

"(i) the sum of the products described in subparagraph (B) with respect to each undistributed income year, by

"(ii) the aggregate undistributed net income.

The quotient determined under the preceding sentence shall be rounded under procedures prescribed by the Secretary.

"(B) **PRODUCT DESCRIBED.**—For purposes of subparagraph (A), the product described in this subparagraph with respect to any undistributed income year is the product of—

"(i) the undistributed net income for such year, and

"(ii) the sum of the number of taxable years between such year and the taxable year of the distribution (counting in each case the undistributed income year but not counting the taxable year of the distribution).

"(4) **UNDISTRIBUTED INCOME YEAR.**—For purposes of this subsection, the term 'undistributed income year' means any prior taxable year of the trust for which there is undistributed net income, other than a taxable year during all of which the beneficiary receiving the distribution was not a citizen or resident of the United States.

"(5) **DETERMINATION OF UNDISTRIBUTED NET INCOME.**—Notwithstanding section 666, for purposes of this subsection, an accumulation distribution from the trust shall be treated as reducing proportionately the undistributed net income for undistributed income years.

"(6) **PERIODS BEFORE 1996.**—Interest for the portion of the period described in paragraph (2) which occurs before January 1, 1996, shall be determined—

"(A) by using an interest rate of 6 percent, and

"(B) without compounding until January 1, 1996."

(b) **ABUSIVE TRANSACTIONS.**—Section 643(a) is amended by inserting after paragraph (6) the following new paragraph:

"(7) **ABUSIVE TRANSACTIONS.**—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes."

(c) **TREATMENT OF LOANS FROM TRUSTS.**—

(1) **IN GENERAL.**—Section 643 (relating to definitions applicable to subparts A, B, C, and D) is amended by adding at the end the following new subsection:

"(i) **LOANS FROM FOREIGN TRUSTS.**—For purposes of subparts B, C, and D—

"(1) **GENERAL RULE.**—Except as provided in regulations, if a foreign trust makes a loan of cash or marketable securities directly or indirectly to—

"(A) any grantor or beneficiary of such trust who is a United States person, or

"(B) any United States person not described in subparagraph (A) who is related to such grantor or beneficiary, the amount of such loan shall be treated as a distribution by such trust to such grantor or beneficiary (as the case may be).

"(2) **DEFINITIONS AND SPECIAL RULES.**—For purposes of this subsection—

"(A) **CASH.**—The term 'cash' includes foreign currencies and cash equivalents.

"(B) **RELATED PERSON.**—

"(i) **IN GENERAL.**—A person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b). In applying section 267 for purposes of the preceding sentence, section 267(c)(4) shall be applied as if the family of an individual includes the spouses of the members of the family.

"(ii) **ALLOCATION.**—If any person described in paragraph (1)(B) is related to more than one person, the grantor or beneficiary to whom the treatment under this subsection applies shall be determined under regulations prescribed by the Secretary.

"(C) **EXCLUSION OF TAX-EXEMPTS.**—The term 'United States person' does not include any entity exempt from tax under this chapter.

"(D) **TRUST NOT TREATED AS SIMPLE TRUST.**—Any trust which is treated under this subsection as making a distribution shall be treated as not described in section 651.

"(3) **SUBSEQUENT TRANSACTIONS REGARDING LOAN PRINCIPAL.**—If any loan is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) shall be disregarded for purposes of this title."

(2) **TECHNICAL AMENDMENT.**—Paragraph (8) of section 7872(f) is amended by inserting "643(i)," before "or 1274" each place it appears.

(d) **EFFECTIVE DATES.**—

(1) **INTEREST CHARGE.**—The amendment made by subsection (b) shall apply to distributions after the date of the enactment of this Act.

(2) **ABUSIVE TRANSACTIONS.**—The amendment made by subsection (b) shall take effect on the date of the enactment of this Act.

(3) **LOANS FROM TRUSTS.**—The amendment made by subsection (c) shall apply to loans of cash or marketable securities made after September 19, 1995.

#### **SEC. 407. RESIDENCE OF TRUSTS, ETC.**

(a) **TREATMENT AS UNITED STATES PERSON.**—

(1) **IN GENERAL.**—Paragraph (30) of section 7701(a) is amended by striking "and" at the end of subparagraph (C) and by striking subparagraph (D) and by inserting the following new subparagraphs:

"(D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and

"(E) any trust if—

"(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and

"(ii) one or more United States fiduciaries have the authority to control all substantial decisions of the trust."

(2) **CONFORMING AMENDMENT.**—Paragraph (31) of section 7701(a) is amended to read as follows:

"(31) **FOREIGN ESTATE OR TRUST.**—

"(A) **FOREIGN ESTATE.**—The term 'foreign estate' means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

"(B) **FOREIGN TRUST.**—The term 'foreign trust' means any trust other than a trust described in subparagraph (E) of paragraph (30)."

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply—

(A) to taxable years beginning after December 31, 1996, or

(B) at the election of the trustee of a trust, to taxable years ending after the date of the enactment of this Act. Such an election, once made, shall be irrevocable.

(b) **DOMESTIC TRUSTS WHICH BECOME FOREIGN TRUSTS.**—

(1) **IN GENERAL.**—Section 1491 (relating to imposition of tax on transfers to avoid income tax) is amended by adding at the end the following new flush sentence:

"If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust."

(2) **EFFECTIVE DATE.**—The amendment made by this subsection shall take effect on the date of the enactment of this Act.

#### **Subtitle B—International Shipping Income Disclosure**

#### **SEC. 411. PENALTIES FOR FAILURE TO DISCLOSE POSITION THAT CERTAIN INTERNATIONAL SHIPPING INCOME IS NOT INCLUDIBLE IN GROSS INCOME.**

(a) **IN GENERAL.**—Section 883 is amended by adding at the end the following new subsection:

"(d) **PENALTIES FOR FAILURE TO DISCLOSE POSITION THAT CERTAIN INTERNATIONAL SHIPPING INCOME IS NOT INCLUDIBLE IN GROSS INCOME.**—

"(1) **IN GENERAL.**—A taxpayer who, with respect to any tax imposed by this title, takes the position that any of its gross income derived from the international operation of a ship or ships is not includible in gross income by reason of subsection (a)(1) or section 872(b)(1) (or by reason of any applicable treaty) shall be entitled to such treatment only if such position is disclosed (in such manner as the Secretary may prescribe) on the return of tax for such tax (or any statement attached to such return).

"(2) **ADDITIONAL PENALTIES FOR FAILING TO DISCLOSE POSITION.**—If a taxpayer fails to meet the requirement of paragraph (1) with respect to any taxable year—

"(A) the amount of the income from the international operation of a ship or ships—

"(i) which is from sources without the United States, and

"(ii) which is attributable to a fixed place of business in the United States,

shall be treated for purposes of this title as effectively connected with the conduct of a trade or business within the United States, and

"(B) no deductions or credits shall be allowed which are attributable to income from the international operation of a ship or ships.

"(3) **REASONABLE CAUSE EXCEPTION.**—This subsection shall not apply to a failure to disclose a position if it is shown that such failure is due to reasonable cause and not due to willful neglect."

(b) **CONFORMING AMENDMENTS.**—

(1) Paragraph (1) of section 872(b) is amended by striking "Gross income" and inserting "Except as provided in section 883(d), gross income."

(2) Paragraph (1) of section 883(a) is amended by striking "Gross income" and inserting "Except as provided in subsection (d), gross income."

(c) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall apply to taxable years beginning after the later of—

(A) December 31, 1996, or

(B) the date that the Shipbuilding Agreement enters into force with respect to the United States.

(2) **COORDINATION WITH TREATIES.**—The amendments made by this section shall not apply in any case where their application would be contrary to any treaty obligation of the United States.

(d) **INFORMATION TO BE PROVIDED BY CUSTOMS SERVICE.**—The United States Customs Service shall provide the Secretary of the Treasury or his delegate with such information as may be specified by such Secretary in order to enable such Secretary to determine whether ships which are not registered in the United States are engaged in transportation to or from the United States.

Mr. NICKLES. Mr. President, I ask unanimous consent the committee amendment be considered not agreed to; the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, the amendment to the title be considered tabled, and any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The committee amendment was rejected.

The bill (H.R. 3074) was deemed read for a third time, and passed.

#### **MEASURE READ THE FIRST TIME—H.R. 3452**

Mr. NICKLES. Mr. President, I understand H.R. 3452 has arrived from the House. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (H.R. 3452) to make certain laws applicable to the Executive Office of the President, and for other purposes.

Mr. NICKLES. I now ask for its second reading and would object to my own request on behalf of the other side of the aisle.

The PRESIDING OFFICER. The bill will remain at the desk pending its second reading on the next legislative day.

#### PROVIDING FOR THE SAFETY OF JOURNEYMEN BOXERS

Mr. NICKLES. Mr. President, I ask unanimous consent the Senate immediately proceed to consideration of H.R. 4167, which is at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4167) to provide for the safety of journeymen boxers, and for other purposes.

Mr. NICKLES. Mr. President, I ask unanimous consent the bill be deemed read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill appear at this point in the RECORD.

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

The bill (H.R. 4167) was deemed read for a third time, and passed.

#### FALSE STATEMENTS ACCOUNTABILITY ACT OF 1996

Mr. NICKLES. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on (H.R. 3166) to amend title 18, United States Code, with respect to the crime of false statement in a Government matter.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendments of the Senate to the bill (H.R. 3166) entitled "An Act to amend title 18, United States Code, with respect to the crime of false statement in a Government matter", with the following House amendment to Senate amendments:

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

##### SECTION 1. SHORT TITLE.

*This Act may be cited as the "False Statements Accountability Act of 1996".*

##### SEC. 2. RESTORING FALSE STATEMENTS PROHIBITION.

*Section 1001 of title 18, United States Code, is amended to read as follows:*

##### "§ 1001. Statements or entries generally

*"(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—*

*"(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;*

*"(2) makes any materially false, fictitious, or fraudulent statement or representation; or*

*"(3) makes or uses any false writing or document knowing the same to contain any materially false fictitious or fraudulent statement or entry;*

*shall be fined under this title or imprisoned not more than 5 years, or both.*

*"(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.*

*"(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to—*

*"(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or*

*"(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate."*

##### SEC. 3. CLARIFYING PROHIBITION ON OBSTRUCTING CONGRESS.

*Section 1515 of title 18, United States Code, is amended—*

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

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

*"(b) As used in section 1505, the term 'corruptly' means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information."*

##### SEC. 4. ENFORCING SENATE SUBPOENA.

*Section 1365(a) of title 28, United States Code, is amended in the second sentence, by striking "Federal Government acting within his official capacity" and inserting "executive branch of the Federal Government acting within his or her official capacity, except that this section shall apply if the refusal to comply is based on the assertion of a personal privilege or objection and is not based on a governmental privilege or objection the assertion of which has been authorized by the executive branch of the Federal Government".*

##### SEC. 5. COMPELLING TRUTHFUL TESTIMONY FROM IMMUNIZED WITNESS.

*Section 6005 of title 18, United States Code, is amended—*

*(1) in subsection (a), by inserting "or ancillary to" after "any proceeding before"; and*

*(2) in subsection (b)—*  
*(A) in paragraphs (1) and (2), by inserting "or ancillary to" after "a proceeding before" each place that term appears; and*

*(B) in paragraph (3), by adding a period at the end.*

Mr. SPECTER. Mr. President, I am pleased that the Senate is taking final action to enact the False Statements Accountability Act of 1996, legislation to overturn the Supreme Court's 1995 decision in *Hubbard versus United States* and restore the prohibition on making false statements to Congress.

The bill before us is in substance identical to the bill that passed the Senate on July 25, 1996, except in one respect. I do not want to reiterate all that I said at that time, so I will address at this time only the one substantive difference between the bill passed by the Senate and the current compromise we will vote on today.

As passed, the Senate bill provided blanket application to prohibit any

false statement made to Congress or any component of Congress, including individual members and their offices. The coverage provided by the House bill was much narrower in scope. The trick was to reconcile the two approaches. Through detailed negotiations and the good faith of all concerned, we have been able to produce this compromise legislation, which restores the applicability of section 1001 of title 18 of the United States Code to the areas in which Congress most needs it.

First, the compromise covers false statements made in all administrative matters. This includes claims for payment, vouchers, and contracting proposals. The provision also covers all employment related matters, such as submitting a phony resume or making false claims before the Office of Compliance or Office of Fair Employment Practices. Also covered are all documents required by law, rule, or regulation to be submitted to Congress. This crucial provision will cover all filings under the Ethics in Government Act and the Lobbying Disclosure Act and provides a real deterrent to false filings under these two laws, among others. For this reason alone, this bill is one of the most important congressional reforms we will have taken during this Congress.

The compromise also applies the prohibition on false statements to an investigation or review conducted by any committee, subcommittee, commission, or office of the Congress. This provision will prohibit knowing and willful material false statements to entities like the General Accounting Office and the Congressional Budget Office. False statements to the Capitol Police will also be covered.

The greatest difficulty was in formulating the scope of the applicability of the false statement prohibition to committees and subcommittees of each House of Congress. Only committee or subcommittee investigations or reviews conducted pursuant to the authority of the particular committee or subcommittee, meaning within its jurisdiction, will receive the protection of section 1001, and then only so long as the investigation or review is conducted in a manner consistent with the rules of the House or Senate, as relevant. This provision will allow each House to determine for itself whether to limit the circumstances in which committee or subcommittee investigations or reviews will be covered by section 1001. We do not intend, however, for the Senate to need to change its rules before false statements made to a committee or subcommittee conducting a review of a policy within its jurisdiction be punishable under this act.

In having the bill cover any investigation, we intend to cover formal investigations conducted pursuant to the rules of particular committees of the Senate, many of which have specific rules covering investigations. Thus, an investigation will be a more formal inquiry into a particular matter within