995

#### HON. BOB FRANKS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, June 30, 1995

Mr. FRANKS of New Jersey. Mr. Speaker, spread throughout Washington, DC., and roaming in all corners of our country are more than 250,000 cars and trucks that make up the civilian Federal motor fleet. Last year, the GAO reported that only the IRS was in compliance with existing law which requires agencies to take advantage of the most cost-effective fleet management practices available.

Today, I am introducing a bill to require the Office of Management and Budget to supervise the awarding of competitive contracts in acquiring and operating the Federal fleets. This bill will save taxpayers at least \$1 billion over 5 years.

Mr. Speaker, this Congress must demand that Federal agencies account for all the costs