[JOINT COMMITTEE PRINT]

# SUMMARY OF THE REVENUE PROVISIONS OF H.R. 4961 (THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982)

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

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## INTRODUCTION

This pamphlet, prepared by the staff of the Joint Committee on Taxation, summarizes the revenue provisions (titles II, III, and IV [1]) of H.R. 4961, the Tax Equity and Fiscal Responsibility Act of 1982. The pamphlet includes tables showing the estimated revenue effects of these provisions for fiscal years 1983–1987.

The summary descriptions contained in this pamphlet are intended to be informative, rather than inclusive. The official legislative history of the Act is contained in the Statement of Managers (H. Rpt. No. 97–760; Sen. Rpt. No. 97–530) and the committee reports.

[1] Title III of the Act also includes a provision (sec. 355) amending the Communications Act of 1934, relating to reallocation of VHF television broadcast channels. Title VI of the Act (Federal Supplemental Compensation Program) contains a provision (sec. 611) which modifies the taxation of unemployment compensation benefits (see footnote 1, Part II–A, *infra*).

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# I. OVERVIEW OF PRINCIPAL REVENUE PROVISIONS

The following is an overview of the principal revenue provisions (titles II, III, and IV) of H.R. 4961, the Tax Equity and Fiscal Responsibility Act of 1982 (the "Act").

## A. Individual Income Tax Provisions [1]

### *1. Individual minimum tax*

The Act repeals the add-on minimum tax, adds several new tax preferences to the alternative minimum tax, restructures the treatment of itemized deductions in the minimum tax, establishes a flat 20-percent rate for the tax, and increases the minimum tax exemption from $20,000 to $30,000 for unmarried persons and $40,000 for married couples. These changes generally apply beginning in 1983.

### *2. Medical expense deduction*

The Act increases the floor under the itemized deduction for medical expenses from 3 percent of adjusted gross income to 5 percent, beginning in 1983. It repeals the separate deduction for one-half of health insurance premiums up to $150. It eliminates (after 1983) the 1-percent-of-income floor on deductibility of expenditures for drugs and provides that only prescription drugs and insulin will be eligible for the deduction.

### *3. Casualty loss deduction*

The Act limits the itemized deduction for nonbusiness casualty and theft losses to losses in excess of 10 percent of adjusted gross income, beginning in 1983.

## B. Business Tax Provisions

### *1. Corporate tax preferences*

The Act scales back the following corporate tax preferences by 15 percent: percentage depletion for coal and iron ore; excess bad debt reserves of financial institutions; interest incurred by financial institutions to carry tax-exempt obligations acquired after 1982; DISC; section 1250 recapture on real estate; rapid amortization of pollution control facilities; intangible drilling costs of integrated oil companies (which are to be amortized over 36 months); and mining exploration and development costs. This cutback applies only to corporations.

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[1] Title VI of the Act (Federal Supplemental Compensation Program) contains a provision (sec. 611) which modifies the taxation of unemployment compensation benefits (see footnote 1, Part II–A, infra).

### *2. Basis adjustment for investment tax credits*

The basis of assets (which is used to compute cost recovery deductions and gain or loss) is reduced by one-half of the amount of the regular, energy, and historic structure investment tax credits.

### *3. Investment tax credit limitation*

The percentage of tax liability which taxpayers may offset by the investment tax credit is reduced from 90 percent to 85 percent.

### *4. Accelerated depreciation—1985 and 1986*

The Act repeals the acceleration of depreciation currently scheduled for 1985 and 1986.

### *5. Construction period interest and taxes*

Interest and taxes attributable to the construction period for nonresidential real estate owned by a corporation must be capitalized and written off over 10 years.

### *6. Leasing rules*

The Act repeals safe-harbor leasing after 1983. For the period between July 1, 1982, and January 1, 1984, a restricted form of safe-harbor leasing is put into effect. After 1984, a liberalized form of prior law leasing is permitted.

### *7. Foreign provisions*

The Act provides rules under which companies with foreign oil and gas extraction income will not be able to use tax benefits from that income to reduce their taxes on other kinds of oil related income and under which oil companies will be taxed on the oil related income of their foreign subsidiaries.

Also, the Act contains a series of rules to limit the extent to which businesses can use operations in U.S. possessions to avoid tax by transfering intangibles to their possession subsidiaries and by allowing passive income to accumulate in a possession.

### *8. Tax-exempt obligations*

The Act provides several restrictions on industrial development bonds, including a sunset of the small issue exemption after 1986. Investments financed with IDBs will, with certain exceptions, be limited to straight-line depreciation over ACRS lives.

Also, the Act liberalizes several of the rules restricting the issuance of mortgage subsidy bonds for both single-family and multifamily housing.

### *9. Mergers and acquisitions*

The Act makes a number of changes in the rules relating to partial liquidations, stock redemptions, stock purchases, and other provisions relating to mergers and acquisitions. These are designed to limit the tax benefits which now arise from mergers, acquisitions, and other corporate transactions.

### *10. Accounting for long-term contracts*

The Act revises the rules for determining which costs are currently deductible and which must be allocated to long-term contracts. Exceptions are provided for small construction contractors.

### *11. Accelerated corporate tax payments*

The Act increases the percentage of tax liability which corporations must cover with estimated tax payments from 80 to 90 percent.

### *12. Original issue discount bonds*

The Act eliminates the tax benefits associated with original issue discount, or zero coupon, bonds.

### *13. Coupon stripping*

The Act eliminates the special tax treatment afforded stripping of coupons from bonds.

### *14. Targeted jobs credit*

The Act extends the targeted jobs credit for 2 years, makes the credit available for summer employment of economically disadvantaged 16 and 17 year olds, and makes several administrative changes.

## C. Compliance Provisions

### *1. Withholding on dividends and interest*

Effective July 1, 1983, the Act imposes 10 percent withholding on dividends and interest, similiar to the withholding which now applies to wages. Exemptions are provided for persons 65 or older whose income (not including exempt income such as social security) is less than about $22,000 for a married couple, and at a lower level of income for individuals under age 65.

### *2. Other compliance provisions*

The Act includes a number of changes designed to improve taxpayer compliance. These include additional reporting requirements, changes in penalty provisions, modifications of voluntary withholding on pensions, partnership audits, and various taxpayer safeguards.

## D. Pension Provisions

The Act reduces the limits on contributions to, and benefits from, tax-qualified pension plans. The limit for annual additions under defined contribution plans is reduced from $45,475 to $30,000, and the limit on annual benefits in a defined benefit plan is reduced from $136,425 to $90,000. The indexing of these limits is suspended until 1986. Limits are placed on loans from retirement plans. Rules are provided to achieve parity between corporate and noncorporate pension plans. A $100,000 cap is placed on the estate tax exclusion for annuities. Finally, there are modifications in the rules relating to retirement plans for church employees, State judicial retirement plans, profit-sharing contributions for disabled employees, and group trusts. A nondiscrimination rule is added for employer-provided group term life insurance.

### E. Insurance Provisions

The Act makes a series of changes in the tax treatment of life insurance companies and annuities. The Modco provisions of present law are repealed, and the formula for revaluing preliminary term reserves is changed. In addition, a number of provisions are adopted to reduce insurance company taxes for a 2-year stopgap period. There are also new rules relating to annuity contracts and (for 2 years) flexible premium contracts.

### F. Employment Tax Provisions

#### *1. Independent contractors*

The Act provides that certain sales persons who are licensed real estate agents, and certain direct sellers, will be treated as self-employed persons, and not as employees. Also, the Act indefinitely extends the 1978 interim provisions relating to controversies as to tax classifications of workers.

#### *2. Federal unemployment tax*

The wage base subject to the Federal unemployment tax (FUTA) is increased to $7,000 and the Federal tax rate is increased to 3.5 percent, beginning in 1983.

#### *3. Medicare coverage of Federal employees*

The Act subjects Federal employees to the hospital insurance portion of the social security tax and makes them eligible for Medicare, beginning in 1983.

### G. Excise Tax Provisions

#### *1. Airport and airway taxes*

The Act reauthorizes the Airport and Airway Trust Fund through 1987 and reinstates (with some modifications) aviation excise taxes, which were reduced in 1980, effective September 1, 1982.

#### *2. Cigarette excise taxes*

The Act doubles the cigarette excise taxes (from 8 cents to 16 cents per pack on small cigarettes) for the period January 1, 1983 through September 30, 1985.

#### *3. Telephone excise tax*

The Act increases the excise tax on local and long-distance telephone services from 1 percent to 3 percent for the years 1983 through 1985 and terminates the tax after 1985.

#### *4. Windfall profit tax provisions*

The Act repeals the special windfall profit tax adjustment for transportation costs applicable to Alaskan oil and clarifies the exemption for Alaskan native corporations.

## H. Other Provisions

The bill includes additional provisions relating to the following:

a. Two-year extension of the income tax exclusion for National Research Service Awards.

b. A technical change permitting use of the annual accrual accounting method for certain partnerships growing sugarcane.

c. Modification of the provision disallowing deductions for certain payments to foreign government officials.

d. Authorization for the Secretary of the Treasury to vary the investment yield on savings bonds and to issue additional long-term debt.

e. Revision of the rules limiting the disclosure of tax information in nontax criminal investigations.

f. Modification of the rules under which veterans organizations may qualify for tax-exempt status.

g. Tax-exempt status for certain amateur athletic organizations.

h. Modifications of the New Jersey general revenue sharing allocation.

i. Payment of $50,000 to the Jefferson County Mental Health Center, Lakewood, Colorado, to settle claims relating to social security taxes.

j. Expansion of provisions for award of reasonable attorney fees in civil tax cases, including U.S. Tax Court cases, where the government's position was unreasonable.

k. Modification of the definition of a lending or financial business under the personal holding company provisions.

l. Additional refunds relating to repeal of the excise tax on buses.

## I. Revenue Effect

The revenue provisions of the Act (titles II, III, and IV) are expected to increase fiscal year receipts by $18.0 billion in 1983, $37.7 billion in 1984, and $42.7 billion in 1985, for an estimated total of $98.3 billion for fiscal years 1983–1985. (See tables in Part III for details of estimated revenue effects.)

# II. SUMMARY OF REVENUE PROVISIONS (TITLES II, III, AND IV)

## A. Individual Income Tax Provisions [1]

### *1. Individual minimum tax (sec. 201 of the Act)*

#### *Repeal of add-on tax*

Under present law, a 15-percent add-on minimum tax is imposed on the sum of six tax preferences in excess of the greater of one-half the regular income tax paid or $10,000 (Code sec. 56). The Act repeals the add-on tax for individuals.

#### *Revision of alternative tax*

Individuals are also subject under present law to an alternative minimum tax, payable to the extent it exceeds regular tax (sec. 55). The tax applies to taxable income increased by the deduction for long-term capital gains and by excess itemized deductions. The foreign tax credit is allowed, and credits attributable to an active trade or business are allowed to the extent that tax is not attributable to net capital gains or to itemized deductions included in the minimum tax base.

Under present law, the alternative minimum tax base is subject to the following tax rates: $0 to $20,000, no tax; $20,000 to $60,000, 10 percent; and over $60,000, 20 percent.

The Act provides that the alternative minimum tax base will equal adjusted gross income plus specified preferences, minus specified itemized deductions. A flat 20-percent tax is imposed on the excess of this base over an exemption amount. The exemption is $30,000 for unmarried individuals; $40,000 for married persons filing a joint return or a surviving spouse; and $20,000 for a married person filing a separate return, a trust, or an estate. The foreign tax credit, but not other nonrefundable credits, is allowed against the tax.

The specified preferences to be added to adjusted gross income include:

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[1] Title VI of the Act (Federal Supplemental Compensation Program) contains a provision (sec. 611) which modifies the taxation of unemployment compensation benefits. Under present law, unemployment compensation benefits are subject to Federal income taxation if the sum of adjusted gross income, the deduction for two-earner married couples, certain disability income, and unemployment compensation exceeds a base amount (sec. 85). If there is an excess, the taxpayer must include in gross income an amount of unemployment compensation equal to one-half of the excess of this sum over the base amount.

Section 611 of the Act lowers the base amount from $25,000 to $18,000 for taxpayers filing a joint return, and from $20,000 to $12,000 for other taxpayers. (In the case of married taxpayers who file separately, the base amount remains zero.) This provision is effective for payments of unemployment compensation made after December 31, 1981, in taxable years ending after that date. Taxpayers are not to be penalized for underpayment of estimated taxes attributable to employment compensation which is received during 1982 and which, except for this provision, would not be includible in gross income.



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(1) the preferences presently included under the add-on minimum tax (other than the deduction for amortization of child care facilities);

(2) the deduction for long-term capital gains;

(3) interest and dividend income excluded under the $100 dividend exclusion, the All-Savers exclusion, and the 15-percent net interest exclusion (which takes effect after 1984);

(4) the excess of expensing over 10-year amortization for mining exploration and development costs, research and development costs, and magazine circulation expenditures; and

(5) the "spread" on the exercise of an incentive stock option.

The following "below-the-line" deductions are allowed to the extent allowable against the regular tax:

(1) charitable contributions;

(2) medical expenses (in excess of 10 percent of adjusted gross income);

(3) casualty and wagering losses;

(4) personal housing interest;

(5) other interest to the extent of net investment income; and

(6) estate taxes (sec. 691(c)).

The net operating loss deduction is generally reduced by items of tax preference.

Net income taken into account, directly or indirectly, from a limited partnership interest or an interest in a subchapter S corporation (in the case of a person who does not participate in the management of the corporation) is investment income for the purposes of the net investment income limitation on the interest deduction. Interest on indebtedness incurred to acquire or carry such an interest is treated as "below-the-line" interest for purposes of the minimum tax and therefore subject to the net investment income limitation on the interest deduction.

An election is provided for individuals to amortize mining exploration and development costs, circulation expenditures, and research and experimental expenditures, for purposes of the regular tax and minimum tax, over a 10-year period beginning with the year the expenditure occurs. If this election is made, the item will not be treated as an item of tax preference. With respect to intangible drilling costs, limited partners may elect 10-year amortization. For other individuals with intangible drilling costs, an election to take 5-year ACRS and the investment tax credit is provided.

The provision generally applies to taxable years beginning after December 31, 1982. Pre-1983 net operating loss preferences continue to be subject to the add-on tax when used, as under present law.

### *2. Medical expense deduction (sec. 202 of the Act)*

Under the Act, three changes are made in the itemized deduction for medical expenditures (sec. 213).

First, the separate deduction for one-half of health insurance premiums up to $150 is eliminated. Second, the floor for deductible medical expenses is raised from 3 percent to 5 percent of adjusted gross income. These first two provisions are effective for taxable years beginning after December 31, 1982. Third, effective for taxable years beginning after December 31, 1983, the one-percent floor on deductibility of drug expenditures is eliminated. The only drug expenditures which will be eligible for the deduction will be expenditures for drugs which legally require a prescription or for insulin.

### *3. Casualty loss deduction (sec. 203 of the Act)*

Under present law, individuals who itemize deductions may deduct unreimbursed losses of nonbusiness property resulting from fire, storm, shipwreck, or other casualty, or from theft (sec. 165). For any one casualty, the deduction is allowed only to the extent that the amount of the loss exceeds $100.

Under the Act, nonbusiness casualty losses are deductible only to the extent total losses sustained during the year exceed 10 percent of adjusted gross income. As under present law, each casualty loss is eligible for deductibility only to the extent it exceeds $100.

This provision applies to taxable years beginning after December 31, 1982, and to the taxpayer's last taxable year beginning before January 1, 1983, for a taxpayer who elects to take into account a disaster loss in such a taxable year.

## B. Business Tax Provisions

### *1. Corporate tax preferences (sec. 204 of the Act)*

Under present law, corporations must pay a minimum tax on certain tax preferences (sec. 56), in addition to the corporation's regular tax. The amount of the minimum tax is 15 percent of the corporation's tax preferences in excess of the greater of the regular income tax paid or $10,000.

The tax preference items included in this base of the minimum tax for corporations are:

(1) Accelerated depreciation on real property in excess of straight-line depreciation over the useful life or recovery period;

(2) Amortization of certified pollution control facilities (the excess of 60-month amortization over depreciation otherwise allowable);

(3) In the case of certain financial institutions, the excess of the bad debt deductions over the amount of those deductions computed on the basis of actual experience;

(4) Percentage depletion in excess of the adjusted basis of the property;

(5) $^{18}/_{46}$ of the corporation's net capital gain; and

(6) Amortization of child care facilities (the excess of 60-month amortization over depreciation otherwise allowable).

#### *Cutback in certain preferences*

The Act provides for a 15-percent cutback in certain corporate tax preferences.

The changes, which apply to all corporations other than subchapter S corporations, are as follows:

(a) In the case of iron ore and coal (including lignite), 15 percent of the depletion otherwise allowable in excess of basis is not allowed as a deduction.

(b) The bad debt reserve deduction is reduced by 15 percent of the amount by which the otherwise allowable deduction exceeds the amount which would have been allowable on the basis of actual experience.

(c) In the case of a financial institution, 15 percent of the otherwise allowable interest deduction for debt incurred or continued to purchase tax-exempt obligations acquired after 1982 is disallowed.

(d) The deemed dividend distribution by a domestic international sales corporation (DISC) to a corporate shareholder is increased by 15 percent, to 57½ percent of certain taxable income.

(e) The amount treated as ordinary income on the sale of section 1250 property (real estate) by a corporation is increased by

15 percent of the additional amount which would be ordinary income if the property were subject to recapture under section 1245. Special rules apply to capital gain distributions of REITS.

(f) 15 percent of the basis of pollution control facilities to which an election under section 169 applies is treated as if the election did not apply.

(g) In the case of an integrated oil company, 15 percent of the amount otherwise allowable as a deduction for intangible drilling costs under section 263(c) is capitalized to the oil, gas, or geothermal property and amortized over a 36-month period.

(h) 15 percent of the deductions for mining exploration and development costs otherwise allowable under section 616(a) and 617 to a corporation are capitalized and treated as recovery property assigned to the 5-year class. ACRS deductions and the investment tax credit are made available. The deductions and the credit are subject to recapture in accordance with the usual recapture rules.

(i) The preference for child care facilities is deleted.

Only 71.6 percent of the items subject to a cutback will be treated as items of tax preference under the add-on minimum tax for corporations.

***Effective dates***

The provisions generally apply to taxable years beginning after December 31, 1982. However, the provision relating to deductions under secs. 263(c), 616, and 617 applies to expenditures made after that date; the provision relating to pollution control facilities applies to property placed in service after that date; the provision relating to section 1250 property applies to dispositions after that date; and the provision relating to depletion applies to taxable years beginning after December 31, 1983.

### 2. *Basis adjustment for investment tax credits (sec. 205(a) of the Act)*

Cost recovery deductions under present law are allowed for 100 percent of the cost of a depreciable asset, including property for which the regular, energy, or historic structure rehabilitation investment tax credits are allowed. Basis is reduced by the full amount of rehabilitation credits except that no basis reduction is required for the credit for qualified rehabilitation of historic structures. Lessors may elect to pass through investment credits to lessees, in which case lessees are treated as having purchased the asset for fair market value for purposes of computing the credit.

#### *Basis adjustment*

The Act provides that a taxpayer is required to reduce the basis of assets by 50 percent of the amount of regular, energy, and certified historic structure investment tax credits. This applies to credits claimed on qualified progress expenditures as well as on ordinary credits. A deduction also is allowed for one-half of unused credits in the year in which they expire. The reduction in basis is subject to recapture as ordinary income under the usual depreciation recapture rules (sec. 1245 and 1250). The basis adjustment is not taken into account in determining earnings and profits.

Taxpayers are given an election under the Act with respect to the regular investment credit on recovery property to elect a 2-percentage point reduction in the credit. The election is made property-by-property. A taxpayer who makes this election does not have to make a basis adjustment. In the case of partnerships, the election is made at the partnership level.

#### *Treatment of lessees*

When lessors elect to pass through the investment credit to lessees under section 48(d), the lessor does not have to make a basis adjustment. Instead, the lessee includes in income ratably over the ACRS recovery period for the property an amount equal to one-half of the credit allowable. Lessees are eligible to elect the 2-percentage point reduction for the regular investment credit, in which case they are not required to include this in income. If the credit is recaptured, the income inclusions will be adjusted, in accordance with Treasury regulations, to take account of the amount of the credit recaptured.

#### *Effective dates*

The provision applies to property placed in service after December 31, 1982, other than property (which is not public utility property, property subject to a safe-harbor lease, or a rehabilitated building) placed in service before January 1, 1986, for which a contract was entered into after August 13, 1981, and was binding on

July 1, 1982, and at all times thereafter. For property placed in service after 1982 which is not covered by the transition rule, qualified progress expenditures and expenditures for property constructed by the taxpayer incurred before 1983 are not subject to the new rules.

In the case of an integrated manufacturing facility where there were binding contracts, or where construction by the taxpayer was carried out with respect to more than 20 percent of the cost of the facility between August 13, 1981, and July 2, 1982, and where the on-site construction began before July 1, 1982, property eligible for the credit in the facility will qualify for the transition rule if the property is placed in service before January 1, 1986.

The basis adjustment does not apply for rehabilitation of certified historic structures if there is a contract to rehabilitate the property which was entered into after December 31, 1980, and was binding on July 1, 1982, and at all times thereafter or if rehabilitation began between December 31, 1980, and July 1, 1982, as long as the building is placed in service before January 1, 1986. Rehabilitations of certified historic structures placed in service before July 1, 1984, are exempt if Securities and Exchange Commission filings and HUD Section 8 applications with respect to those structures were made before July 1, 1982.

### *3. Investment tax credit limitation (sec. 205(b) of the Act)*

The investment tax credit earned by a taxpayer can be used under present law to reduce tax liability up to certain limits. Except for the energy tax credit, the limit for taxable years ending after 1981 is $25,000 plus 90 percent of the tax liability in excess of $25,000. Unused credits for a taxable year may be carried back to each of the 3 taxable years preceding the unused credit year, and then carried forward to each of the 15 following taxable years.

Under the Act, the amount of income tax liability (in excess of $25,000) that may be offset by the investment tax credit (other than the energy tax credit) is reduced from 90 percent to 85 percent, effective for taxable years beginning after December 31, 1982.

### *4. Accelerated depreciation—1985 and 1986 (sec. 206 of the Act)*

For 1981–84, cost recovery schedules for equipment reflect the 150-percent declining balance method with a switch to the straight-line method. Under present law, the schedules would accelerate in 1985 to reflect the 175-percent declining balance method with a switch to the sum-of-the-years-digits method. In 1986, they would accelerate further to reflect the 200-percent declining balance method with a switch to the sum-of-the-years-digits method.

Under the Act, the 1985 and 1986 acceleration of depreciaton schedules is repealed.

### *5. Construction period interest and taxes (sec. 207 of the Act)*

Under present law, corporations other than personal holding companies and subchapter S corporations are permitted to deduct currently construction period interest and taxes. However, individuals, personal holding companies, and subchapter S corporations are required to capitalize construction period interest and taxes for the construction of real property other than low-income housing (sec. 189).

Under the Act, all corporations are required to capitalize construction period interest and taxes for nonresidential real property.

The Act applies to interest and taxes incurred in taxable years beginning after 1982 with respect to construction begun after 1982. The Act does not apply, however, to the Alaska Natural Gas Transportation System. In addition, the Act does not apply to the construction of hotels, motels, hospitals, or nursing homes if construction begins before 1984 pursuant to a written plan of the taxpayer existing on July 1, 1982, and if the taxpayer has requested in writing approval for construction from a governmental body.

### *6. Leasing rules (secs. 208–210 of the Act)*

#### *a. Non-safe harbor leases*

*Overview*

Prior to the enactment of the Economic Recovery Tax Act of 1981 (ERTA), the law contained rules to determine who owns an item of property for tax purposes when the property is subject to an agreement which the parties characterize as a lease. These rules, which evolved over the years through a series of court cases and revenue rulings and revenue procedures issued by the Internal Revenue Service, still apply to transactions that are not governed by the safe-harbor rules. Essentially, outside the safe harbor provided by ERTA, the law is that the economic substance of a transaction, not its form, determines who is the owner of the property for tax purposes. Lease transactions cannot be used solely for the purpose of transferring tax benefits.

Revenue Procedure 75–21 and subsequent revenue procedures provide the following objective guidelines for determining non-safe harbor lease treatment of leveraged leases of equipment.

1. *Lessor's minimum investment.*—The lessor must have a minimum 20 percent unconditional at-risk investment in the property.
2. *Lessee's investment.*—Neither the lessee nor a party related to the lessee may furnish any part of the cost of the property.
3. *Lessee loans or guarantees.*—The lessee may not lend to the lessor any of the funds necessary to purchase the property or guarantee any lessor loan.
4. *Purchase options.*—The lessee may not have an option to purchase the property at the end of the lease term unless the option can be exercised only at fair market value (determined at the time of exercise). In addition, the lessor cannot have a contractural right to require the lessee or any other party to purchase the property, even at fair market value (i.e., a put).
5. *Lessor profit and cash flow.*—The lessor must expect to receive a profit and positive cash flow from the transaction independent of tax benefits.
6. *Limited use property.*—Under Revenue Procedure 76–30, property that can be used only by the lessee (limited use property) is not eligible for lease treatment.

The Act generally retains these present law rules. However, the Act modifies these rules for agreements that are referred to as finance leases under the Act. For finance leases entered into after December 31, 1983, the fact that the lessee has a fixed price purchase option of at least 10 percent of the original cost of the property or that the property is usable only by the lessee will not be taken into account in determining whether the lessor is the owner of the property or the agreement is a lease. A lessor cap, a lessee cap, and a spread of the investment credit apply to finance leases but not to other non-safe harbor leases). Finance lease treatment is not elective. For example, if an agreement characterized by the parties as a lease contains a fixed price purchase option and the eligibility requirements are met, these limitations apply. Finance lease treatment is allowed for leases entered into after July 1, 1982, for up to $150,000 of a lessee's farm property without limitation by the lessor cap, lessee cap, or investment credit spread.

In addition to the changes for finance leases, a 90-day window is allowed for all non-safe harbor leases entered into after December 31, 1983. The Act also prohibits the IRS from retroactively denying lease treatment for certain motor vehicle operating leases by reason of the fact that those leases contain rental adjustment clauses.

***Finance leases***

*Definition of finance lease.*—In general, a finance lease is an agreement characterized by the parties as a lease that contains a 10-percent fixed price purchase option or that involves limited use property.

*Eligibility requirements.*—To be eligible, the lessor generally must be a corporation. In addition, finance lease treatment applies only if, without regard to the fact the lease contains a fixed price purchase option or that the property is limited use property, the lessor would be treated as the owner and the transaction would be a lease.

*Eligible property.*—In general, property eligible for finance lease treatment is new property eligible for ACRS and the investment credit. Eligible property does not include (1) rehabilitated buildings, (2) public utility property, (3) property used by former tax-exempt organizations (other than a farmer's cooperative or unrelated trade or business property the income from which is not taxed), or (4) property used by a foreign person not subject to U.S. tax. Mass commuting vehicles financed by tax-exempt bonds also are not eligible.

*10-percent fixed price purchase option.*—A 10-percent fixed price purchase option means an option of the lessee (i.e., a call option) to purchase the property at the end of the lease term for a price that is fixed at the beginning of the lease term at an amount that is 10 percent or more of the original cost of the property.

*Limited use property.*—Limited use property is property that is not readily usable by any person other than the lessee.

*Investment tax credit.*—Under the Act, 20 percent of any investment credit earned for finance lease property is allowable in the first taxable year and 20 percent of the credit is allowable in each of the 4 succeeding taxable years. In computing cost recovery allowances for finance lease property, the regular ACRS periods and methods apply. The basis adjustment for half of the full investment credit occurs in the first taxable year.

This spreading of the investment credit does not apply to property placed in service after September 30, 1985.

*Lessor limitations.*—In taxable years ending after December 31, 1983, a lessor is not allowed deductions or credits allocable to finance lease property to the extent those deductions or credits reduce its income tax liability (including any liability under the add-on minimum tax) by more than 50 percent. Deductions or credits not allowed by operation of this limitation may be carried forward. This lessor limitation does not apply to taxable years beginning after September 30, 1985.

*Lessee limitations.*—The Act places a 40-percent limit on the amount of a lessee's property that may be leased during each of the calendar years 1984 and 1985 under a finance lease.

The Act requires a lessee to compute its percentage depletion deduction for property subject to a finance lease as if it owned the property. The lessee must use the regular ACRS deductions allowed under the law in effect at the time of the lease agreement in making this determination.

*Related party transactions.*—The finance lease rules do not apply to transactions between related corporations.

*Farm finance leases.*—Leases of new section 38 property used for farming purposes entered into after July 1, 1982, may qualify for finance lease treatment if the cost basis of the leased property when added to the cost basis of all other farm property subject to a finance lease that was entered into by the lessee (or a related person) during the calendar year does not exceed $150,000. These leases of farm property are not subject to the lessor cap, the lessee cap, or the spread of the investment credit. However, those limitations apply for leases entered into after December 31, 1983, of property exceeding the $150,000 amount. The limitations on related party transactions and percentage depletion of a lessee apply to farm finance leases for all years.

*Other non-safe harbor leases unaffected.*—The Act does not alter the present law treatment of leases other than finance leases or safe-harbor leases. Thus, a lease that meets the requirements of Revenue Procedure 75-21 is not subject to the lessor cap, the lessee cap, the investment credit spread, the percentage depletion rule, or the related party rule.

### *Effective dates*

The provision permitting a 90-day window applies to leases entered into after December 31, 1983. The finance lease provisions also generally apply to property placed in service after December 31, 1983. However, the farm finance lease provisions apply to leases entered into after July 1, 1982. The motor vehicle provisions apply to any open taxable years.

### *b. Safe-harbor leasing*

### *Overview*

The safe-harbor leasing provisions enacted in the ERTA permit owners of property to transfer the tax benefits of ownership (depreciation and the investment credit) to other persons without having to meet the prior law requirements for characterizing the transaction as a lease. The safe-harbor leasing provisions operate by guaranteeing that for Federal tax purposes qualifying transactions will be treated as leases, and that the nominal lessor will treated as the owner of the property, even though the lessee is in substance the owner of the property and the transaction otherwise would not be considered a lease.

The Act modifies the safe-harbor provisions with respect to eligibility requirements, eligible property, ACRS deductions, investment credits, lessee and lessor limitations, and certain other matters. These modifications generally apply to leases entered into or property placed in service after July 1, 1982. However, transitional rules exclude certain property from these modifications. The Act repeals safe-harbor leasing for leases entered into after December 31, 1983.

***Eligibility requirements***

Under prior law, the term of a safe-harbor lease could not exceed the greater of 90 percent of the useful life of the property or 150 percent of the ADR midpoint life of the property. Under Treasury regulations, the maximum interest rate on lessee obligations to the lessor generally could not be more than 3 percentage points above the rate on tax underpayments and overpayments.

Under the Act, the safe-harbor lease term cannot exceed the greater of the recovery period of the property (as provided by the Act) or 120 percent of the ADR midpoint life of the property. The interest rate on lessee obligations cannot exceed the rate on tax underpayments and overpayments.

***Eligible property***

Property must be qualified leased property, which, in general, means that the property must be new equipment eligible for both ACRS and the investment credit. Qualified leased property includes mass commuting vehicles (i.e., any bus, subway car, rail car or similar equipment that is leased to a governmentally owned mass transit system and used in providing mass commuting services) that are financed in whole or in part by tax-exempt bonds.

Under prior law, public utility property was eligible for safe-harbor leasing, and property used by a foreign person was not made ineligible by virtue of the fact that the user's income from the property is not subject to U.S. tax. Property (other than mass commuting vehicles) used by a tax-exempt organization or a U.S. Federal, State, or local government unit generally was ineligible. Ferries used to provide mass transportation services were not designated as mass commuting vehicles.

Under the Act, public utility property is ineligible for safe-harbor leasing, and property used by a foreign person is ineligible if the user's income from the property is not subject to U.S. tax. Property (other than mass commuting vehicles) leased to a person that was a tax-exempt organization (or whose predecessor was a tax-exempt organization engaged in substantially similar activities as the lessee) within the 5-year period preceding the date of the lease agreement is ineligible. However, the Act does not exclude from eligible property any property used by a tax-exempt organization in an unrelated trade or business the income from which is subject to tax. Also, property used by certain farmers cooperatives is eligible for safe-harbor leasing whether or not the cooperative is tax exempt. The Act designates ferries used to provide mass transportation services as mass commuting vehicles.

### *ACRS deductions*

Under prior law, the taxpayer could elect the regular ACRS recovery period and method for property in a safe-harbor lease.

Under the Act, recovery periods for property in a safe-harbor lease are 5 years for 3-year property, 8 years for 5-year property, and 15 years for 10-year property. Cost recovery allowances are computed by applying prescribed percentages to the unadjusted basis of the property, after taking into account in the first year any required reduction in basis for investment credits. These percentages are based on the 150-percent declining balance method, changing to the straight-line method, and using a half-year convention in the first recovery year.

### *Investment tax credit*

Under prior law, 100 percent of any investment tax credit for property in a safe-harbor lease was allowable when the property was placed in service.

Under the Act, only 20 percent of an investment tax credit is allowable in the first taxable year and 20 percent of the credit is allowable in each of the 4 succeeding taxable years, whether or not the taxpayer elects a reduced credit. The entire amount by which basis is reduced for investment credits takes effect in the first taxable year.

### *Lessee limitations*

Under the Act, a lessee may apply the safe-harbor rules with respect to no more than 45 percent of his qualified base property placed in service in each of the calendar years 1982 and 1983. A lessee's qualified base property includes the cost basis of (1) all qualified leased property leased by the lessee under a safe-harbor lease and placed in service during the calendar year, (2) all other new section 38 property of the lessee that is placed in service during the calendar year, and (3) new property eligible for the investment credit that is used by the lessee under a long-term agreement qualifying as a lease under non-safe harbor rules and placed in service during the calendar year. Qualified leased property not subject to this 45-percent limitation by virtue of the general effective date or transitional rules counts toward the limitation, but safe-harbor lease treatment is not denied for that property.

The Act also requires that the lessee compute its 50- and 65-percent taxable income limitations on percentage depletion deductions as if it were the owner of the leased property. For this purpose, the lessee must take into account ACRS deductions for the property and must disregard lease rentals and interest on lessee financings. In computing the imputed ACRS deductions for the property, the lessee must use the recovery period and method applicable to the lessor under the new safe-harbor rules.

### *Lessor limitations*

In taxable years ending after July 1, 1982, a lessor is not allowed deductions or credits allocable to qualified leased property to the extent those deductions or credits reduce its income tax liability (including any liability under the add-on-minimum tax) by more than 50 percent. Deductions or credits not allowable by operation of this rule may be carried forward under regulations to be prescribed by the Secretary. No deferral of tax benefits is required with respect to deductions or credits arising from safe-harbor leases not covered by the general effective date or transition rules, but such deductions or credits count first in determining whether the 50-percent limitation applies to safe-harbor leases covered by these rules. A lessor cannot use tax benefits obtained as a safe-harbor lessor to generate a net operating loss carryback or investment tax credit carryback to a prior taxable year. The Act does not prohibit a carryforward of these amounts.

***Related party transactions***

The Act prevents the lessee from entering into a safe-harbor lease with a related person.

***ITC strip***

The Act allows safe-harbor lease treatment for transactions referred to as lease-leasebacks or ITC strips entered into before October 20, 1981.

***Closely held lessors***

Under present law, closely held lessors, in general, are subject to the rules that limit losses and investment credits to the amount of the taxpayer's at-risk investment.

Under the Act, the at-risk limitations generally do not apply to losses or credits of closely held corporations (other than personal service corporations) with respect to qualified leased property subject to a safe-harbor election. The at-risk rules continue to apply to closely held lessors with respect to finance leases and other non-safe-harbor leases. This change applies (1) to property placed in service after the date of enactment and (2) to property placed in service before the date of enactment if the lessor first became a closely held corporation after the date of enactment.

***Effective date***

The modifications to the safe-harbor leasing rules generally apply to leases entered into or property placed in service after July 1, 1982, except that the limitation on lessees relating to percentage depletion and the limitation on related party transactions apply to leases entered into after February 19, 1982.

The Act provides a general transitional rule, under which the modifications to the safe-harbor leasing provisions do not apply for property placed in service before January 1, 1983 if after December 31, 1980 and before July 2, 1982 either (1) the property was acquired by the lessee or construction of the property was commenced by or for the lessee, or (2) a binding contract to acquire or construct the property was entered into by the lessee. A contract is not binding unless the lessee's failure to perform would subject him to liability for damages in an amount equal to or greater than 5 percent of the cost of the property.

The Act also provides additional transitional rules, under which the modifications to the safe-harbor leasing provisions do not apply to—

(a) a mass commuting vehicle placed in service before January 1, 1988;

(b) a mass commuting vehicle placed in service after December 31, 1987, if (1) the property was not placed in service before January 1, 1988, solely because of conditions not within the control of the lessor or lessee and (2) the property is placed in service pursuant to a binding contract or commitment entered into before April 1, 1983;

(c) commercial passenger aircraft (other than helicopters) placed in service before January 1, 1984, if after June 25, 1981, and before February 20, 1982, either (1) the property was acquired by the lessee or construction or reconstruction was commenced by or for the lessee, or (2) a binding contract to acquire or construct the property was entered into by the lessee. For this purpose, construction is considered to have commenced if construction or reconstruction of a subassembly was commenced or the stub wing join occurred;

(d) certain automobile manufacturing property placed in service before July 1, 1982, and leased before August 15, 1982, and automobile manufacturing property that would meet the requirements of the general transitional rule if October 1, 1983, were substituted for January 1, 1983;

(e) boilers and turbines of certain cooperatives placed in service before July 1, 1983, if after December 31, 1980, and before July 2, 1982, at least 20 percent of the cost of the boiler or turbine was paid by the taxpayer; and

(f) property used in the production of steel that would meet the requirements of the general rule if January 1, 1984, were substituted for January 1, 1983.

For purposes of the transitional rules, construction is considered to have commenced when physical work on construction of the property commences. The transitional rules are applied for each separate item of property. The general transitional rule applies to property placed in service before January 1, 1983, where the lessee ordered the components to be used in construction of the property before July 2, 1982 (pursuant to binding contracts entered into after December 31, 1980) and employees of the lessee installed the components after July 1, 1982.

***Repeal***

The Act repeals the safe-harbor lease provisions for leases entered into after December 31, 1983.

### *7. Foreign tax provisions*

#### *a. Limitations on amount of foreign oil and gas extraction taxes allowed as foreign tax credits (sec. 211 of the Act)*

Under present law, for purposes of computing the amount of creditable oil and gas extraction taxes, extraction losses from one foreign country cannot reduce oil and gas extraction income from another foreign country (sec. 907(a) and (c)(4)). Carryovers and carrybacks of excess extraction taxes paid are limited to 2 percent of foreign oil extraction income. The foreign tax credit limitation is computed separately for oil related income and all other foreign income.

The Act provides that a net extraction loss in one country offsets extraction income from other countries for the purpose of computing the amount of creditable foreign oil and gas extraction taxes. The Act also repeals the 2 percent limit on carryovers and carrybacks and the separate foreign tax credit limitation for oil related income. The Act provides for the disallowance of credits to the extent that foreign countries impose abnormally higher taxes on oil activities than on other activities.

The provision applies generally to taxable years beginning after December 31, 1982.

#### *b. Current taxation of foreign oil and gas non-extraction income (sec. 212 of the Act)*

Under current law, foreign-source income of controlled foreign corporations is generally not taxed currently. However, U.S. shareholders are currently taxed on income from certain tax haven and tax avoidance transactions by their foreign corporations (secs. 951–964).

The Act generally subjects U.S. shareholders to tax on the foreign oil non-extraction income of their controlled foreign corporations if the related group has extraction production of at least 1,000 barrels per day. There is no current taxation of income earned by a subsidiary in the country where the oil or gas is extracted or consumed.

This provision applies to taxable years of foreign corporations beginning after December 31, 1982, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

#### *c. Possessions and Virgin Islands corporations (sec. 213 of the Act)*

Under present law, to qualify for effective tax exemption, a U.S. corporation must derive at least 50% of its gross income from the active conduct of a trade or business within a U.S. possession.

Possessions corporations (sec. 936) and certain U.S. corporations that are inhabitants of the Virgin Islands (sec. 934) are, in general, effectively tax exempt. This exemption applies to income from intangibles created by such a corporation or acquired from an unrelated party. Taxpayers allege that an intangible asset (a patent, trademark, etc.) created by a related party and transfered to a possessions corporation generates tax-free income of the possessions corporation. The Internal Revenue Service allocates income from such an intangible to the related party. The issue is currently being litigated in the United States Tax Court.[1]

The Act raises the percentage of income that a corporation must derive from active conduct of a trade or business in a possession to qualify for effective tax exemption from 50 percent to 65 percent. This increase is phased-in over a three-year period.

The Act provides as a general rule that income from intangibles is taxable to the U.S. shareholders of the possessions corporations. Taxpayers may elect out of the general rule and choose between two options for determining taxation of intangibles income. These two options are a "cost-sharing" option and a "50-50 profit split" option. These options are generally not available for taxable years beginning in 1986 and thereafter unless the taxpayer satisfies a substantial business presence test requiring a certain level of activity in the possession.

Under the cost-sharing option, a possession corporation will be permitted to earn income from manufacturing intangibles of it U.S. parent or other U.S. affiliate (collectively, "mainland affiliate"), provided the possession corporation (1) shares, through a cost sharing payment, in the annual product area research expenditures of the mainland affiliates and other affiliates controlled within the meaning of section 482 (collectively, "affiliates"), and (2) has a significant business presence in the possession. If these conditions are satisfied, the possession corporation will be deemed to own such manufacturing intangibles and will be entitled to the full return thereon with respect to the products produced or type of services rendered by the possession corporation. The applicable pricing methods provided in the intercompany pricing regulations (sec. 482) will be utilized for this purpose. The possession corporation cannot claim a return on manufacturing intangibles, such as trademarks, trade names, and brand names.

Under the 50-50 profit split option, the possession corporation also makes a cost-sharing payment. Upon this payment, the possession corporation and its U.S. affiliates will split the combined taxable income of the possession corporation and its U.S. affiliates with respect to products produced, in whole or in part, in the possession. Fifty percent of such profit will be allocated to the possession corporation; 50 percent will be allocated to its U.S. affiliates.

The Act generally subjects to tax sales and other dispositions of intangibles used in a possession. A transfer of a possession related intangible is generally deemed pursuant to a plan having as one of its principal purposes the avoidance of Federal income taxes.

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[1] No inference should be drawn from this summary or from the Act that the Congress agrees or disagrees with either the taxpayers involved or the Internal Revenue Service about this issue or similar issues in similar proceedings.

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The provision applies generally to taxable years beginning on or after January 1, 1983. The provision relating to sales of intangibles applies to sales made after July 1, 1982. The provision relating to certain transfers applies to transfers made after August 14, 1982.

### *8. Tax-exempt obligations (secs. 214–221 of the Act)*

Generally, interest on State and local government obligations is exempt from Federal income tax. However, industrial development bonds (IDBs) are taxable except when issued for certain specified purposes.

Interest on IDBs is tax-exempt if the bonds are issued to finance the following activities: (1) projects for low-income residential rental property, (2) sports facilities, (3) convention or trade show facilities, (4) airports, docks, wharves, mass commuting facilities, and parking facilities, (5) sewage and solid waste disposal facilities, and facilities for the local furnishing of electricity or gas, (6) air or water pollution control facilities, (7) certain facilities for the furnishing of water, (8) qualified hydroelectric generating facilities, and (9) qualified mass commuting vehicles. In addition, the interest on certain IDBs issued for the purpose of acquiring or developing land as a site for an industrial park is exempt from taxation.

Present law also permits tax exemption for certain "small issue" IDBs if the proceeds are used for the acquisition of land or depreciable property. A small issue cannot exceed $1 million ($10 million if certain capital expenditures are counted).

Present law also allows tax-exempt financing for student loans and organizations that qualify for tax-exemption under section 501(c)(3), such as private, nonprofit hospitals and private, nonprofit educational institutions.

Present law permits the cost of facilities financed with tax-exempt IDBs to be recovered under the Accelerated Cost Recovery System (ACRS).

#### *a. Restrictions on tax-exempt bonds for private activities*

Under the Act, quarterly reports to the IRS are required for issuers of all tax-exempt bonds for private activities (i.e., all IDBs, student loan bonds, and bonds for sec. 501(c)(3) organizations). Additionally, all IDBs can be issued only after a public hearing and approval by an elected official, or a voter referendum. The reporting requirement is effective for all bonds issued after 1982; the public hearing and approval requirement is effective for obligations issued after 1982, with a transitional exception for bonds issued solely to refund certain short-term obligations that were issued before July 1, 1982.

The Act restricts cost recovery deductions for property financed with IDBs to amounts determined using the straight-line method over ACRS lives. Full ACRS deductions will still be allowed in the case of low-income rental housing, municipal sewage or solid waste facilities, certain air or water pollution control facilities, and certain facilities with respect to which a UDAG grant is made. This change is generally effective for property placed in service after 1982 which is financed with bonds issued after July 1, 1982; transitional exceptions are provided for certain property for which a binding contract existed on July 1, 1982, or on which construction commenced before that date.

The Act restricts the average term to maturity of all IDBs to a period no greater than 120 percent of the average economic life of the assets financed by the bonds. For this purpose, the ADR midpoint lives, or the lives established under Rev. Proc. 62-21 for structures, are to be used, unless the taxpayer establishes a longer life. This provision is effective for bonds issued after December 31, 1982.

The Act terminates the small issue exception for IDBs, effective for bonds issued after December 31, 1986. In addition, the Act eliminates the use of IDBs to finance certain facilities, effective for bonds issued after December 31, 1982, if (1) more than 25 percent of the proceeds of the issue are used to provide a facility the primary purpose of which is automobile sales or service, retail food or beverage service, or recreation or entertainment, or (2) any portion of the proceeds is used to finance facilities for a golf course, country club, massage parlor, tennis club, skating facility, racquet sport facility, hot tub facility, suntan facility, or racetrack. The Act also provides that tax exemption is not available for bonds exempt under the small issue exemption when the bonds are issued as part of a single issue, including other bonds exempt under any other provision. This provision is effective for bonds issued after the date of enactment.

### *b. Other amendments affecting IDBs*

The Act expands the definition of "local furnishing" for facilities supplying gas to include facilities whose service area does not exceed a city and one contiguous county. In addition, the activities for which IDBs may be issued are expanded to include local district heating and cooling facilities and ferries used in providing mass transportation services. These changes are effective for bonds issued after the date of enactment.

The Act provides for the exclusion of wages and supplies eligible for the research and development credit from the capital expenditures included under the $10 million limitation for small issue bonds. This provision is effective for expenditures incurred after the date of enactment.

The Act permits composite issues of small-issue IDBs provided that all of the facilities financed under the composite issue are located in one State and all of the facilities have different principal users. For this purpose, a principal user includes certain franchisors. This provision is effective for bonds issued after the date of enactment.

The Act allows tax-exempt IDBs to be issued under certain circumstances for use by a qualified regional pollution control authority to acquire existing air or water pollution control facilities which the authority itself will operate. The Act further provides that certain IDBs of the Port Authority of St. Paul, Minnesota, may be advance refunded. These changes are effective for bonds issued after the date of enactment.

The rules for IDBs used to finance residential rental property for low- and moderate-income families are changed in two respects.

First, the Act defines the term "low- and moderate-income" to mean individuals whose income is less than 80 percent of the area median income (regardless of the percentage used under the section 8 program). Second, the duration of the requirement that 20 percent (15 percent in targeted areas) of the housing units in a project be occupied by low- and moderate-income individuals is reduced from 20 years to a period equal to the greatest of (1) 10 years after over one-half of the project is first occupied, (2) a date ending when 50 percent of the maturity of the bonds has expired, or (3) the date on which any section 8 (or comparable) assistance terminates. These changes are generally effective for bonds issued after the date of enactment.

*c. Mortgage subsidy bonds*

Under the Mortgage Subsidy Bond Tax Act of 1980, all of the mortgages financed from tax-exempt bond proceeds must be provided to mortgagors each of whom did not have a present ownership interest in his or her principal residence at any time during the three prior years. All of the mortgages (except qualified home improvement loans) must be used to purchase residences whose purchase price does not exceed 90 percent (110 percent in targeted areas) of the average area purchase price.

In addition, each bond issue must meet certain requirements regarding arbitrage as to both mortgage loans and nonmortgage investments. First, the effective rate of interest on mortgages provided under the issue cannot exceed the yield on the issue by more than one (1.0) percentage point. Second, the reserve for future debt service established in connection with the bonds must be reduced as future annual debt service is reduced.

Present law includes no provisions that relate specifically to the treatment of cooperative housing corporations under these rules.

The Act modifies several of the rules for qualified mortgage subsidy bonds—

*First-time home purchaser limitation.*—The Act provides that 90 percent of the lendable proceeds of a mortgage subsidy bond must be made available for mortgages to first-time home purchasers.

*Purchase price limitation.*—The Act increases the purchase price limitation to 110 percent (120 percent in a targeted area) of the average area purchase price.

*Arbitrage limitations.*—The 1.0-percentage point limit is increased to 1⅛ percentage points.

*Reserve liquidations.*—The Act provides that the rule requiring reserve liquidations will not apply to the extent it requires disposition of any nonmortgage investment resulting in a loss in excess of the amount of undistributed arbitrage profits on such investments.

*Cooperative housing.*—In the case of a cooperative housing corporation, the Act provides that each dwelling unit is to be treated as if it were actually owned by the person entitled to occupy that unit by reason of his or her ownership of shares in the cooperative housing corporation. In addition, any indebtedness of the corporation that is allocable to the dwelling unit is treated as if it were indebtedness of the shareholder who is entitled to occupy the dwelling unit.

The Act also provides that any issue that provides financing to a cooperative housing corporation that is not located in a targeted area may be combined with one or more other issues which in sum satisfy the requirement that at least 20 percent of the proceeds of an issue will be devoted to owner-financing of residences in targeted areas for a period of at least one year.

These changes are generally effective for bonds issued after the date of enactment. However, the change to the first-time home purchaser limitation also applies to bonds issued before the date of enactment to the extent of the uncommitted funds on that date.

### 9. *Mergers and acquisitions (secs. 222–228 of the Act)*

#### *a. Partial liquidations*

A distribution in partial liquidation of a corporation is treated by the distributee shareholders as a payment in exchange for their stock (secs. 331, 346). No gain or loss is recognized to the distributing corporation on a distribution of assets in partial liquidation (sec. 336). However, the recapture provisions of present law apply to such distributing corporation.

Under the Act, distributions in partial liquidation to corporate shareholders are governed by the provisions of present law other than those relating to partial liquidations. Such distributions now treated as partial liquidations will be treated as dividends if they satisfy the definition of a dividend. Distributions in partial liquidation to noncorporate shareholders will continue to be treated as payments in exchange for their stock.

Gain generally will be recognized to the distributing corporation with respect to appreciated assets distributed in partial liquidation to noncorporate shareholders. However, gain will not be recognized where such distributions are made to shareholders who have held (with attribution) at least 10 percent of the corporation's stock for the 5-year period preceding the distribution.

The revised treatment of partial liquidations applies to distributions made after August 31, 1982. However, present-law partial liquidation rules will continue to apply under certain circumstances.[1]

#### *b. Distribution of appreciated property in redemption of stock*

A corporation, under present law, generally is required to recognize gain on a distribution of appreciated property in redemption of its stock. There are a number of exceptions to this requirement, including distributions terminating the interest of a shareholder who has held at least 10 percent of the corporation's stock for one year

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[1] These circumstances are: (a) A ruling request as to partial liquidation treatment was pending on July 22, 1982 (or a ruling was granted on or after July 12, 1981, and before July 23, 1982), and a plan of partial liquidation is adopted by October 1, 1982 (or, if later, within 90 days after the ruling is granted).

(b) A plan of partial liquidation was adopted before July 23, 1982.

(c) Control (as defined in sec. 368(c)) of the distributing corporation was acquired after December 31, 1981 and before July 23, 1982, and a plan of partial liquidation is adopted by October 1, 1982.

(d) Control was acquired after July 22, 1982, pursuant to a binding contract or tender offer outstanding on such date and a plan of liquidation is adopted by October 1, 1982, or, if later, within 90 days after final approval of the acquisition by a Federal regulatory agency or foreign regulatory body. Further, the acquisition need not be made pursuant to a tender offer or binding contract in effect on July 22, 1982, if at least one-third of the corporation's shares were acquired, and the acquiring corporation notified the Federal Trade Commission of its intent to acquire control, during March and April 1982.

(e) Control of an insurance company was acquired after December 31, 1980 and before July 23, 1982, by the distributee or its parent corporation, conduct of the insurance business by the distributee is subject to approval by State regulatory authority, and a plan of partial liquidation is adopted by October 1, 1982.

(sec. 311(d)(2)(A)), distributions of stock in a subsidiary corporation, and distributions pursuant to an antitrust judgment.

The Act repeals these exceptions, but retains an exception for distributions of the stock of certain active subsidiaries to certain noncorporate shareholders who have held (with attribution) 10 percent of the corporation's stock for 5 years.

The repeal of present-law exceptions generally is effective for distributions after August 31, 1982.[2]

### *c. Certain stock purchases treated as asset purchases*

Under present law, when 80 percent or more of a corporation's stock is purchased and the acquired corporation adopts a plan of complete liquidation within 2 years of the purchase, the basis of the assets distributed in liquidation is the cost paid for the stock plus assumed liabilities and other items. The tax attributes of the acquired corporation are terminated. If several affiliated corporations are acquired, this treatment applies to corporations liquidated under these rules, but not to acquired entities that are not liquidated.

Under the Act, the purchasing corporation may elect, within 75 days after the purchase, to treat the acquired corporation as a new corporation that purchased the assets of the acquired corporation, on the date the stock was purchased. The tax attributes of the acquired corporation are terminated on such date. Gain is not recognized to the acquired corporation but the recapture provisions apply. No actual liquidation is required.

If an affiliated group of corporations is purchased, an election will apply to the entire affiliated group. If there is a qualifying stock purchase and if there is also a direct purchase of assets from the same affiliated group, the purchasing corporation is deemed to have made the election.

The new rules generally will apply to acquisitions after August 31, 1982.[3]

### *d. Reorganizations constituting changes in form*

A reorganization includes a mere change in identity, form, or place of organization (an "F" reorganization).

The Act limits the F reorganization definition to a change in identity, form, or place of organization of a single operating corporation. The amendment applies to reorganizations after August 31, 1982. However, present law continues to apply to transactions

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[2] However, if a ruling request was filed under sec. 311(d)(2)(A) before July 23, 1982, present law will continue to apply to distributions made within 90 days after the ruling is granted. Section 311(d)(2)(A) will also apply to distributions made before August 31, 1983, with respect to stock acquired after 1980 and before May 1982. Finally, sec. 311(d)(2)(A) of present law will continue to apply to distributions of timberland by a forest products company, if such distributions are made pursuant to one of two options under a contract between the shareholder and the company binding on August 31, 1982, and at all times thereafter, and do not, on August 31, 1982, exceed in value $10 million. Present law also continues to apply to distributions prior to 1986 with respect to antitrust judgments rendered before July 23, 1982.

[3] However, if the acquisition took place after August 31, 1980 and the acquired corporation was not liquidated before September 1, 1982, the election may be made with respect to such acquisition on or before November 15, 1982.

Old law will continue to apply if there was a binding contract to acquire control of a financial institution outstanding on July 22, 1982, and a plan of liquidation is adopted within 90 days after final regulatory approval of such acquisition.

before January 1, 1983, pursuant to plans of reorganization adopted on or before August 31, 1982.

### *e. Use of holding companies and other devices to bail out earnings*

Shareholders who have their stock redeemed in a corporate distribution are entitled to sale or exchange treatment rather than a dividend generally only if the transaction results in an substantial reduction in their proportionate interests in the distributing corporation. Present law (secs. 304 and 306) contains rules to prevent avoidance of this limitation through the use of related corporations. Present law does not adequately deal with transactions involving the formation of holding companies and the use of preferred stock in some cases.

The Act extends the anti-bailout rules of present law to the use of holding companies and other companies used to avoid such rules.[4] Such rules are made applicable to a transaction that otherwise qualifies as a tax-free incorporation of assets.

Assumption of shareholder debt by the holding company is treated as property received by the transferor shareholders. However, debt incurred to acquire the stock of an operating company is excepted since assumption of such debt is an alternative to a debt-financed direct acquisition by the holding company.[5]

### *f. Application of attribution rules for purposes of sections 306 and 356(a)(2)*

In determining whether a shareholder is entitled to sale or exchange treatment on a stock redemption, stock held by related parties is attributed to the shareholder in determining whether the shareholder's interest in the corporation was terminated or significantly reduced. The attribution rules do not apply to some transactions that are economically equivalent to straight stock redemptions and that offer an equivalent opportunity to bail out earnings. These include the issuance and sale at capital gain rates of preferred stock in some cases and the receipt of property in a reorganization.

The Act extends the ownership attribution rules to a determination of whether, for section 306, the effect of a transaction is substantially the same as a dividend and in determining whether the receipt of property in a reorganization has the effect of a dividend. The amendment applies to stock received and distributions made after August 31, 1982, in taxable years ending after such date.

### *g. Waiver of family attribution rules*

In determining whether a shareholder has completely terminated an interest in a corporation on a stock redemption so as to achieve sale or exchange treatment, present law allows the share-

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[4] The Act excepts from the bailout provisions securities in a bank holding company received by certain minority shareholders incident to the formation of such company following a change in control of a bank.

[5] The amendments to the anti-bailout rules apply to transfers made after August 31, 1982. Present law is continued for transfers pursuant to an application to form a bank holding company filed with the Federal Reserve Board before August 16, 1982, provided the bank holding company is formed by the later of (i) the 90th day after the date of the last required approval of any regulatory authority to form such bank holding company, or (ii) January 1, 1983.

holder to waive attribution of ownership from other family members. The waiving shareholder in general may hold no interest in the corporation (except as a creditor), may not acquire any interest for a 10-year period, and must agree to notify the Internal Revenue Service of any such acquisition. The statute of limitations for the year of redemption remains open in the event of such an acquisition. Stock may be attributed by family attribution and reattributed to an entity such as an estate or trust in which the constructive owner has a beneficial interest.

The Act permits an entity to waive the family attribution rules if those through whom ownership is attributed to the entity join in the waiver. Thus, a trust and its beneficiaries may waive family attribution to the beneficiaries if, after the redemption, neither the trust nor the beneficiaries hold an interest in the corporation, do not acquire such an interest within the 10-year period, and join in the agreement to notify the IRS of any acquisition. The entity and beneficiaries are jointly and severally liable in the event of an acquisition by any of them within the 10-year period and the statute of limitations is kept open to assess any deficiency. The tax increase is a deficiency in the entity's tax but may be asserted as a deficiency against any beneficiary liable under the rules. The tax will be triggered only against the beneficiary whose acquisition triggers the deficiency where, because it has insufficient funds or gone out of existence, the tax cannot be collected from the entity.

Only family attribution can be waived under the Act. The agreement will not be effective to waive the entity attribution rules.

Certain anti-avoidance rules of present law are extended to the entity and affected beneficiaries.

The provision applies to distributions after August 31, 1982, in taxable years ending after such date.

### *10. Accounting for long-term contracts (sec. 229 of the Act)*

Under present law, the completed contract method of accounting provides that income from long-term contracts is recognized when the contract is completed. Also, costs allocable to the contract are deducted when the contract is completed. Other costs, known as "period" costs, are deducted when they are paid or incurred.

Under the Act, the completed contract method of accounting for long-term contracts is revised in two respects. First, the income tax regulations are to be amended to prevent abuse of the rules relating to completion of the contract and aggregation of several agreements in one contract. These new rules apply to taxable years ending after 1982. Special rules are provided for contracts that would have been completed in taxable years ending before 1983 solely by reason of the new rules.

Second, the Act revises rules relating to the allocation of costs to long-term contracts. Under the new rules, all costs which directly benefit, or are incurred by reason of, the long-term contract activities of the taxpayer are to be allocated to the contract and deducted when the contract is completed. For long-term contracts that are expected to be completed within 2 years, the cost allocation rules are not revised. In addition, construction contracts will continue to use present law cost allocation rules where the construction contract is expected to be completed within 3 years or in the case of construction contracts of taxpayers with no more than $25 million of average annual gross receipts for the previous three years.

The new cost allocation rules apply to taxable years beginning after 1982 with respect to contracts entered into after 1982. In addition, the Act provides that the new cost allocation rules are phased in over a 3-year period.

### *11. Accelerated corporate tax payments (sec. 234 of the Act)*

Under present law, corporations generally must pay 80 percent of the current year's tax liability in quarterly estimated tax payments during the taxable year (sec. 6655). A penalty for underpayment of estimated taxes is imposed unless the corporation meets certain exceptions based on prior year's tax liability, prior year's income, or annualized income. At each installment date, annualized income is projected from the actual taxable income earned by the end of the previous month (or quarter).

Generally, a corporation must pay its final tax payment 2½ months after the end of the taxable year, but it may elect to pay only half of the unpaid tax on this date and the remaining half three months later.

Under the Act, the amount of estimated tax payments required for all corporations is increased from 80 percent to 90 percent of current year's tax liability. (A corresponding change will be made in the exception based on annualized income.) The penalty for underpayment of estimated taxes is imposed at three quarters of the full rate on underpayments between 80 and 90 percent of the tax due, but only if the taxpayer makes estimated tax payments of at least 80 percent of the tax due.

The full amount of the unpaid tax is due 2½ months after the end of a taxable year.

Corporate taxpayers with seasonal income have a new rule governing estimated tax payments. These taxpayers may rely on the rule if, in the preceding three taxable years, taxable income for any period of 6 successive months averaged 70 percent or more of total income for the taxable year. Income is to be annualized by assuming that the income is earned, in the current year, in the same pattern as in the three preceding taxable years. This rule requires that the tax be paid on the annualized income in the same seasonal pattern in which it is earned.

The Treasury Department is directed to amend its regulations regarding the computation of taxable income for the period before the installment due date, and taxpayers may rely on these regulations in computing taxable income for a period of less than a full taxable year under the annualization and seasonal pattern of income exceptions to the underpayment penalty.

These provisions apply to taxable years beginning after December 31, 1982.

### *12. Original issue discount bonds (sec. 231 of the Act)*

Under present law, original issue discount on corporate bonds is included in income by holders in whose hands such bonds are capital assets, and is allowed as a deduction to the issuer, on a linear basis over the life of the bond. The discount is treated as accruing in equal monthly installments over the life of the bond. The OID provisions of the Internal Revenue Code presently do not provide for ratable inclusion of discount income by holders of noncorporate bonds. A portion of gain from the sale or disposition of government bonds is treated as ordinary income to the extent of accrued original issue discount.

The Act provides new rules under which the inclusion and deduction of original issue discount correspond to the actual economic accrual of interest. These rules are extended to bonds issued by noncorporate issuers other than natural persons.

The provision is effective for obligations issued after July 1, 1982, unless issued pursuant to a written commitment binding on July 1, 1982, and at all times thereafter.

### *13. Coupon stripping (sec. 232 of the Act)*

Under present law, if a taxpayer disposes of a bond and retains the unmatured interest coupons or disposes of the bond and the coupons in separate transactions, it is arguable that the taxpayer's basis is entirely allocable to the corpus (bond principal). Any loss from disposing of the corpus, if allowable, is an ordinary loss to a dealer in such obligations, or to a bank, and a capital loss to other taxpayers.

Gain to the purchaser of a stripped bond is deferred until the bond is sold or redeemed and is ordinary income to the extent of the difference between the value of the bond with and without the coupons attached at the time of purchase. The purchaser of stripped coupons allocates cost to the coupons in accordance with their relative values at the time of purchase. Capital gain may result if coupons are sold rather than redeemed.

Under the Act, stripped bonds and stripped coupons in the hands of a purchaser are treated as bonds issued at a discount. The discount is the excess of the redemption price of the bond, or amount payable on maturity of the coupon, over the purchase price allocable to the bond or coupon. The purchaser must include the discount in income under the original issue discount rules.

The seller of a stripped bond or stripped coupons must, immediately before the disposition, allocate the basis of the bond (with coupons) among the bond and coupons in accordance with their values. This will prevent artificial losses from the sale of stripped bonds. The same original issue discount treatment applicable to a buyer of a stripped bond or stripped coupons applies to the re-



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tained portions after a seller strips and disposes of either the corpus or coupons.

The rule of present law that requires ordinary income treatment on the sale or other disposition of a stripped bond to the extent of the difference in fair market value of the bond with and without coupons attached at the time of purchase is continued for bonds purchased at any time before July 2, 1982. This rule is applicable to tax exempt obligations without regard to the date of purchase.

The new treatment applicable to coupon stripping applies where there is a sale after July 1, 1982, of either a stripped bond or stripped coupons.

### *14. Targeted jobs credit (sec. 233 of the Act)*

The targeted jobs credit is available for hiring individuals from one or more of nine target groups (sec. 44B). The credit is equal to 50 percent of the first $6,000 of wages paid for the first year of employment, and 25 percent of the first $6,000 of wages paid for the second year of employment, to a target group individual. Under present law, the credit is available for wages paid to eligible individuals who begin work for the employer before 1983.

The Act modifies the credit in several ways. First, the credit is made available with respect to any member of a targeted group who begins work on or before December 31, 1984.

Second, a new targeted group is added, consisting of economically disadvantaged youths who are 16 or 17 years of age on the hiring date and who have not worked for the employer before the period for which the employer claims the credit. The credit for this group is 85 percent of up to $3,000 of wages paid for services attributable to any 90-day period between May 1 and September 15, effective for individuals beginning work for the employer after April 30, 1983.

Third, recipients of noncash, as well as cash, general assistance payments are members of a targeted group.

Fourth, the target group consisting of individuals involuntarily terminated from CETA jobs will be terminated for individuals who begin work for the employer after December 31, 1982.

Fifth, appropriations of administrative funds are authorized for such sums as may be necessary in fiscal years 1983 and 1984.

Sixth, the Secretary of Labor will be required to submit annual quality control reports to the Congress, reviewing the accuracy of the process by which the eligibility of individuals as members of targeted groups is determined.

Seventh, certifications will be valid if requested or received on or before the day the individual begins work for the employer.

## C. Compliance Provisions

### *1. Withholding on interest and dividends (secs. 301–308 of the Act)*

Under present law, no income tax withholding is required on payments of interest, dividends, or patronage dividends to U.S. persons.

The Act provides for withholding on payments of dividends, interest, and certain patronage dividends paid to individuals (and certain others) at a rate of 10 percent. Exceptions are provided for:

(1) individuals with prior year income tax liability of $600 or less ($1,000 on a joint return);

(2) elderly individuals with prior year income tax liability of $1,500 or less ($2,500 on a joint return);

(3) interest payments by electing payors of $150 or less on an annualized basis;

(4) payments by consumer cooperatives; and

(5) payments to corporations, governments, securities dealers, money market funds, exempt organizations, nominees, and certain other recipients.

Interest subject to withholding generally includes interest (including original issue discount), other than (1) interest paid by individuals, or State and local governments on tax-exempt obligations, (2) interest paid to nonresident alien individuals, foreign corporations and certain other foreign entities, and (3) foreign source interest paid outside the United States by United States corporations.

Dividends subject to withholding generally are distributions out of earnings and profits other than payments to nonresident alien individuals and foreign corporations.

Patronage dividends subject to withholding do not include per-unit retain allocations or patronage dividends which include consent-type qualified written notices of allocations unless 50 percent or more of such patronage dividend is paid in money or by qualified check.

In general, these provisions apply to interest and dividends paid or credited after June 30, 1983. This authority may be exercised on a case-by-case basis when the payor has attempted in good faith to comply with the withholding obligations but cannot do so without undue hardship.

### 2. *Reporting provisions and penalty provisions to improve reporting generally*

#### *a. Reporting of interest (sec. 309 of the Act)*

Present law contains an information reporting requirement with respect to payments of interest aggregating $10 or more to any other person during the calendar year (sec. 6049). Any corporation that has an obligation outstanding in registered form with respect to which $10 or more of original issue discount is includible in the gross income of any holder during any calendar year must also file an information return with the Secretary. Payors of interest and persons who are required to file information returns with respect to original issue discount must also furnish information statements to recipients.

Under the Act, as under present law, every person who makes payments of interest aggregating $10 or more to any other person during the calendar year, must file an information return. In addition, any person who withholds tax from a payment of interest must file an information return with the Secretary. Original issue discount is generally treated as paid at the time includible in income. In the case of original issue discount on a bearer obligation issued before January 1, 1983, and original issue discount which is not includible in the income of a holder periodically (including discount on short-term government obligations), the original issue discount is treated as paid on the earlier of redemption or maturity of the obligation.

Under the Act, interest subject to the information reporting requirement is defined to include interest on any obligation which is issued in registered form, or which is of a type offered to the public (other than any obligation with a maturity, at issue, of not more than 1 year which is held by a corporation); interest on bank deposits, and, to the extent provided in regulations prescribed by the Secretary, any other interest (which is not specifically excluded from the definition of interest). These are generally the same categories of interest that are subject to reporting under present law except interest on all obligations in registered form or of a type offered to the public is subject to reporting rather than only interest on corporate obligations as under present law.

As under existing law, interest on bearer obligations that is paid outside the United States by a United States person (e.g., a foreign branch of a U.S. bank) acting as a paying agent for a foreign corporate issuer (or for a U.S. corporate issuer whose interest payments are foreign-source) is exempt from the information reporting requirements, except to the extent otherwise provided by regulations.

In contrast to present law, interest paid on bearer obligations to a United States person by a person acting as a nominee, paying agent, or other middleman is subject to the information reporting requirements if the payment is made within the United States, even if the issuer is a foreign corporation.

This provision is effective for amounts paid after December 31, 1982.

*b. Obligations required to be registered (sec. 310 of the Act)*

Under present law, except for certain housing or energy bonds, the tax status of debt obligations is generally the same regardless of whether the obligation is issued in registered form or in bearer form.

Under the Act, the issuance of most bearer obligations by the U.S. or its agencies or instrumentalities is prohibited and certain tax benefits are denied to issuers and holders of other bearer obligations. In addition, an excise tax is imposed on bearer obligations that were required to be issued in registered form. Certain exceptions to the registration requirements are provided.

If a registration-required obligation is not issued in registered form, no interest deduction is allowable to the issuer with respect to interest (including original issue discount) paid or accrued on the obligation. In addition, the earnings and profits of a corporation issuing a registration-required obligation in bearer form will not be reduced by the amount of any interest paid or accrued on the obligation. Moreover, interest on an otherwise tax-exempt unregistered registration-required obligation is not exempt from tax. An excise tax is imposed on the issuer of a "registration-required obligation" that is not issued in registered form, equal to one percent of the principal amount of the obligation multiplied by the number of years in the term of the obligation. An exception is provided from these issuer sanctions for certain issues of bonds not intended for distribution (or redistribution in connection with the original issue) to U.S. persons.

Holder sanctions are imposed on U.S. persons who own bearer bonds issued after 1982 that were not subject to the excise tax and that should have been issued in registered form or were issued under the exception for bonds distributed outside the U.S. Specifically, these sanctions are the loss of capital gains treatment and the denial of loss deductions when such obligations are sold or exchanged or become worthless. Exceptions from the holder sanctions are provided for persons who promptly surrender bearer obligations for reissuance in registered form, for persons who hold certain bearer obligations in connection with their active conduct of a trade or business outside the United States, for securities dealers holding bearer bonds in inventory, and for persons complying with reporting requirements that may be promulgated by the Secretary, if certain conditions are satisfied to ensure that the bearer bonds will not be delivered to U.S. persons other than those qualifying under the exceptions.

These provisons apply to obligations issued after December 31, 1982, except that the holder and issuer sanctions do not apply to obligations issued in bearer form pursuant to warrants or convertible bonds issued before August 10, 1982, provided the obligations are issued under arrangements reasonably designed to ensure that they will be sold or resold only to foreign persons.

### *c. Returns of brokers (sec. 311 of the Act)*

Under present law, every person doing business as a broker must make returns reporting on profits and losses of its customers when required under regulations issued by the Secretary (sec. 6045). There are, currently, no regulations under this section.

The Act (1) permits the Secretary to require gross proceeds reporting, (2) requires brokers to furnish statements to their customers, and (3) clarifies the definition of broker to explicitly include persons such as dealers, barter exchanges, and other middlemen.

The Act also extends the definition of third-party recordkeepers (for administrative summons purposes) to include barter exchanges that are subject to the information reporting requirements imposed on brokers.

Generally, this provision will take effect on the date of enactment. Further, regulations must be issued under this provision within 6 months after the date of enactment; however, any such regulations may not apply to transactions occurring before January 1, 1983. The provision defining barter exchanges as third-party recordkeepers is effective for summonses served after December 31, 1982.

### *d. Information reporting requirements and penalties with respect to payments of remuneration for services and direct sales (sec. 312 of the Act)*

*Payments of remuneration*

Present law generally requires a person engaged in a trade or business to file an information return with respect to payments to another person aggregating $600 or more in the calendar year (Code sec. 6041(a)). The penalty for failure to file, or to provide statements to recipients, is $10 per failure, with a maximum aggregate penalty for each type of failure of $25,000 for any one calendar year (Code secs. 6652 and 6678).

The Act adds a separate Code provision dealing specifically with payments of remuneration for services, effective for payments made after 1982. In addition, the Act provides that the penalty for failure to file a return with respect to such payments, or failure to provide a statement to the recipient, is $50 per failure, not to exceed $50,000 in any calendar year. However, if the failure is due to intentional disregard of the filing requirements, the penalty will be no less than 10 percent of the amount not properly reported, without regard to the $50,000 limitation. The provision applies to returns the due date of which (without extensions) is after December 31, 1982.

*Direct sales*

There is no reporting requirement under present law with respect to sales of consumer products for resale.

The Act provides that direct sellers will be required to file information returns identifying all buyers to whom aggregate sales of $5,000 or more are made during the calendar year. Statements also must be provided to the buyers.

The provision applies to sales after December 31, 1982. The penalty for failure to comply with these reporting requirements is $50 per failure, not to exceed $50,000 in any calendar year. However, if the failure is due to intentional disregard of the reporting requirements, then the penalty will be $100 per failure, without regard to $50,000 limitation.

#### *e. Reporting of State and local income tax refunds (sec. 313 of the Act)*

Under present law, the refund, credit or offset of State or local income taxes that were deducted (with a resulting tax benefit) in a prior year is includible in a taxpayer's gross income. There is no requirement that information returns with respect to such refunds be filed with the United States or that a statement regarding the refund be furnished to the recipient.

The Act provides that an information return must be filed with the Secretary with respect to any State or local income tax refunds, credits, or offsets aggregating $10 or more paid or credited to an individual during the calendar year. In addition, a statement must be furnished to the recipient during January of the calendar year following the year of refund, credit or offset.

This new requirement will apply to refunds paid, and credits or offsets allowed, after December 31, 1982.

#### *f. Employer reporting with respect to tips (sec. 314 of the Act)*

Under present law, tipped employees must generally report all tips received in the course of their employment to their employer.

In general, withholding for purposes of the Federal Insurance Contributions Act (FICA) tax and the income tax is required only to the extent tips are reported to the employer and only to the extent collection of the tax can be made by the employer from wages paid to the employee (excluding tips, but including funds turned over by the employee to the employer or under the control of the employer).

Employees, whether or not they receive tips, are required to keep records to establish the amount of gross income and deductions. Employers are expressly required to retain only charge tip receipts and statements of tips received by employees furnished by such employees.

Under the Act, the rules of present law relating to reporting of tips to employers by their employees and to the resulting withholding of FICA and income taxes is retained. However, each large food and beverage establishment is required to report annually to the Internal Revenue Service (1) the gross receipts of the establishment from food and beverage sales (other than receipts from carryout sales and mandatory 10-percent or more service charge sales), (2) the amount of aggregate charge receipts (other than receipts from carryout sales and 10-percent service charge sales), (3) the aggregate amount of tips shown on such charge receipts and (4) reported tip income and mandatory service charges of less than 10 percent.

If the employees voluntarily report tips aggregating 8 percent or more of gross receipts (defined as gross receipts less carryout sales, less 10-percent service charge sales), then no tip allocations, will need to be made. However, if this 8-percent reporting threshold is not met, then the employer must allocate an amount equal to the difference between 8 percent of gross receipts and the amounts reported by employees for the year to all tipped employees pursuant to either an agreement between the employer and employees or in the absence of such an agreement according to regulations issued by the Secretary.

A large food or beverage establishment is any establishment (public or private) the activity of which is the provision of food or beverages for consumption on the premises, other than of a "carry-out" nature such as "fast food restaurants," with respect to which tipping is customary, and which normally employed more than 10 employees on a typical business day during the preceding calendar year.

The Act requires the Secretary of the Treasury to submit, prior to January 1, 1987, to the tax-writing committees of the Congress a report on the operation of the present reporting system as applied to tips received as wages or compensation.

These amendments generally apply to calendar years beginning after December 31, 1982, but the allocation rules will first apply to payroll periods ending after March 31, 1983.

### *g. Increased penalties for failure to file information returns and statements (sec. 315 of the Act)*

Present law imposes a penalty on any person who fails to file timely information returns relating to various forms of compensation, interest, and dividends. The penalty is $10 for each such failure, but the total amount of the penalties imposed for all such failures during a calendar year cannot exceed $25,000. Persons with respect to whom information returns are filed generally are entitled to a statement of the information shown on the return. The penalty for failure to provide these statements is also $10 per failure up to $25,000 per year. Employers and plan administrators must file information returns with respect to certain deferred compensation plans. The penalty for failure to provide these returns is $10 for each day the failure continues up to $5,000. The penalty is not imposed if the failure is due to reasonable cause and not due to willful neglect.

Under the Act, the category of information returns subject to the general penalty for failure to file timely information returns is expanded to include broker returns and direct seller returns. The penalty for failure to file most information returns, and to provide statements to recipients, is increased to $50 per failure, not to exceed $50,000 in any calendar year. The penalty for failure to file information returns or statements with respect to certain deferred compensation plans, and certain term, annuity, and bond purchase plans is increased to $25 per day that the failure continues, but not to exceed $15,000.

If the failure to file information returns is due to intentional disregard of the filing requirements, the penalty will be no less than 10 percent of the amounts not properly reported (5 percent in the case of broker returns and $100 in the case of direct sellers) and the $50,000 limitation will not apply.

The provision applies to returns and statements required (without regard to extensions) after December 31, 1982.

### *h. Increase in civil penalty on failure to supply identifying numbers (sec. 316 of the Act)*

Present law imposes a penalty of $5 per failure on any person who is required by regulations (1) to include his taxpayer identification number (TIN) in any return, statement or document, (2) to furnish his TIN to another person, or (3) to include in any return or statement made with respect to another person the TIN of such other person, and who fails to comply with such requirement at the time prescribed (sec. 6676).

The penalty for failure to supply identifying numbers (other than in case (1), above) is increased from $5 per failure to $50 per failure, but not to exceed $50,000 for all such failures in any calendar year.

The provision will be effective for returns the due date of which (without extensions) is after December 31, 1982.

### *i. Extension of withholding to certain payments where identifying number not furnished or inaccurate (sec. 317 of the Act)*

Present law imposes a penalty of $5 per failure on any person who is required by regulations (1) to include his taxpayer identification number (TIN) in any return, statement, or document, (2) to furnish his TIN to another person, or (3) to include in any return or statement made with respect to another person the TIN of such other person, and who fails to comply with such requirement at the time prescribed. The penalty is not imposed if the failure is due to reasonable cause and not due to willful neglect.

Under the Act, withholding at source at a tax rate of 15 percent will be required if a taxpayer fails to supply a TIN or supplies an incorrect TIN to another person who must file certain types of information returns with respect to payments to the taxpayer. If a taxpayer fails to supply a TIN to the payor of a backup withholding payment or supplies an obviously incorrect number then the withholding obligation rules would apply immediately. Otherwise, a 15-day grace period would apply during which the payor will not be liable if it failed to withhold, or withholds where he had an obligation to do so. The types of payments subject to this withholding requirement (back-up withholding payments) generally would include the types of payments subject to the information reporting requirements. This withholding generally would not apply to payments made to the United States or any agency or instrumentality thereof, to any State or political subdivision thereof, to any tax-exempt organization, or to any foreign government or international organization.

Except in the case of payments of compensation, etc. for which information reporting is required under section 6041 (relating to information at the source generally) or section 6041A (relating to payments to independent contractors), this requirement for withholding would apply without regard to the reporting thresholds provided for the information returns.

Generally, payment of amounts subject to this new withholding provision would be treated as wages paid by an employer to an employee and subject to the various provisions applying to collection of income tax at the source on wages.

This provision will apply to payments made after December 31, 1983.

#### *j. Minimum penalty for extended failure to file (sec. 318 of the Act)*

Under present law, if a taxpayer fails to file a tax return on the date prescribed therefor (including extensions) and if there is an underpayment of the tax required to be shown on such return, then he is subject to a penalty of 5 percent of the underpayment per month (or fraction thereof) while the failure continues, but not more than 25 percent.

Under the Act, if an income tax return is not filed within 60 days of the date prescribed therefor (with extensions), the penalty for failure to file will be at least $100 or the tax owed, which ever is less. This minimum penalty would not be imposed if the failure to file the return were due to reasonable cause.

The penalty will apply to returns due after December 31, 1982.

#### *k. Form of returns (sec. 319 of the Act)*

In general, returns required by the tax law must be made according to the forms and regulations prescribed by the Secretary. There is no statutory or regulatory requirement that returns be filed on magnetic tape or in other machine-readable form.

Under the Act, the Secretary is required to prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. In providing these standards, the Secretary must take into account, among all other relevant factors, the ability of the taxpayer to comply, at a reasonable cost, with such a filing requirement. In no event may the Secretary require returns of the tax imposed under subtitle A (i.e., the income tax) by individuals, estates, and trusts, to be other than on paper forms.

### *3. Other penalty provisions*

#### *a. Penalty for promoting abusive tax shelters, etc. (sec. 320 of the Act)*

Present law contains no penalty provision specifically directed toward promoters of abusive tax shelters and other abusive tax avoidance schemes.

Under the Act, a new civil penalty is be imposed on persons who organize or sell any interest in a partnership or other entity or investment, when, in connection with such organization or sale, the person makes or furnishes either (1) a statement, which the person knows or has reason to know is false or fraudulent as to any material matter with respect to the availability of any tax benefit said to be available by reason of participating in the investment, or (2) a gross valuation overstatement as to a matter material to the entity which is more than 200 percent of the correct value.

The penalty for promoting an abusive tax shelter is an assessable penalty equal to the greater of $1,000 or 10 percent of the gross income derived, or to be derived, from the activity.

The Secretary is given authority to waive all or part of any penalty resulting from a gross valuation overstatement upon a showing that there was a reasonable basis for the valuation and the valuation was made in good faith. This penalty is in addition to all other penalties provided for by law.

This provision will take effect on the day after the date of enactment.

#### *b. Action to enjoin promoters of abusive tax shelters, etc. (sec. 321 of the Act)*

Present law provides that a civil action may be brought by the United States to enjoin any person who is an income tax return preparer who engages in certain proscribed acts.

The Act permits the United States to seek injunctive relief against any person engaging in conduct subject to the penalty for organizing or selling abusive tax shelters (sec. 331 of the bill and new Code sec. 6700). Venue for these actions generally is the district in which the promoter resides, has his principal place of business, or has engaged in the conduct subject to penalty under section 6700.

This provision will take effect on the day after the day of enactment.

#### *c. Procedural rules applicable to penalties under Code sections 6700, 6701, and 6702 (sec. 322 of the Act)*

Under present law, the burden of proof is on the Secretary in any proceeding in which the issue is whether an income tax return preparer has willfully attempted to understate the liability for tax of any person. Similarly, the burden of proof is generally on the Secretary to prove fraud. Under present law, the deficiency procedures generally apply to the collection of additions to tax, additional amounts, and nonassessable penalties.

The Act provides district court review of the Secretary's assessment and notice and demand of (1) the abusive tax shelters promoter penalty, (2) the civil aiding and abetting penalty, and (3) the frivolous return penalty, before the full amount of such penalties can be collected if certain procedural requirements are met. In any proceeding involving the issue of whether any taxpayer is liable for such penalties, the burden is on the Secretary.

The provision takes effect on the day after the date of enactment.

#### *d. Penalty for substantial understatement (sec. 323 of the Act)*

Under present law, penalties may be imposed on the failure to pay certain taxes shown on a return or required to be shown on a return, unless such failure is due to reasonable cause and not willful neglect. If the failure is due to negligence or fraud, additional penalties may apply. If a taxpayer makes a substantial property valuation overstatement which results in an underpayment of tax, then a penalty measured as a percentage of the underpayment resulting from the valuation overstatement generally is imposed without regard to fault.

Under the Act, a penalty of 10 percent would be imposed on any substantial understatement of income tax. For this purpose, an understatement is the excess of the amount of income tax imposed on the taxpayer for the taxable year, over the amount of tax shown on the return. A substantial understatement of income tax exists if the understatement for the taxable year exceeds the greater of 10 percent of the tax required to be shown on the return for the taxable year, and $5,000 ($10,000 for corporations other than subchapter S corporations and personal holding companies).

The amount of the understatement will be reduced by the portion of the understatement that is attributable to (1) the treatment of any item for which there is or was substantial authority, or (2) any item for which there was adequate disclosure of the relevant facts on the return. In the case of a tax shelter, the reduction will apply only to the portion which the taxpayer believed was more likely than not to be the correct treatment. A tax shelter is defined as a transaction for which evasion or avoidance of income tax is the principal purpose.

The Secretary may waive all or a part of the penalty on a showing by the taxpayer that there was a reasonable basis for the understatement and the taxpayer acted in good faith.

The penalty is effective with respect to returns which have a due date after 1982.

### *e. Penalty for aiding and abetting the understatement of tax liability (sec. 324 of the Act)*

Present law provides a criminal penalty for willfully aiding in the preparation or presentation of a false or fraudulent return, or other document under the internal revenue laws. The penalty is a fine of up to $5,000 or 3 years imprisonment, or both, together with costs. There is no comparable civil penalty on persons who aid in the preparation of false or fraudulent documents. Income tax return preparers who willfully attempt to understate the liability for tax of any person are subject to a penalty of $500 per return.

The Act provides for a new civil penalty on any person who aids in the preparation or presentation of any portion of a return or other document under the internal revenue laws which the person knows will be used in connection with any material matter arising under the tax laws, and which the person knows will (if used) result in any understatement of the tax liability of another person.

This penalty is $1,000 for each return or other document ($10,000 in the case of returns and documents relating to the tax of a corporation). In general, this penalty is in addition to all other penalties provided by law. However, if the return preparer penalties for negligence or intentional disregard of rules or regulations, or for willful attempt to understate the tax liability of any person, are imposed with respect to any document, this new penalty will not apply with respect to such document.

This provision will be effective on the day after the date of enactment.

### *f. Fraud penalty (sec. 325 of the Act)*

Under present law, if any portion of an underpayment of tax is due to fraud, a civil penalty is imposed (as an addition to tax) equal to 50 percent of the entire underpayment. If part of an underpayment is attributable to negligence or intentional disregard of rules and regulations, the penalty under present law is equal to 5 percent of the entire underpayment plus 50 percent of interest payable on the portion of the underpayment attributable to negligence or disregard of rules and regulations for the period beginning on the last date prescribed for payment of the tax and ending on the date of assessment of the tax. In the case of the windfall profit tax, both the negligence and the fraud penalty may apply to the same underpayment.

The Act conforms the civil fraud penalty to the negligence penalty by providing that in addition to the 50-percent fraud penalty on the entire underpayment, there is a penalty equal to 50 percent of the interest payable on the portion of the underpayment attributable to fraud for the period beginning on the last date prescribed for payment of the tax (without regard to any extension), and ending on the earlier of the date of assessment or the date of payment of the tax. Under the Act, the negligence penalty does not apply in any case in which the fraud penalty has been assessed.

Finally, the Act provides that when a joint return is filed, the interest addition does not apply with respect to a spouse's tax unless some part of the underpayment was due to the spouse's fraud.

The provision applies to taxes the last day for payment of which (without regard to any extension) is after the date of enactment.

#### *g. Penalty for frivolous returns (sec. 326 of the Act)*

Under present law, a taxpayer who files a protest return is subject to a penalty only if he or she also underpays his or her tax. Thus, if a taxpayer has paid at least the correct amount of tax through estimated tax or wage withholding, there is no penalty for filing a protest return.

The Act provides for an immediately assessable penalty of $500 on any individual who files a frivolous return. The penalty applies only as to documents purporting to be returns that are patently improper and not in cases involving valid disputes with the Secretary.

The deficiency procedures, under which the taxpayer receives advance notice before the assessment, will not apply to this penalty. There is, however, a provision allowing district court review of the assessment on payment of 15 percent of the amount assessed and the filing of a claim for refund of the amount paid.

This penalty applies to documents filed after the date of enactment.

#### *h. Adjustments to penalty relating to estimated tax provision (secs. 327 and 328 of the Act)*

Under present law, an individual required to pay estimated taxes is subject to a penalty for underpayment of such taxes if he fails to pay at least 80 percent of the total amount of each installment when due. The penalty does not apply, however, if the taxpayer (1) pays at least the tax shown on the preceding year's return (if such return was for a taxable year of 12 months); (2) 80 percent of the tax due by placing his income on an annualized basis; (3) an amount equal to 90 percent of the tax due using current year's tax rates applied to the actual income prior to the month in which the installment is paid; or (4) an amount equal to the tax computed using current year's rates applied to the facts and law applicable to the preceding year's return. A criminal penalty may also apply. There are no expressed exceptions to the criminal penalty.

In addition to paying estimated taxes when required, individuals are required to file declarations of estimated taxes. There is, however, no penalty for failure to file a declaration.

Under the Act, any individual or corporation that fails to make any estimated tax payment would not be subject to the criminal penalty for such failure if the civil penalty for such failure is not applicable because an exception to the civil penalty applies. This provision is effective on the date of enactment.

The Act provides that no civil estimated tax penalty may be imposed on an individual if the individual had no tax liability for the preceding taxable year, such taxable year was a taxable year of 12 months, and the individual was a U.S. citizen or resident for the entire year.

The requirement for filing a declaration of estimated tax is terminated after 1982. Other provisions of law will, however, continue to apply as if such declaration were filed. In addition, the requirement of present law that a taxpayer must pay 100 percent of each installment when due is modified to require payment only of an amount computed by taking into account the penalty provisions.

These provisions are effective for taxable years beginning after 1982.

#### *i. Criminal penalties (sec. 329 of the Act)*

Under present law—

(1) any person who willfully attempts to evade or defeat any tax or the payment thereof is guilty of a felony and, if convicted, may be fined not more than $10,000 or imprisoned for not less than 5 years, or both.

(2) Any person who is required to pay any tax or estimated tax or keep records or report information and willfully fails to do so is guilty of a misdemeanor and is punishable by a fine of not more than $10,000 or imprisonment for not more than 1 year, or both.

(3) Any person who willfully files a false declaration under penalty of perjury, aids or assists in the preparation of a false or fraudulent document; falsely executes any document under the internal revenue laws; conceals goods, etc., to evade or defeat any tax; or does certain other acts, is guilty of a felony and upon conviction may be fined not more than $5,000 or imprisoned for not more than 3 years, or both.

(4) Any person who willfully delivers any false or fraudulent document to the Secretary, or does certain other acts, is guilty of a misdemeanor and may be fined not more than $1,000 or imprisoned for one year, or both.

The Act increases these maximum fines. Thus, in (1) above, the maximum penalty is increased from $10,000 to $100,000 ($500,000 for corporations); the maximum penalty amount in (2) above is increased from $10,000 to $25,000 ($100,000 for corporations); the maximum fine in (3) above is increased from $5,000 to $100,000

($500,000 for corporations); and the maximum fines in (4) above are increased from $1,000 to $10,000 ($50,000 for corporations).

These increases are effective with respect to offenses committed after the date of enactment.

### *j. Special rules with respect to certain cash (sec. 330 of the Act)*

Under present law, the Secretary may not generally assess and collect a tax deficiency unless he follows certain procedures designed to allow the taxpayer to first contest the existence and amount of the deficiency. These procedures include written notice of deficiency followed by a 90-day (or 150-day) period during which time the taxpayer may petition the Tax Court for review of the Secretary's determination. No assessment may be made until after this period has expired or until after a decision of the Tax Court is final.

Jeopardy and termination assessment procedures are provided when the Secretary believes the collection of a tax will be jeopardized by delay. These procedures permit immediate assessment and collection of the tax; that is, the taxpayer is denied the opportunity to contest the liability prior to payment. In both the jeopardy and termination assessment cases, the taxpayer is entitled to an expedited review of whether the determination of jeopardy was reasonable under the circumstances and whether the amount assessed and demanded was appropriate under the circumstances.

The Act provides that the Secretary can presume that the collection of an amount of income tax is in jeopardy, where an individual in physical possession of more than $10,000 of cash or its equivalent denies ownership of the cash and does not claim that such cash belongs to another person the identity of whom is readily ascertainable by the Secretary (and who acknowledges ownership). In such a case, the Secretary may presume, for purposes of the jeopardy or termination assessment provisions (1) that such cash represents gross income to a single individual for the taxable year of possession taxable at 50 percent rate, and (2) that the collection of the tax on such cash would be jeopardized by delay. The Internal Revenue Service cannot assess on the same cash twice.

Notices with respect to the assessment are given to the person found in possession of the cash. However, the true owner can come forward and challenge the assessment and will be retroactively substituted for the possessor for all purposes (including establishing lien priorities) as of the date of the original assessment. In addition, the true owner will continue to have the same rights as exist under present law to recover his cash.

This provision is effective the day after the date of enactment.

### 4. *Administrative summons*

#### *a. Special procedures for third-party summonses and third-party recordkeepers (secs. 331 and 332 of the Act)*

Under present law, if an administrative summons is served on a third-party recordkeeper, then notice of the summons must also be given to the person whose records have been summoned (*i.e.*, the taxpayer). The taxpayer can stay compliance with a third-party summons by notifying the recordkeeper in writing not to comply with the summons. To enforce the summons, the Secretary must then seek an order of a United States District Court compelling compliance.

Under the Act, a taxpayer whose records are summoned, and who wishes to prevent compliance with the summons by the recordkeeper, is required to begin a civil action in court to quash the summons not later than the 20th day after the day notice of the summons is given. No examination of the summoned records is allowed before the close of the 23rd day after notice was given, or, if the proceeding to quash is begun, until the court so orders or the taxpayer consents. The ultimate burden of persuasion with respect to his right to enforce the summons remains on the Secretary.

The Act also requires third-party recordkeepers to proceed to assemble summoned records upon receipt of the summons and to be prepared to produce the records on the date specified for their examination.

The provisions apply with respect to summonses initially served after December 31, 1982.

#### *b. Limitation on use of administrative summons (sec. 333 of the Act)*

Under present law, the Secretary may issue summonses for the purpose of determining liability for taxes due under the internal revenue laws unless the Internal Revenue Service has institutionally abandoned its civil tax case.

Under the Act, the Secretary may not issue any summons or commence any action to enforce a summons if a Justice Department referral is in effect with respect to the person whose tax liability is in issue. The Act provides that the purposes for which an administrative summons may be issued include the right to inquire into any offense connected with the administration or enforcement of the Internal Revenue laws.

This provision will be effective the day after the date of enactment.

### 5. *Withholding and recordkeeping provisions relating to pensions and other retirement income*

#### *a. Withholding on pensions, annuities, and certain deferred income (sec. 334 of the Act)*

Under present law, income tax generally is not required to be withheld on pension or annuity payments. However, a recipient may elect to have tax withheld on annuity payments.

The Act provides that payors generally will be required to withhold tax from the taxable part of payments made from or under a pension, etc., plan, an IRA, or a commercial annuity contract. Tax will be withheld on periodic payments in excess of $5,400 under the wage withholding tables. Tax on certain total distributions will be withheld under a schedule designed to reflect the special tax treatment accorded to lump sum distributions, and tax on other non-periodic distributions will be withheld at a flat 10-percent rate.

Withholding will be required with respect to payments made after December 31, 1982, unless the recipient elects not to have tax withheld. The Act generally requires that payors notify recipients of the withholding rules and their rights to elect out.

Civil and criminal penalties for failure to withhold tax will not apply to any failure before July 1, 1983, if the payor made a good faith effort to withhold, and actually withholds from any subsequent 1983 payments sufficient amounts to satisfy the pre-July 1983 requirements. In addition, the Act permits the Secretary to waive the withholding obligation on a case-by-case basis prior to July 1, 1983, if he finds the payor cannot comply without undue hardship.

#### *b. Pension reporting requirements (sec. 334 of the Act)*

Under present law, distributions under a tax-qualified plan or annuity contract are required to be reported only if the amount includible in income totals $600 or more for the calendar year. Distributions from an IRA are required to be reported without regard to the amount of the distributions. Penalties generally apply to any person failing to file a required report.

The Act provides for reporting of necessary information by employers and administrators of plans and issuers of insurance or annuity contracts from which taxable distributions can be made. Increased penalties apply to any person failing to file any required reports. The provision is effective for calendar years beginning after December 31, 1982.

#### *c. Pension recordkeeping requirements (sec. 334 of the Act)*

Under present law, no separate penalty is imposed for failure to maintain a data base sufficient to provide required reports.

The Act imposes a new penalty if the data base needed for reports is not maintained whether or not reports are due for the period during which the recordkeeping failure occurs. However, no penalty is imposed for a recordkeeping failure that is due to a prior failure with respect to which the penalty has already been imposed, or which occurred before 1983, if all reasonable efforts have been made to correct the prior failure. The recordkeeping penalties will be effective on January 1, 1985.

#### *d. Partial rollovers of IRAs (sec. 335 of the Act)*

Distributions from qualified pension, etc., plans and IRAs are eligible for tax-free rollover treatment. However, under present law, distributions from an IRA are eligible for tax-free rollover treatment only if the entire amount of the distribution is rolled over to another eligible retirement plan, while distributions from qualified plans are eligible for tax-free rollover treatment to the extent of any amount so transferred.

Under the Act, distributions from IRAs which are made after December 31, 1982, are eligible for tax-free rollover treatment to the extent that the distribution is rolled over to another eligible retirement plan.

### *6. Transactions outside the United States*

#### *a. Court jurisdiction and enforcement of summonses in the case of persons residing outside the United States (sec. 336 of the Act)*

Under present law, an administrative summons may be directed to a U.S. person outside the United States. However, it may not be enforceable because the Code specifically confers jurisdiction to enforce the summons on a District Court only when a person "resides or is found" in a judicial district of the United States.

The Act establishes jurisdiction for summons enforcement actions involving U.S. citizens or residents living abroad in the United States District Court for the District of Columbia. A citizen or resident of the United States who does not reside in any U.S. judicial district, and who is not found in any U.S. judicial district, is treated as residing in the District of Columbia for tax purposes relating to jurisdiction of courts and enforcement of summons.

The provision is effective on the date after the date of enactment.

#### *b. Admissibility of documentation maintained in foreign countries (sec. 337 of the Act)*

Under present law, there is generally no special procedure to require timely production of documents held abroad.

The Act adds a formal document request procedure that is intended to discourage taxpayers from delaying or refusing disclosure of certain foreign based information to the Internal Revenue Service. Under this procedure, if a taxpayer fails to substantially comply with a formal document request upon motion of the Secretary, a court in a civil proceeding must prohibit the introduction into evidence by the taxpayer of foreign-based documentation covered by the request, unless the documentation was provided to the Secretary within 90 days, or a later date by the Secretary, of the mailing of the request.

Foreign-based documentation is that which is outside the United States and which is relevant and material to the tax treatment of an examined item. It includes documents held by a foreign entity whether or not controlled by the taxpayer.

The request must be made in the course of an audit and after the normal request procedures have failed to produce the requested documentation. It must set forth the time and place for the production of the documentation, contain a statement of the reason the documentation previously produced (if any) is not sufficient, contain a description of the documentation being sought, and state the consequences to the taxpayer of the failure to produce the documentation.

The sanction of nonadmissibility does not arise if the taxpayer establishes that the failure to provide the documentation as requested by the Secretary is due to reasonable cause. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause.

Any dispute about a formal document request may be resolved in judicial proceedings to quash the request at the time it is served.

The provision applies to formal document requests mailed after the date of enactment.

### *c. Penalty for failure to furnish information with respect to foreign corporations (sec. 338 of the Act)*

Under present law, a U.S. person who controls a foreign corporation is required to furnish the Internal Revenue Service with certain information concerning that corporation (section 6038(a)). The penalty for failure to furnish any required information is a 10-percent reduction of the U.S. person's creditable foreign taxes. Additional five percent reductions are provided if the failure to furnish information continues 90 days or more after notice to the U.S. person required to provide the information. The penalty is not available if it is shown to the satisfaction of the Secretary that reasonable cause exists for failure to furnish the required information on time.

The Act adds a fixed-dollar penalty for failure of a U.S. shareholder of a foreign corporation to furnish the Internal Revenue Service the required information. This penalty can be imposed in lieu of the foreign tax credit penalty (although both can be imposed). The penalty is $1,000 for each failure to furnish information for an annual accounting period (generally a taxable year) of the foreign corporation. If the failure continues for more than 90 days after notification by the Secretary, then there are additional $1,000 penalties for each 30-day period (or fraction thereof) during which the taxpayer continues to fail to produce the requested information, up to a total of $25,000. So long as it is shown to the satisfaction of the Secretary that reasonable cause for the failure exists, no penalty is due. The provision is effective for annual accounting periods ending after the date of enactment.

### *d. Information reporting requirements for corporations controlled by foreign persons (sec. 339 of the Act)*

Under present law, there is no specific statutory reporting requirement for a U.S. corporation (or a foreign corporation operating in the United States) that is controlled by a foreign person and that enters into transactions with related parties.

Under the Act, a U.S. corporation (or a foreign corporation engaged in trade or business in the United States) controlled by a foreign person (defined to include certain possessions residents) are required to report certain transactions with affiliates.

The Act imposes penalties for violation of this new reporting requirement that are similar to the Act's new supplemental penalties for failure to suply information under the existing reporting requirement relating to controlled foreign corporations. Reasonable cause, as shown to the satisfaction of the Secretary, precludes imposition of this penalty.

This new reporting requirement applies to taxable years beginning after December 31, 1982.

### *e. Returns with respect to foreign personal holding companies (sec. 340 of the Act)*

Under present law, certain information returns are required of officers, directors, and 50-percent U.S. shareholders of companies that are foreign personal holding companies at year's end. There is no civil penalty for failure to file.

The Act gives the Commissioner flexibility in setting due dates and waiving duplicate filings for foreign personal holding company reports and returns. The Act also makes changes in reporting requirements, including imposing reporting requirements on 10-percent shareholders. A $1,000 civil penalty for failure to file a proper return is imposed. The provision applies to taxable years of foreign corporations beginning after the date of enactment.

### *f. Authority to delay date for filing certain returns relating to foreign corporations and trusts (sec. 341 of the Act)*

Acquisition of a 5-percent interest (or an additional 5-percent interest) in a foreign corporation or the creation of or transfer of property to a foreign trust causes a U.S. person to have to file an information return (secs. 6046 and 6048). Beginning service as an officer or director of a foreign corporation creates a similar requirement. The returns are due 90 days after the triggering events.

The Act gives the Commissioner flexibility to delay the date for reporting of certain transactions relating to foreign corporations and foreign trusts beyond the current due date.

The provision applies to returns due after the date of enactment.

### *g. Withholding of tax on nonresident aliens and foreign corporations—treaty benefits (sec. 342 of the Act)*

Under present law, a 30 percent tax is imposed on the gross amount of certain passive income which arises from U.S. sources and is paid to foreign persons. The 30 percent tax on such gross amounts is collected by withholding at the source (secs. 1441 and 1442).

Tax treaties between the United States and other countries commonly provide, on a reciprocal basis, for reduced rates or elimination of U.S. tax on various categories of passive income paid to residents of such other countries. Generally, under current regulations, a foreign recipient of U.S. source passive income may obtain a reduction or elimination of U.S. tax on such income under an applicable treaty if the recipient provides the payor or other person having control of such income with a completed Internal Revenue Service Form 1001. Regulations prescribe a different method, the "address method," under which a reduced rate of tax is generally given for a payment to a recipient of U.S. source dividends who has an address in a country with which the United States has a tax treaty.

The Act requires the Secretary to establish procedures to limit treaty benefits to those persons who are justifiably entitled to such benefits. The Act also requires the Secretary to consider the refund system and the certification system as methods of limiting treaty benefits to those persons entitled to them. The Secretary is not limited to consideration of these methods; he is to consider other methods as well.

The provision requires the Secretary to establish procedures within two years of the date of enactment.

#### *h. Technical amendment to section 905(c) (sec. 343 of the Act)*

The last sentence of section 905(c) appears to provide that interest on a U.S. tax underpayment triggered by a refund of foreign taxes begins to run before receipt of the refund. Other Code provisions begin the running of interest on receipt of the refund and provide a penalty for failure to report a refund.

Under the Act, the last sentence of section 905(c) is eliminated, effective retroactively for all years.

### *7. Modification of interest provisions*

#### *a. Daily compounding of interest (sec. 344 of the Act)*

Under present law, interest payable to or by the United States under the internal revenue laws is not compounded.

All interest payable under the internal revenue laws will be compounded daily. The change will also affect any other amounts computed by reference to the interest rate provided for in the Code other than the penalty for failure to pay estimated taxes.

This compounding requirement will apply to interest accruing after December 31, 1982, on amounts (including interest) remaining unpaid after that date. In a case in which the principal portion of an obligation is satisfied, and interest remains outstanding, such interest will, of course, be compounded.

#### *b. Semi-annual determination of rate of interest (sec. 345 of the Act)*

Under present law, the rate of interest paid on underpayments, overpayments, and for certain other purposes under the internal revenue laws is determined once a year based on September's average predominant prime rate.

Under the Act, interest rates are redetermined twice a year on the basis of the average adjusted prime rate charged by commercial banks during the six-month period ending September 30 (effective January 1 of the succeeding calendar year), and March 31 (effective July 1 of the same calendar year).

The amendment is effective for adjustments taking effect after December 31, 1982.

#### *c. Restrictions on payment of interest for certain periods (sec. 346 of the Act)*

In general, under present law, interest on refunds, credits, and offsets runs from the date of overpayment or (in the case of a credit) to the due date of the amount against which the credit is taken. An overpayment resulting from a net operating loss carryback, net capital loss carryback, or credit carryback is treated as having occurred at the close of the year in which the carryback arose.

In the case of an underpayment of tax, interest generally runs from the last date prescribed for payment of the tax without regard to extensions, to the date the tax is paid.

Under the Act, the general rule with respect to the payment of interest on overpayments is unchanged when the credit or refund is claimed in a timely filed return. However, when the return is late because it is filed after the due date (determined with regard to extensions), no interest is payable on the overpayment for any period prior to the date on which the return is filed. For this purpose, and for purposes of determining whether a refund has been made within 45 days after the return is filed, no return is treated as filed until filed in processible form.

Under the Act, an overpayment resulting from a net operating loss carryback, a net capital loss carryback, or credit carryback is treated as having occurred on the due date (without extensions) of the return for the year in which the carryback arose. In the case of a refund, the return for the loss year is treated as not filed prior to the time the claim for refund therefor is filed. Thus, no interest will be paid on a refund claimed on a late return if the refund is made within 45 days after the claim for refund is filed.

The provisions regarding late returns and processible returns are effective for returns filed after the 30th day after the date of enactment. The provision regarding interest overpayments due to carrybacks is applicable to interest accruing 30 days after enactment.

### *8. Taxpayer safeguard provisions*

#### *a. Property exempt from levy (sec. 347 of the Act)*

Among other items, present law exempts from levy certain amounts of (1) fuel, provisions, furniture, and personal effects, etc.; (2) books and tools of a trade, business, or profession; and (3) wages, salary, or other income (Code sec. 6334).

The Act increases from $500 to $1,500 the exemption for fuel, provisions, furniture, and personal effects, etc. The exemption for books and tools of a trade, business, or profession is increased from $250 to $1,000. The exemption for wages, salary, and other income is increased from $50 per week and $15 for each dependent to $75 per week plus $25 for each dependent.

The provision applies to levies made after December 31, 1982.

#### *b. Release of liens (sec. 348 of the Act)*

Present law imposes no statutory time limit for the release of a lien (Code sec. 6325).

The Act provides that a lien must be released no later than 30 days after (1) tax liability has been fully satisfied or has become legally unenforceable, or (2) a bond has been accepted.

This provision is effective with respect to liens (1) which are filed after December 31, 1982, (2) which are satisfied after December 31, 1982, or (3) with respect to which the taxpayer after December 31, 1982, requests the Secretary to issue a certificate of release on the grounds that the liability was satisfied or legally unenforceable.

*c. Notice before levy (sec. 349 of the Act)*

Levy upon property may be made if the taxpayer neglects or refuses to pay tax within 10 days after notice and demand. In the case of a levy upon property, other than salary or wages, there is no statutory provision that requires additional notice before levy (Code sec. 6331).

The Act provides that levy may be made upon the salary, wages, or other property of any person with respect to any unpaid tax only after the Secretary has notified the person in writing of his intention to make such levy. This notice must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, no less than 10 days before the day of levy.

This provision applies to levies made after December 31, 1982.

*d. Redemption of property (sec. 349A of the Act)*

In general, present law provides that real property that has been sold after a seizure may be redeemed at any time within 120 days after the sale (Code sec. 6337).

The Act extends the period of time during which property that has been sold after a seizure may be redeemed from 120 days to 180 days.

This provision applies to property sold after the date of enactment.

*e. Amount of damages in case of wrongful levy (sec. 350 of the Act)*

If there has been a wrongful levy and sale of real property belonging to a person other than the person against whom tax was assessed, present law allows the recovery of an amount not exceeding the amount received by the United States from the sale of the property (Code sec. 7426).

The Act provides for recovery of an amount not exceeding the greater of: (1) the amount received by the United States from the sale of the property, or (2) the fair market value of the property immediately before the levy. The provision applies to levies made after December 31, 1982.

*9. Other provisions*

*a. Disallowing deductions for drug dealing (sec. 351 of the Act)*

Ordinary and necessary trade or business expenses are generally deductible in computing taxable income. However, fines, illegal bribes and kickbacks, and certain other illegal payments are nondeductible (sec. 162).

Under the Act, all deductions and credits for amounts paid or incurred in the illegal trafficking in drugs listed in the Controlled Substances Act disallowed.

This provision is effective for amounts paid or incurred after the date of enactment.

### *b. Internal Revenue Service staff increases (sec. 352 of the Act)*

Public Law 97-92 enables the Internal Revenue Service to maintain an average of 85,363 positions during fiscal year 1982. The Administration's budget request for fiscal year 1983 includes a net increase in Internal Revenue Service manpower of 3,310 average positions.

The Act contains a sense of the Congress resolution that additional funds be appropriated to the Internal Revenue Service pursuant to the Administration's request for fiscal year 1983 and that additional funds be provided in future years for the Internal Revenue Service sufficient to collect additional tax revenues of at least $1 billion in fiscal year 1984 and $2 billion in fiscal year 1985.

### *c. Reports on forms (sec. 353 of the Act)*

Under the Act, the Treasury is required to study and report to Congress, no later than June 30, 1983, on methods of modifying the design of the forms used by the Internal Revenue Service to achieve greater accuracy in the reporting of income and the matching of information reports and returns with the actual income tax returns.

## *10. Tax treatment of partnership items (secs. 401-406 of the Act)*

For income tax purposes, partnerships are not taxable entities. Instead, a partnership is a conduit, in which the items of partnership income, deduction, and credit are allocated among the partners for inclusion in their respective income tax returns.

Partnerships are required to file an annual information return setting forth the partnership income, deductions, and credits, names and addresses of the partners, each partner's distributive share of these items, and certain other information required by the regulations.

### *a. Partnership proceedings*

Under the Act, the tax treatment of items of partnership income, loss, deductions, and credits are determined at the partnership level in a unified partnership proceeding rather than in separate proceedings with the partners.

#### *Return filing requirements*

Partnerships will continue to file information returns and notify each partner of that partner's share of partnership income, loss, etc. Partners generally will be required to file returns consistent with the partnership return or notify the Internal Revenue Service of the inconsistency.

#### *Administrative proceeding*

A partnership level administrative proceeding will go through the same process of examination, audit, appeal, settlement, notice of final determination, etc., that generally applies to a tax audit. All partners will be notified by the IRS of the commencement of a partnership administrative proceeding, will be eligible to participate in the proceeding, and will be given notice by the IRS of the final partnership administrative adjustment (FPAA). If the partnership return lists more than 100 partners, the IRS will be required to provide notice only to partners with an interest in partnership profits of one percent or greater. A tax matters partner (TMP) will be designated (normally by the general partners, otherwise as prescribed) and will receive notice on behalf of other partners and be required to notify them of the commencement of a proceeding and notice of a FPAA. However, a notice group with an aggregate interest of 5 percent or more in partnership profits may designate a representative in lieu of the TMP to receive notice of a FPAA. The TMP will notify all partners of significant events during the course of an audit, such as conferences or settlement offers.

*Settlements*

The IRS must, upon settlement with any partner, offer consistent settlement terms to all other partners. The TMP may enter into a binding settlement on behalf of non-notice partners who have not formed a notice group, unless the non-notice partner notifies the IRS that the TMP is not authorized to act on his behalf.

*Effect of final partnership administrative adjustment*

The FPAA is binding on all partners (unless they are subject to separate proceedings under other portions of the proposal) if a petition for judicial review is not filed within 150 days. The IRS may thereafter, generally within a period of one year, assess any resulting adjustments to the partners' tax liability.

*Judicial review of FPAA*

Within 90 days after notice of an FPAA, the TMP may file a petition for judicial review. Other partners may not file suit during the 90-day period. Upon expiration of the 90 days, if the TMP does not file a petition, any other partner may file.

Petition may be filed in the Tax Court, the district court for the district in which the partnership has its principal place of business, or the Claims Court. Only one court acquires jurisdiction, and the choice of forum by the TMP always governs. Otherwise, if a petition is filed in the Tax Court, the Tax Court becomes the forum. Otherwise, the earliest filed petition determines whether the forum is the district court or the Claims Court. A partner filing in any forum other than the Tax Court must first pay the deficiency resulting from adjustments to his return to reflect the FPAA. Other partners, where the forum is not the Tax Court, are subject to assessment and collection.

*Administrative adjustment requests*

The Act provides for an Administrative Adjustment Request (AAR) to be filed within 3 years of the due date for the partnership return. An AAR functions as does a claim for refund. When it is filed by the TMP, it is filed on behalf of all the partners and the IRS may proceed to allow it and grant refunds or institute a partnership proceeding. Failure by the IRS to act within 6 months enables the partnership to file suit. Petition may be filed in the Tax Court, the Claims Court, or the appropriate district court and the scope of judicial review is limited to disallowed items to which the AAR relates. If an AAR is filed by any other partner, unless the IRS commences a partnership audit, the items to which the request relates are treated as nonpartnership items and the partner may file a refund suit pursuant to section 7422, as under existing law.

*Statute of limitations*

The period of limitations for assessments attributable to partnership items generally is the later of 3 years from the filing of the partnership return or the last day for filing such return, extended by the period during which suit may be filed, by the pendency of court proceedings, and for one year thereafter. The assessment period will not expire with respect to any partner, if the IRS has mailed a timely notice of FPAA, until one year after the IRS is furnished the partner's name and address. The limitations period otherwise applicable may be extended by agreement (the TMP is authorized to enter into an extension agreement on behalf of all partners).

*Small partnerships*

The new partnership rules for administrative and judicial proceedings do not apply to partnerships with 10 or fewer partners each of whom is a natural person (other than a nonresident alien) or an estate, provided each partners's distributive share of any item is the same as his distributive share of all other items. A partnership eligible to be excluded under this provision may elect to be covered by the rules.

*Other matters*

*(1) Multi-tiered partnerships and pass-through partners.*—Where one partnership (or a trust or subchapter S corporation) holds an interest in another partnership that is the subject of a partnership proceeding, the taxpayer whose liability is affected by the partnership determination is not the immediate partner. If such indirect partners are properly identified and their profits interests disclosed with the partnership return (or thereafter, pursuant to regulation), the IRS will deal with them as the parties in interest for all purposes of the proposals. Otherwise, such indirect partners are bound by any action taken with respect to the pass-through partner.

*(2) Contest of computational adjustments.*—While a partner is precluded from challenging the final administrative or judicial determination of partnership items, the partner may by claim for refund and by judicial proceeding seek redetermination of the correctness of any computational adjustment to his tax liability resulting from such determination. Substantive issues may not be raised in such proceeding.

*(3) Regulatory authority.*—The Act authorizes regulations limiting its scope where treatment as partnership items would interfere with effective enforcement of the tax law. This authority extends to criminal investigations, jeopardy and termination assessments, and other areas presenting special enforcement considerations.

### *b. Foreign-based partnerships*

The Act explicitly applies the partnership return filing requirement to any partnership which has U.S. partners (direct or indirect). Where the TMP resides outside the United States or the partnership books and records are kept outside the United States, failure to comply with the partnership return requirement or provide the return information on request will result in disallowance of partnership losses and credits to the partners. The Treasury Department would be given authority to waive the reporting requirement in appropriate cases. The Act also requires reporting by a U.S. person who acquires or disposes of an interest in a foreign partnership.

### *c. Effective date*

The provisions relating to partnership proceedings and the partnership return filing requirements apply to partnership taxable years beginning after the date of enactment of the Act.[1] However, if all partners request and the Treasury Department consents, these provisions will apply to the partnership taxable years ending after the date of enactment. The return requirement relating to acquisitions and dispositions of interests in a foreign partnership apply to any such changes after the date of enactment.

### *d. Windfall profit tax audits*

Under the Act, windfall profit tax items are included as partnership audit items under regulations to be issued by the Treasury. Thus, the tax treatment of any partnership windfall profit tax item will be determined at the partnership level rather than the partner level. A partnership windfall profit tax item is any item relating to the computation of the windfall profit tax on crude oil produced by the partnership which the Treasury determines by regulation to be more appropriately determined at the partnership rather than the partner level.

Under regulations, the partnership will be authorized to act on behalf of its partners for purposes of the determination, examination, and collection of windfall profit tax. Thus, the partnership can be made responsible for certifying necessary withholding tax information to first purchasers and for filing quarterly and annual returns with respect to the partnership's production of domestic crude oil. When necessary, the partnership will be able to rely on certifications by its partners of their status under the windfall profit tax. On the election of one or more partners owning an interest in at least 5 percent of partnership income, this authorization will cease to apply for the entire partnership.

Each partner will remain primarily liable for the windfall profit tax on his allocable share of taxable crude oil produced by the partnership. The partner's liability will be abated to the extent of any payment of windfall profit tax by the partnership. In determining the liability of any partner for windfall profit tax purposes, each partner will be required to treat any partner-

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[1] The new rules relating to partnership proceedings and information and return filing requirements do not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, or a successor of either such organization.

ship windfall profit tax item in a manner consistent with the treatment of that item on the partnership return unless the partner notifies the Treasury of an inconsistent position. Each partner will be required to certify to the partnership that partner's correct treatment under the exemption of independent stripper wells, the special rates on independent producers, the royalty owners exemption, and other producer-related provisions. The partnership will compute and pay the windfall profit tax on the assumption that the certifications given by the partners are correct.

The Act will apply to determination, examination, and collection of windfall profit tax with respect to oil removed in taxable periods beginning after December 31, 1982, unless the partnership, each partner, each indirect partner, and the Treasury consent to earlier application of the provisions.

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## D. Pension Provisions

### *1. Overall limits on contributions, benefits, and exclusions (secs. 235 and 245 of the Act)*

The Act makes several changes to the overall limits on contributions and benefits for an employee under a tax-qualified pension, etc., plan. The dollar limit for annual additions to profit-sharing and other defined contribution plans is reduced from $45,475 to $30,000.

With regard to defined benefit pension plans, the Act reduces the dollar limit for annual benefits from $136,425 to $90,000, and requires that an interest rate of not less than the greater of 5 percent or the rate specified in the plan be used to determine whether alternative benefit forms (e.g., lump sum distributions) are within the annual benefit limit. Also, the dollar limit is to be actuarially reduced (using the same interest rate) if benefits commence before age 62 (increased from age 55), except that the dollar limit is not less than $75,000 for benefits commencing at age 55 or later. For ages below 55, the dollar limit is not less than the actuarial equivalent of a $75,000 annual benefit commencing at age 55. For benefits commencing after age 65, the dollar limit is increased (using an interest rate not exceeding the lesser of 5 percent or the rate specified in the plan) to the equivalent of the benefit limit as applied to benefits commencing at age 65.

The Act suspends cost-of-living adjustments to the dollar limits for defined benefit plans and defined contribution plans until 1986, at which time the limits will be adjusted for post-1984 cost-of-living increases (as measured by the social security benefit index). In addition, employers may not currently deduct contributions to defined benefit plans to fund anticipated cost-of-living increases, and such anticipated increases cannot be taken into account in determining actuarial equivalents.

The Act also reduces the aggregate limit for an individual who participates in a defined contribution plan and a defined benefit plan of the same employer from 1.4 (140 percent of the otherwise applicable separate dollar or percentage limit) to the lesser of 1.25, as applied only to the dollar limits, or 1.4, as applied under present law. In addition, the Act provides a transitional rule to insure that contributions or benefits provided under the present-law higher limits will not effectively preclude future contributions or benefits under the lower limits provided by the Act. Under this transitional rule, the Secretary of the Treasury is to prescribe regulations under which the numerator of the defined contribution plan fraction (as determined for the last year beginning before January 1, 1983) is to be reduced, so that the sum of the fractions does not exceed the Act's aggregate limit.

The Act's provisions relating to the overall limits on contributions and benefits will apply to plan years beginning after December 31, 1982, except that plan amendments will be required with respect to plan years beginning after December 31, 1983.

With respect to decedents dying after December 31, 1982, the Act also places a $100,000 aggregate limit on the estate tax exclusion for certain retirement benefits under qualified pension, etc., plans, tax-sheltered annuities, individual retirement accounts (IRAs), and certain military retirement plans.

*2. Loans from retirement plans (sec. 236 of the Act)*

A qualified pension, etc., plan or a tax-sheltered annuity program generally is permitted to make reasonable loans to participants other than owner-employees under an H.R. 10 plan or shareholder-employees under a subchapter S corporation plan. If a self-employed individual borrows from an H.R. 10 plan or if an individual borrows from an IRA, the loan is treated as a distribution, subject to the usual income tax rules.

The Act generally provides that a loan received after August 13, 1982, by a participant or beneficiary under a qualified plan, government plan, or tax-sheltered annuity which is to be repaid within 5 years is treated as a distribution only to the extent that the amount of the loan, when added to the outstanding loan balance with respect to the employee under all plans of the employer, exceeds the lesser of (1) $50,000, or (2) one-half of the present value of the employee's nonforfeitable accrued benefit under such plans, but not less than $10,000.

In addition, a loan made with respect to an employee under a qualified plan, etc., which is not required to be repaid within 5 years, is treated as a distribution. For this purpose, the period within which a loan is required to be repaid is determined at the time the loan is made. However, the Act also provides an exception to the 5-year repayment rule to the extent that a loan made with respect to a plan participant is applied toward acquiring, constructing, or substantially rehabilitating any principal residence of the participant or a member of the participant's family.

Investments (including investments in residential mortgages) which are made in the ordinary course of an investment program will not be considered as loans, if the amount of the mortgage loan does not exceed the fair market value of the property purchased with the loan proceeds.

The Act also provides a special transitional rule for qualified refunding loans (those loans made before August 14, 1983, and applied to repay plan loans which fall due before that date). Qualified refunding loans will not be treated as distributions to the extent repaid before August 14, 1983.

### *3. Parity under the qualified plan rules for corporate and noncorporate employers; group-term life insurance*

#### *a. Rules for H.R. 10 plans repealed; additional qualification requirements for top-heavy plans (secs. 237–243 and 249 of the Act)*

Under present law, plans which benefit self-employed individuals, owner-employees, or shareholder-employees of subchapter S corporations are subject to additional, more restrictive, qualification requirements designed to limit benefits for such individuals and provide additional protections for rank-and-file employees.

For years beginning after 1983, the Act generally eliminates distinctions in the tax law between qualified pension, etc., plans of corporations and those benefiting self-employed individuals (H.R. 10 plans) or shareholder-employees. The Act (1) repeals certain of the special rules for H.R. 10 plans, (2) extends other of the special rules to all qualified plans, including those maintained by corporate employers, and (3) generally applies the remainder of the special rules, with appropriate modifications, only to those plans (whether maintained by a corporate or noncorporate employer) which primarily benefit the employer's key employees (top-heavy plans).

The special rules for H.R. 10 plans which are repealed include those which (1) set lower limits on contributions and benefits for self-employed individuals, (2) prevent certain H.R. 10 plans from limiting coverage to a fair cross section of employees, and (3) prohibit integration with social security. Thus, beginning in 1984, self-employed individuals will be allowed annual contributions of up to $30,000 under a defined contribution plan and may maintain a defined benefit plan without regard to the present-law restrictions (sec. 401(j)).

The special rules for H.R. 10 plans which are extended (with modifications) to all qualified plans are those under which (1) the payment of a participant's benefits must commence not later than the taxable year in which the participant attains age 70½, or if later, the year in which the participant retires, and (2) the tax rate applicable to employers for old age, survivors, and disability insurance (OASDI) under social security is the maximum rate at which employer contributions can be reduced under plans that are integrated with social security.

Under the special rules for H.R. 10 plans which generally are extended (with modifications) to top-heavy plans (1) a participant's compensation taken into account under the plan is limited to $200,000 (as adjusted, after 1985, for cost-of-living increases), (2) benefits for non-key employees must become nonforfeitable under either of two alternative schedules (3-year full vesting or 6-year graded vesting), (3) plan withdrawals by key employees before age 59½ generally are subject to an additional 10-percent income tax, and (4) plan distributions for a key employee must commence not later than age 70½.

The Act's provisions relating to top-heavy plans also require that participants in a defined benefit plan who are not key employees must accrue an employer-provided minimum nonintegrated benefit of two percent of the employee's average annual compensation per year, not to exceed 20 percent. Under a top-heavy defined contribution plan, the employer generally must contribute to the plan on behalf of each participant who is not a key employee an amount not less than three percent of the participant's compensation (determined without to employer-provided social security benefits).

Unless certain requirements are met (including an extra minimum benefit or contribution), the aggregate limit for a key employee who participates in both a defined benefit plan and a defined contribution plan which are included in a top-heavy group is the lesser of 1.0 (as applied only to the dollar limits) or 1.4 (as determined under prior law).

Under the Act, a defined benefit plan is a top-heavy plan for a plan year if, as of the determination date, the present value of the accumulated accrued benefits for participants who are key employees exceeds sixty percent of the present value of the accumulated accrued benefits for all employees. A defined contribution plan is a top-heavy plan for a plan year if the sum of the account balances of participants who are key employees exceeds sixty percent of the sum of the account balances of all employees. The determination date for any plan year generally is the last day of the preceding plan year. The Act also provides rules under which two or more plans of a single employer are aggregated to determine whether each plan is top-heavy on account of the plans, as a group, being top-heavy.

Key employees generally include employees who (1) are officers (subject to certain limitations), (2) are one of the 10 employees owning the largest interests in the employer, (3) own more than a five-percent interest in the employer, or (4) own more than a one-percent interest in the employer and have annual compensation from the employer in excess of $150,000.

### *b. Certain organizations performing personal services*

#### *Organizations performing management functions (sec. 246 of the Act)*

Effective for years beginning after December 31, 1983, the Act expands the class of employers which, under the rules for affiliated service groups (sec. 414(m)), are to be treated as a single employer for purposes of certain of the tax-law rules for qualified pension plans, etc. Under the Act, if an organization's principal business is performing, on a regular and continuing basis, management functions for another organization, the two organizations are treated as a single employer. The provision applies only where the management functions are functions historically performed by employees, including partners or sole proprietors in the case of unincorporated trades and businesses.

#### *Employee leasing (sec. 248 of the Act)*

Effective for years beginning after December 31, 1983, the Act also provides that, for purposes of certain of the tax-law rules for qualified pension, etc., plans an individual (a leased employee) who performs services for another person (the recipient) may be treated as the recipient's employee where the services are performed pursuant to an agreement between the recipient and a third person (the leasing organization) who is otherwise treated as the individual's employer. The individual is to be treated as the recipient's employee only if the individual has performed services for the recipient (or for the recipient and persons related to the recipient) on a substantially full-time basis for a period of at least 12 months, and the services are of a type historically performed by employees in the recipient's business field.

Under the provision, contributions or benefits for the leased employee which are provided by the leasing organization under a qualified plan or simplified employee pension (SEP) maintained by the leasing organization are to be treated as if provided by the recipient to the extent such contributions or benefits are attributable to services performed by the leased employee for the recipient.

In addition, under a "safe harbor" rule, an individual who otherwise would be treated as a recipient's employee will not be treated as such an employee, if certain requirements are met with espect to contributions and benefits provided for the individual under a qualified money purchase pension plan maintained by the leasing organization.

***Certain corporations performing personal services (sec. 250 of the Act)***

Under the Act, if a corporation, the principal activity of which is the performance of personal services substantially all of which are performed by employee-owners for or on behalf of another corporation, partnership, or entity (including related parties), is availed of for the principal purpose of evasion or avoidance of Federal income tax by securing for any employee-owner significant tax benefits which would not otherwise be available, then the Secretary may allocate all income, as well as such deductions, credits, exclusions, etc., as may be allowable, between or among the corporation and employee-owners involved. For this purpose, an employee-owner is defined as any employee who owns (after application of the attribution rules under section 318) more than 10 percent of the outstanding stock of the corporation.

The provision applies to taxable years beginning after December 31, 1982.

***c. Group-term life insurance (sec. 244 of the Act)***

The Act also provides that the income exclusion for the cost of employer-provided group-term life insurance (sec. 79) will apply with respect to a key employee for taxable years beginning after December 31, 1983, only if the life insurance is provided under a program of the employer which does not discriminate in favor of key employees as to (1) eligibility to participate, or (2) the type and amount of life insurance benefits provided under the plan. Group-term life insurance benefits will not be considered to discriminate as to amount merely because the amount of life insurance provided employees bears a uniform relationship to compensation. In addition, group-term life insurance provided under a cafeteria plan (sec. 125) will not be considered to discriminate as to eligibility to participate if the eligibility rules for cafeteria plans are satisfied.

The Secretary of the Treasury is to periodically revise the tables for computing the amount includible in an employee's gross income on account of employer-provided group-term life insurance costs.

### *d. Disincorporation of personal service corporations (sec. 247 of the Act)*

The Act provides a transitional rule under which personal service corporations may, during 1983 or 1984, complete a one-month liquidation under Code section 333 without the risk that the corporation would incur tax on its unrealized receivables. The income represented by unrealized receivables will retain its character as ordinary income and will be fully recognized by the distributee shareholder upon subsequent collection or other disposition.

### *4. Retirement savings for church employees (sec. 251 of the Act)*

Public schools and certain tax-exempt organizations (including churches) may contribute to a tax-sheltered annuity contract for an employee. Annual contributions excluded from an employee's income are limited to 20 percent of the employee's compensation multiplied by the number of the employee's years of service with the employer, reduced by amounts already contributed by the employer. In addition, under the overall limit on annual additions to tax-favored retirement savings arrangements, special one-time elections increase the limit for a year to allow contributions permitted under the exclusion allowance on account of prior years of service. Under prior law, the elections were not available to most church employees.

The Act revises the tax-sheltered annuity rules as they apply to church employees for taxable years beginning after December 31, 1981, by (1) providing a minimum exclusion allowance equal to the lesser of $3,000 or 100 percent of compensation for employees with adjusted gross income of $17,000 or less; (2) providing that all years of service with organizations that are part of a particular church are treated as years with one employer; (3) extending to all church employees the special catchup elections to increase the annual contribution limit; and (4) providing an additional election for church employees which increases the contribution limit to as much as $10,000 for any year, subject to a $40,000 lifetime cap. In addition, the Act permits churches to maintain segregated defined contribution retirement savings programs pursuant to the tax-sheltered annuity rules, and provides a special retroactive correction period for church plans.

### *5. State judicial retirement plans (sec. 252 of the Act)*

State or local government employees may defer compensation under an eligible State deferred compensation plan, subject to prescribed annual limits. If a plan is not an eligible plan, amounts under the plan are includible in an employee's income when there is no substantial risk of forfeiture.

The Act provides that participants in a qualified State judicial plan are not required to include benefits in gross income merely because there is no substantial risk that the benefits will be forfeited. The plan must be a mandatory retirement plan for State judges which has been continuously in existence since December 31, 1978, and which meets certain requirements with regard to contributions and benefits.

***6. Contributions for disabled employees (sec. 253 of the Act)***

Contributions to a tax-qualified profit-sharing or other defined contribution plan generally may not be made for an employee after the employee separates from the service of the employer.

For years beginning after December 31, 1981, the Act permits an employer to continue deductible contributions to a profit-sharing or other defined contribution plan for an employee (other than an officer, owner, or highly compensated individual) who is permanently and totally disabled, if the contributions are nonforfeitable when made.

***7. Participation in group trusts by governmental plans (sec. 254 of the Act)***

Under prior law, a group trust was exempt from tax only if each of the participating trusts was a qualified trust forming a part of a qualified pension, etc., plan or an IRA.

For taxable years beginning after December 31, 1981, the Act permits a governmental retirement plan to participate in a group trust without regard to whether plan assets are held in trust or the plan is a qualified plan.

## E. Insurance Provisions

### *1. Reinsurance arrangements (secs. 255–258 of the Act)*

Under present law, a ceding company and the reinsurer may elect to report a modified coinsurance transaction for tax purposes as if the assets relating to the risks reinsured were transferred to the reinsurer, as if the premium income for the reinsured policies and the investment income on the assets were received directly by the reinsurer, and as if reserves to reflect liability for future claims were maintained by the reinsurer, although no transfer of assets actually occurs.

Also, under present law, a reinsurer (under either a modified coinsurance or a conventional coinsurance agreement between life insurance companies) is treated as having paid policyholder dividends to the extent it reimburses the ceding company for payment of such dividends.

The Act repeals the special elective provisions for modified coinsurance arrangements. Existing arrangements will be treated as terminated on January 1, 1982, and reinsurers will be permitted to pay any tax attributable to termination treatment in installments over a 3-year period. With respect to the reimbursement of policyholder dividends, the dividends will be treated as paid by the ceding company rather than the reinsurer. With respect to other reinsurance arrangements, the Act denies any deduction (in computing taxable investment income) for interest paid on debt obligations issued by a ceding company in connection with such arrangements. Also, the Treasury Department is granted authority to recharactize items in connection with a reinsurance arrangement between related taxpayers in order to reflect the proper source and character of taxable income. Finally, pre-1982 modified coinsurance transactions are grandfathered except in the event of fraud.

Generally, these provisions are effective as of January 1, 1982, subject to certain special elective rules. However, the special allocation authority for related party reinsurance contracts applies to contracts entered into after the date of enactment.

### *2. Policyholder dividends (sec. 259 of the Act)*

Under present law, the deduction for policyholder dividends (and certain other special deductions) is limited to $250,000 plus the amount by which gain from operations (computed without regard to these deductions) exceeds taxable investment income.

The Act increases the $250,000 limit to $1 million. The limit must be allocated among members of an affiliated group of corporations and is also phased out for larger companies (between $4 million and $8 million in dividends paid). Alternatively, at the annual election of the taxpayer, the amount of special deductions is limited to the sum of 100 percent of the policyholder dividends credited to qualified pension plans, the statutory amount of $1 million (subject to the affiliated group and phaseout rules), and 77½ percent of the policyholder dividends paid by mutual companies on other than pension business or 85 percent of policyholder dividends and the special deduction for nonparticipating contracts for stock companies. These provisions apply for a 2-year period (1982–1983).

### *3. Life insurance reserves and contract liabilities (secs. 260 and 267 of the Act)*

Under present law, the computation of reserves is taken into account for several purposes. First, taxpayers may revalue life insurance reserves computed on a preliminary term basis to a net level premium basis under an approximate revaluation formula (reserves for other than term insurance are increased by $21 per $1,000 insurance in force, less 2.1 percent of reserves under such contracts). Second, in computing reserves for certain contracts, taxpayers may reflect the future liability for interest (which may be guaranteed for more than one year) in excess of the assumed rate for such contracts. Third, life insurance companies may allocate investment yield to pension contracts on the basis of the current earnings rate or higher guaranteed rates of interest depending on whether the contracts have permanent purchase rate guarantees. Fourth, for purposes of qualifying as a life insurance company for tax purposes, present law requires that more than 50 percent of a company's total reserves must consist of life insurance reserves.

The Act revises the approximate revaluation formula for preliminary term reserves by permanently reducing the revaluation from $21 to $19 per $1,000 of other than term insurance in force, for business written after March 31, 1982. For 1982 through 1983, except for a special transition rule, no reserve deductions will be allowed for excess interest guaranteed beyond the close of a taxable year for guarantees made after July 1, 1982. For 1983, the Act eliminates the so-called "double-dip" available under present law by providing that the amount excludable from investment yield for group pension contracts is limited to the amount actually credited to the contracts. Finally, for any taxable year ending before January 1, 1985, the Act provides that life insurance company status for a company will not be changed by treating reserves for group pension contracts without permanent annuity purchase rate guarantees as not being insurance reserves.

### *4. Menge formula (sec. 261 of the Act)*

Under present law, a mechanical arithmetic adjustment, commonly called the "Menge" formula, is used to compute the amount of adjusted life insurance reserves. The amount computed is then used in determining the policyholders' share of investment yield and accordingly affects the computation of a life insurance company's taxable investment income. For a 2-year period (1982–83), the Act provides a "geometric" Menge formula to compute adjusted life insurance reserves for purposes of allocating investment yield to policyholders.

### *5. Consolidated returns (sec. 262 of the Act)*

Under present law, two or more affiliated domestic life insurance companies may elect to file a consolidated return. For a 2-year period (1982–83), the Act provides that a "bottom-line" method of consolidation is allowed for determining consolidated life insurance company taxable income. That is, taxable income first is determined for each component member of the affiliated group and then consolidated by adding those separate company taxable incomes. Further, the Internal Revenue Service cannot disturb a bottom-line reporting position taken in a consolidated return filed for taxable years beginning before 1981 for returns (including amended returns) filed before July 1, 1982, and for taxable years beginning in 1981 for returns filed before September 16, 1982.

### *6. Allowance of deduction for excess interest (sec. 264 of the Act)*

The Internal Revenue Service has ruled that excess interest credited by an insurance company with respect to certain deferred annuity contracts is a policyholder dividend subject to the statutory deduction limitation, while taxpayers have taken the position that excess interest is fully deductible as an increase in reserves for guaranteed contractual benefits.

The Act allows a deduction for 100 percent of the interest credited to qualified annuities if it is guaranteed in advance, at a fixed rate or in accordance with a formula, for a period of not less than 12 months. For purposes of this deduction, an annuity contract is "qualified" if it is not a pension plan contract, involves life contingencies, is nonparticipating under State law, and provides for the payment of excess interest. A participating contract, meeting all other requirements, may also be treated as a qualified contract at the election of the taxpayer, but the interest deduction is limited to 100 percent of the permanently guaranteed rate of interest and 92½ percent for any interest credited in excess of the guaranteed rate.

Subject to certain transition rules, these provisions apply to taxable years beginning after December 31, 1981.

### *7. Amounts received under annuity contracts (sec. 265 of the Act)*

Under present law, taxation of interest or other current earnings on a policyholder's investment in an annuity contract generally is deferred until annuity payments are received or amounts characterized as income are withdrawn. Amounts paid out before the annuity starting date are first a return of capital and are taxable (as ordinary income) only after investment in the contract is recovered. There is no tax penalty for withdrawals or surrenders before the annuity starting date or before a certain age.

The Act provides that amounts received before the annuity starting date will be treated first as withdrawals of income earned on investments to the extent of such income, the remainder being treated as a return of capital. Likewise, loans under the contract, or amounts received upon assignment or pledging of the contract, will be treated as amounts received under the contract. These provisions apply as of August 13, 1982, but do not apply to income amounts allocable to investments made before August 14, 1982, to endowment or life insurance contracts (except to the extent prescribed in regulations), or to contracts purchased under qualified pension plans.

In addition, the Act imposes a penalty on certain distributions from an annuity contract. The penalty will be equal to 5 percent of the amount includible in income, to the extent the amount is allocable to an investment made within 10 years of the receipt. However, the penalty will not apply to a distribution that is (1) made on or after the policyholder reaches age 59½; (2) made to a beneficiary on or after death of the policyholder; (3) attributable to the policyholder becoming disabled; (4) a payment under an annuity for life or at least 5 years; (5) from a qualified pension plan; or (6) allocable to an investment before August 14, 1982. Also, the penalty only applies to distributions made after December 31, 1982.

### *8. Flexible premium contracts (sec. 266 of the Act)*

Under present law, gross income does not include proceeds of a life insurance contract paid by reason of the death of the insured. The Act provides mandatory guidelines for determining whether a death benefit paid under a life insurance contract that provides for payment of one or more premiums not fixed by the insurer as to both timing and amount (a flexible premium life insurance contract) should be excluded from gross income. In addition to providing a life insurance benefit, such contracts can also provide benefits for guaranteed insurability, accidental death, family term coverage, or waiver of premium; they do not provide life insurance to the extent they provide any annuity benefits other than as settlement options. The guidelines contain alternative tests which a contract must meet at all times in order to be considered life insurance thereunder. The first test sets standards for both the amount of premiums that can be paid and the amount of pure death benefit required. The second test sets a standard for the cash value of the contract. The Act also provides computational rules that must be followed for purposes of applying the guidelines, as well as special provisions for correcting errors so that a contract can meet the guideline tests. Except for some transistion rules, the guidelines are applicable for flexible premium contracts issued before January 1, 1984.

### *9. Indeterminate premium policies (sec. 263(b) of the Act)*

In a private letter ruling, issued in June, 1982, the Internal Revenue Service held, among other things, that the excess of the maximum premium chargeable over the premium actually collected should be treated as a distribution of policyholder dividends which is paid back as a premium to the company. The Act provides grandfather treatment so that, for taxable years beginning before 1982, amounts that could have been charged as a premium or mortality charge, but were not, will not be included in premium income.

### *10. Underpayments of 1982 estimated taxes (sec. 268 of the Act)*

Under present law, a nondeductible penalty is imposed on underpayments of estimated taxes. The Act provides that the underpayment penalty will not apply to underpayment periods ending before December 15, 1982, to the extent an underpayment is created or increased by the provisions of the Act affecting life insurance companies.

## F. Employment Tax Provisions

### *1. Independent contractors (secs. 269 and 270 of the Act)*

#### *Treatment of real estate agents and direct sellers*

The Act provides that salespersons who are licensed real estate agents and individuals who are direct sellers will be treated, for Federal income and employment tax purposes, as self-employed persons (and not as employees) if substantially all their remuneration is directly related to sales or other output and their services are performed pursuant to a written contract providing that they will not be treated as employees for Federal tax purposes. The provision applies to services performed after 1982.

#### *Interim provisions relating to classification controversies*

Section 530 of the Revenue Act of 1978 provided that taxpayers who had a reasonable basis for not treating workers as employees in the past could continue such treatment without incurring employment tax liabilities. The provision expired on June 30, 1982.

The Act indefinitely extends the interim provisions of section 530 of the Revenue Act of 1978 from July 1, 1982 until such time as the Congress enacts legislation concerning the classification of workers as independent contractors or employees.

#### *Certain employment tax liabilities*

If a worker reclassification occurs under present law, the employer generally is responsible for all employment tax liabilities (income tax withholding, both the employer's and employee's share of FICA taxes, and FUTA taxes) with respect to the reclassified worker.

The Act provides that an employer will be liable for 1.5 percent of wages and 20 percent of the worker's share of FICA tax that should have been withheld if the employer erroneously treated the worker as a nonemployee for income tax and social security tax purposes. These amounts are doubled if no information returns are filed. The reduced liability does not apply if the employer treats a worker as a nonemployee with intentional disregard of the law. The provision is effective on enactment, but does not apply to assessments made before January 1, 1983.

## 2. *Federal unemployment tax (FUTA) provisions*

### *a. FUTA rate and wage base (secs. 271–275 of the Act)*

Under FUTA, employers are subject to a payroll tax of 3.4 percent (a permanent tax of 3.2 percent and a temporary extended benefit tax of 0.2 percent) of the first $6,000 of wages per employee per year. If a State unemployment insurance law meets requirements of Federal law, employers in that State generally receive a 2.7 percent credit against the Federal tax, for a net Federal tax of 0.7 percent.

Sixty-five percent of the revenue raised by FUTA is allocated to the Employment Security Administration Account (ESAA), and 35 percent is allocated to the Extended Benefits Account (EUCA). Upon repayment of the Federal general revenue advances to EUCA, the 0.2 percent temporary tax will be eliminated and the allocation to EUCA will be reduced to 10 percent of the revenue raised by the Federal unemployment tax.

A State that has depleted its own unemployment funds may receive Federal loans as necessary to pay regular State benefits. States that borrow funds have 2 to 3 years to repay the loan, depending on the month the loan is received. If a State does not fully repay all loans within the 2 to 3 year period, employers in the State become subject to an annual reduction in the offset credit against the gross Federal unemployment tax rate of at least 0.3 percent. This means the net Federal tax rate, currently 0.7 percent, becomes subject to annual increases of at least 0.3 percent, up to a maximum of 3.4 percent, until sufficient revenue has been raised through such increases to repay the State's entire outstanding loan balance.

There are two potential credit reductions that are in addition to the annual 0.3 percent reduction. In the fourth year, in addition to another 0.3 percent reduction, employers in the State face a reduction equal to the amount that 2.7 percent exceeds the State's average tax rate on taxable wages in the calendar year to which the reduction applies. In the fifth year and thereafter, employers face a reduction, in addition to another 0.3 percent, equal to the higher of the amount of the additional fourth year reduction or the amount that the State's 5-year benefit cost rate exceeds the State's average tax rate on taxable wages in the calendar year to which the reduction applies. (The benefit-cost rate is benefits divided by taxable wages.)

Effective April 1, 1982, through December 31, 1987, States must pay interest on new Federal unemployment loans that are not repaid by the end of the fiscal year in which they are obtained. The interest rate is the same rate paid by the Federal Government on State reserves in the unemployment trust fund for the quarter ending December 31 of the preceding year, but not higher than 10 percent per annum. Interest payments are credited to the General Fund of the U.S. Treasury.

Under the Act, effective for remuneration paid after December 31, 1982, the FUTA wage base is increased to $7,000 and the tax rate is increased to 3.5 percent. This increases the net Federal tax to 0.8 percent. In order for employers to qualify for the full 2.7 percent credit against the Federal tax, States will have to have a State unemployment tax wage base of at least $7,000.

Effective for remuneration paid after December 31, 1984, the Federal tax rate is increased to 6.2 percent (a permanent tax of 6.0 percent and an extended benefit tax of 0.2 percent) and the credit to 5.4 percent. This will require that States could not assign to an employer a tax rate below 5.4 percent except on the basis of experience rating. However, States that, under State law in effect as of August 10, 1982, allow certain specified industries to pay a non-experience based State unemployment tax rate that is below 5.4 percent could provide for such industries to reach gradually the new 5.4 standard tax rate. Annual increases in the State unemployment tax rate for such industries could be limited to no less than 20 percent of the difference between the rate paid by an employer as of August 10, 1982 and 5.4 percent.

The allocation of Federal unemployment tax revenues among accounts in the Federal trust fund is modified to provide that 60 percent of the revenue raised by the 0.8 tax rate (or 0.48 percentage points) will be allocated to the Employment Security Administration Account (ESAA) and 40 percent (or 0.32 percentage points) to the Extended Benefits Account (EUCA).

The Act allows States to make Federal unemployment loan repayments from State trust fund accounts in lieu of further reductions in the credit against the gross Federal unemployment tax rate, provided several requirements are met. First, the State account must have sufficient funds or sufficient income to enable it to repay an amount equal to at least the sum that the credit reduction would have generated plus any advances made to the State during the year. Second, after making this repayment, the State must retain enough funds in its account to pay all State benefits for the next 3 months (from November 1). Finally, the State must have made a change in its law, after the date of enactment of the Act, and after receiving the first advance, that has resulted in an increase in the solvency of its unemployment compensation system.

The Act drops the additional credit reduction based on the State's previous 5-year benefit cost rate that begins in the fifth year a State is subject to annual reductions in the credit against the gross FUTA because of outstanding Federal unemployment loans. This amendment applies to a debtor State in any tax year, beginning after December 31, 1982, in which the State has taken no action during the 12-month period ending on September 30 which has reduced the solvency of the State unemployment trust fund.

Effective for interest due after December 31, 1982, the Act permits States with high unemployment to reduce payments of interest on Federal unemployment loans to 25 percent of the amount due in any year, and thereby extend the payment of the total interest obligation over a 4-year period. (Interest would be charged on any deferred amount.) A State will be able to extend payment of interest due in any calendar year in which the State insured unemployment rate equaled or exceeded 7.5 percent during the first 6 months of the preceding calendar year.

#### *b. Exclusion from FUTA of wages paid to certain students (sec. 276 of the Act)*

Under current law, wages paid to a student under age 22 who is enrolled full-time in a work study or internship program are exempted from the Federal unemployment tax (FUTA) if the work performed is an integral part of the student's academic program.

The Act exempts from FUTA tax any wages paid to a student enrolled full-time in a work-study or internship program, regardless of age, for work that is an integral part of the student's academic program, effective for services performed after the date of enactment. In addition, for tax year 1983 only, the Act exempts from FUTA wages paid by certain summer camps to employees who are full-time students.

#### *c. Extension of exclusion from FUTA of wages paid to certain alien farmworkers (sec. 277 of the Act)*

Under the Immigration and Nationality Act, residents of foreign countries who do not intend to abandon such residency may be admitted to the United States to work for a temporary period of time during the peak agricultural crop seasons. Prior to 1982, wages paid to such alien farmworkers were excluded from Federal unemployment (FUTA) taxes.

The Act extends for 2 years—from January 1, 1982, to January 1, 1984—the provision of prior law that excluded wages paid to certain alien farmworkers from FUTA taxes. The provision is effective on the date of enactment.

### *3. Extension of social security hospital insurance taxes and Medicare coverage to Federal employees (sec. 278 of the Act)*

Under present law, Federal employees generally are not subject to social security hospital insurance taxes, nor does their employment qualify them for Medicare coverage.

Under the Act, Federal employment is subject to the hospital insurance portion of the FICA tax, effective for remuneration paid after December 31, 1982, and the newly covered Federal employment will be used in determining eligibility for protection under Medicare part A (hospital insurance). A transitional provision provides credit for additional hospital insurance quarters of coverage for certain Federal employees who perform service during and before January 1983, and who otherwise would not qualify for Medicare protection even though they have made hospital insurance tax contributions based on their Federal employment.

## G. Excise Tax Provisions

### *1. Airport and airway taxes (secs. 279–281 of the Act)*

Present law imposes a 5-percent tax on domestic air passenger tickets, the revenues from which go into the general fund. In addition, present law imposes a 4-cents-per-gallon tax on gasoline used by noncommercial aviation and taxes on aircraft tires and tubes; the revenues from these taxes currently go into the Highway Trust Fund.

#### *a. Tax provisions*

The Act makes the following changes in aviation excise taxes through December 31, 1987: (1) increases the domestic air passenger ticket tax to 8 percent; (2) reimposes the 5-percent tax on air freight waybills; (3) reimposes the $3 per person international departure tax; (4) increases the tax on noncommercial aviation gasoline to 12 cents per gallon; (5) imposes a 14-cents-per-gallon tax on other noncommerical aviation fuels; (6) continues the tax on aircraft tires and tubes at present rates; and (7) provides an exemption from the fuels and air passenger ticket taxes for helicopters not utilizing Federal-aid airports or the Federal aviation system where used in (a) timber operations or (b) hard mineral exploration or development.

Three modifications are made in the application of the air passenger ticket tax. First, the 6-hour layover rule is increased to 12 hours for purposes of determining whether the flight is treated as uninterrupted international travel subject only to the departure tax (i.e., not subject to the domestic ticket tax).

Second, the Secretary of the Treasury is granted the authority to waive the 225-mile zone rule if Canada or Mexico enters into a "qualified agreement" regarding the tax to be applied to persons traveling by air between the United States and that country, with the objective of eliminating double taxation of travel between the countries or within the 225-mile zone.

Third, the requirement that the ticket fare and tax be shown by trip segments is repealed, effective from the date of enactment. The requirement for separately showing the total airfare and total ticket tax is retained.

The tax changes are effective for tickets, waybills, and fuels purchased after August 31, 1982.

#### *b. Trust fund provisions*

Revenues from these aviation excise taxes are appropriated to the Airport and Airway Trust Fund, effective September 1, 1982 through December 31, 1987. The Act also transfers the Airport and Airway Trust Fund statute to the Internal Revenue Code, effective September 1, 1982, and extends the trust fund expenditure authority through September 30, 1987. The trust fund expenditure purposes are updated to include the changes made in the Airport and Airway System Development Act of 1982 (title V of the Act).

***2. Temporary increase in cigarette excise taxes (sec. 283 of the Act)***

Present law (sec. 5701) imposes a manufacturers excise tax equal to $4 per thousand (8 cents per pack) on small cigarettes (i.e., cigarettes weighing no more than three pounds per thousand). Generally, a tax equal to $8.40 per thousand is imposed on large cigarettes, except that higher rates apply to large cigarettes that exceed 6.5 inches in length.

The Act temporarily doubles the excise taxes on small and large cigarettes, effective during the period January 1, 1983 through September 30, 1985. The Act also imposes a special floor stocks tax on cigarettes removed before January 1, 1983, and held for sale on that date. The floor stocks tax is equal to the excess of the new tax rates over the lower pre-1983 rates.

***3. Temporary increase in telephone excise tax (sec. 282 of the Act)***

Under present law (sec. 4251), the excise tax on local and long-distance telephone and teletypewriter services is 1 percent in 1982 through 1984. The tax is scheduled to expire after 1984.

The Act increases the telephone excise tax to 3 percent for calendar years 1983–1985, and terminates the tax after 1985.

***4. Windfall profit tax provisions***

***a. Windfall profit tax TAPS adjustment repeal (sec. 284 of the Act)***

Under present law, the windfall profit tax base price of Sadlerochit oil is adjusted upward by the amount by which the Trans-Alaska Pipeline System (TAPS) tariff falls below $6.26.

Under the Act, the TAPS adjustment is repealed effective for oil removed after December 31, 1982.

***b. Windfall profit tax on Alaska native corporations (sec. 291 of the Act)***

Under present law, certain domestic crude oil is exempt from the windfall profit tax if the producer is a native corporation "organized under" the Alaska Native Claims Settlement Act (as in effect on January 21, 1980).

The Act clarifies this exemption by providing that certain domestic crude oil the producer of which is a corporation "organized pursuant to" the Alaska Native Claims Settlement Act (including a wholly owned subsidiary) is exempt Indian oil within the meaning of the windfall profit tax.

## H. Other Provisions

### *1. Exclusion from income of National Research Service Awards (sec. 285 of the Act)*

Amounts received as National Research Service Awards were treated, under the Revenue Act of 1978, as excludable scholarships or fellowship grants. That exclusion, as subsequently extended, was effective for awards made through 1981. The Act extends the temporary exclusion from income for National Research Service Awards for two additional years (i.e., for awards made through 1983).

### *2. Annual accrual accounting method for certain partnerships (sec. 230 of the Act)*

Farming corporations generally are required to use the accrual method and are required to capitalize preproductive period expenses. When the restriction was first provided, corporations were permitted to continue to use the "annual" accrual method and deduct currently preproductive period expenses for certain farming businesses. Under present law, if a corporation which is eligible to use the annual accrual method for a farming business transfers the business to a partnership with other corporations, the partnership is not allowed to continue to use the annual accrual method for the business.

Under the Act, a partnership principally engaged in the business of growing sugarcane and consisting solely of corporations (other than personal holding companies or subchapter S corporations) is permitted to use the annual accrual method for a farming business covered by the original grandfather provision. This provision applies to taxable years beginning after 1982.

### *3. Certain payments to foreign government officials or employees (sec. 288 of the Act)*

Under present law, taxpayers cannot deduct payments to foreign government officials or employees which would be illegal under U.S. law, if U.S. law applied (sec.162(c)).

Under the Act, payments to foreign government officials or employees which are otherwise deductible will not be disallowed on grounds of illegality under U.S. law unless those payments are illegal under the Foreign Corrupt Practices Act. The provision applies to payments made after the date of enactment.

### *4. Debt management provisions (sec. 289 of the Act)*

#### *a. Rate of interest on U.S. savings bonds*

The Secretary of the Treasury, with the approval of the President, presently may increase the investment yield on any U.S. savings bond above the current rate in any 6-month period by no more than one percentage point (annual rate, compounded semiannually).

The Act provides that the Secretary of the Treasury, with the approval of the President, is allowed to fix the investment yield on any U.S. savings bond. The Secretary also is authorized to provide for increases and decreases in the yield on any outstanding U.S. savings bond. With this authority, however, the Secretary may not decrease the yield on any bond below the minimum yield guaranteed at the time of its issuance for the period the bond is held. This provision is effective on enactment.

#### *b. Long-term U.S. bonds*

Bonds are defined under present law as obligations of the United States which have a maturity when issued that is longer than 10 years. The rate of interest that may be paid under present law on a bond may not exceed 4¼ percent, except that up to $70 billion in outstanding bonds with rates of interest above 4¼ percent may be held by the public.

The Act provides an additional $40 billion increase in the exception from the interest rate ceiling. This action raises the exception to $110 billion. All bonds issued under the additional exception must be issued in registered form. This provision is effective on enactment.

### *5. Disclosure of tax returns (sec. 356–358 of the Act)*

#### *a. Disclosure for nontax criminal investigation purposes*

Present law restricts the disclosure of tax returns and return information. In general, tax information may be disclosed to Justice Department personnel, for nontax criminal investigation purposes, only pursuant to the grant of an ex parte order by a U.S. district court judge (sec. 6103(i)). However, certain tax information that is received by the Internal Revenue Service from a party other than the taxpayer may be disclosed upon written request. Moreover, the IRS may disclose certain tax information on its own initiative.

The Act (1) modifies the standards for the granting of an ex parte order for the disclosure of tax returns and return information and allows U.S. District court magistrates, as well as judges, to issue those orders; (2) expands the number of personnel who are permitted to request disclosure; (3) allows the disclosure of tax information, pursuant to court order, for the purpose of locating Federal fugitives from justice; and (4) provides additional authority for the IRS to disclose tax information, on its own initiative, in emergency circumstances. These provisions are effective on the day after the date of enactment.

#### *b. Civil damages for unauthorized disclosures*

Present law provides that a person who knowingly or negligently makes an unauthorized disclosure of tax returns or return information may be sued in a civil action for damages in a U.S. district court (sec. 7217).

The Act provides that if a U.S. officer or employee knowingly or negligently makes an unauthorized disclosure of tax information, the wronged party will be permitted to bring a civil action for damages against the U.S. (rather than against the officer or employee). The provision is effective for disclosures made after the date of enactment.

### *c. Disclosure for use in certain GAO audits*

The General Accounting Office (GAO) currently has access to tax information for the purpose of auditing the Internal Revenue Service, and for purposes of auditing how other Federal agencies safeguard tax information (sec. 6103(i)(6)).

The Act expands the GAO's access to tax information for the purpose of auditing the programs or activities of another Federal agency. The provision is effective on the day after the date of enactment.

### *6. Veterans organizations (sec. 354 of the Act)*

Under present law, a domestic post or organization of war veterans (or an auxiliary unit or society of, or a trust or foundation for, such post or organization) is tax exempt if at least 75 percent of its members are war veterans and substantially all the other members are veterans or cadets, or are spouses, widows, or widowers of such individuals, and if no part of its net earnings inures to the benefit of any private individual (sec. 501(c)(19)).

The Act modifies the membership requirement to allow tax exemption for a veterans organization as long as 75 percent of its members are past or present members of the U.S. Armed Forces. Also, it allows exemption for any veterans assocations founded before 1880, 75 percent of the members of which are past or present members of the U.S. Armed Forces, and the primary purpose of which is to provide insurance and other benefits to veterans and their dependents. The provision is effective on the date of enactment.

### *7. Amateur athletic organizations (sec. 286 of the Act)*

Athletic organizations may qualify for tax exemption and tax-deductible contributions if they meet the general requirements for charitable or educational organizations. Also, such organizations could qualify if organized and operated exclusively to foster national or international amateur sports competition, but only if no part of the organization's activities involve the provision of athletic facilities or equipment and no part of the net earnings of the organization inure to the benefit of any private individual.

The Act allows tax-exempt status, and tax-deductible contributions, to amateur athletic organizations that conduct national or international competition in sports or support and develop amateur athletes for such competition (whether or not the organization provides facilities or equipment to its members), if no part of the organization's net earnings inures to the benefit of any private individual. As under present law, a tax deduction is not allowed if the contributor derives a substantial, direct personal benefit from the contribution. The provision is effective as of October 5, 1976.

### *8. New Jersey general revenue sharing allocation (sec. 287 of the Act)*

Under present law, only taxes assessed and collected by a local government are counted toward the jurisdiction's tax effort under the general revenue sharing allocation (31 U.S.C. 1228).

The Act provides that the New Jersey Franchise and Gross Receipts Taxes shall be deemed an adjusted tax of local governments for the purpose of allocating revenue sharing funds for the quarterly period beginning on October 1, 1982. This change will remain in effect for future quarterly payments if New Jersey amends its tax status to provide for local retention and collection.

This provision is effective for revenue sharing payments made with respect to the last quarter in calendar year 1982.

### *9. Relief for the Jefferson County Mental Health Center, Lakewood, Colorado (sec. 290 of the Act)*

Employees of a nonprofit organization are excluded from social security coverage unless the organization files with the Internal Revenue Service a certificate waiving its exemption from taxation.

The Act authorizes the payment of $50,000 to the Jefferson County Mental Health Center, Lakewood, Colorado, in settlement of its claims against the United States for repayment of $74,128 that the Center refunded to its employees for social security contributions after the IRS erroneously advised the Center that the contributions had been withheld incorrectly. The provision is effective on enactment.

### *10. Award of reasonable litigation costs where taxpayer prevails and government position was unreasonable (sec. 292 of the Act)*

#### *Attorneys fees*

Under the Equal Access to Justice Act, a taxpayer who prevails in civil tax litigation in the Federal courts (other than the U.S. Tax Court) may be awarded reasonable attorneys fees and other litigation costs, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

In substitution of the existing rules, the Act provides that a taxpayer who prevails in civil tax litigation in a Federal court, including the U.S. Tax Court, may be awarded reasonable attorneys fees and other litigation costs if the position of the United States was unreasonable. The maximum award is $25,000. The provision applies to civil tax litigation begun on or after March 1, 1983. The provision does not apply to cases begun after December 31, 1985.

#### *Damages for delay in Tax Court*

Present law provides that if a U.S. Tax Court proceeding has been instituted by a taxpayer merely for delay, the Court may award damages to the United States in an amount not to exceed $500 (sec. 6673).

The Act provides that if a Tax Court proceeding has been brought primarily for delay, or if the taxpayer's position in the case is frivolous or groundless, the Court may award damages to the United States in an amount not to exceed $5,000. The provision applies to Tax Court cases begun after December 31, 1982.

***11. Personal holding companies (sec. 293 of the Act)***

Under present law, a corporation actively engaged in a lending or finance business is excluded from the personal holding company tax provisions if the corporation has qualifying business expenses equal to at least 15 percent of the first $500,000 of ordinary gross income from its lending or finance business, plus 5 percent of such ordinary gross income from $500,000 to $1 million. The term "lending or finance business" is defined to include the business of making loans with maturities of not more than 60 months.

Effective for taxable years beginning after December 31, 1981, the Act modifies the business expense test to require a lending or finance company to have qualifying business expenses equal to at least 15 percent of the first $500,000 of ordinary income from the lending or finance business, plus 5 percent of such ordinary gross income in excess of $500,000. Thus, 5 percent of ordinary gross income in excess of $1 million will be added to the qualifying business expense test of present law.

In addition, effective for taxable years beginning after December 31, 1980, the Act increases the 60-month loan maturity limitation to 144 months, and the definition of a lending or finance business is amended to include the business of making loans in indefinite maturity credit transactions.

***12. Additional refunds relating to repeal of the excise tax on buses (sec. 294 of the Act)***

The Energy Tax Act of 1978 repealed the prior law 10-percent manufacturers excise tax on buses effective after November 9, 1978. The Act also contained provisions effectively repealing the tax for buses sold after April 19, 1977 and before November 10, 1978, if a claim for refund was filed with the Internal Revenue Service and if the tax originally collected from ultimate purchasers was reimbursed before September 5, 1979.

The Act extends the last date for reimbursing ultimate purchasers of buses to December 31, 1982, and permits the reimbursement to occur at the same time a refund from IRS is received. The provision applies to taxpayers that filed a claim for refund before September 5, 1979.

## III. REVENUE EFFECTS OF TAX PROVISIONS OF H.R. 4961 (TITLES II, III, AND IV)

**Table 1.—Summary of Estimated Revenue Effects of Tax Provisions of H.R. 4961 (Titles II, III, and IV), Fiscal Years 1983–1987**

**[In millions of dollars]**

| Provision | 1983 | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|---|
| Individual income tax provisions | 272 | 3,113 | 3,106 | 3,336 | 3,556 |
| Business tax provisions | 5,422 | 13,292 | 16,497 | 28,042 | 40,116 |
| Compliance provisions | 3,365 | 8,869 | 8,660 | 10,174 | 11,217 |
| Pension provisions | 194 | 780 | 870 | 970 | 1,058 |
| Insurance and provisions | 1,942 | 2,155 | 2,920 | 3,138 | 3,370 |
| Employment tax provisions | 1,904 | 3,083 | 3,577 | 2,853 | 2,572 |
| Excise tax provisions | 2,798 | 4,009 | 4,702 | 2,054 | 1,472 |
| Miscellaneous provisions | −38 | −37 | −34 | −32 | −30 |
| **Total, tax provisions** | **15,859** | **35,264** | **40,298** | **50,535** | **63,331** |
| Revenue gain resulting from additional IRS enforcement personnel | 2,100 | 2,400 | 2,400 | 1,300 | 600 |
| **Grand total, all provisions** | **17,959** | **37,664** | **42,698** | **51,835** | **63,931** |

Table 2.—Estimated Revenue Effects of Tax Provisions of H.R. 4961 (Titles II, III, and IV), Fiscal Years 1983–1987

[In millions of dollars]

| Provision | 1983 | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|---|
| *Individual Income Tax Provisions:* | | | | | |
| Alternative minimum tax | (1) | 659 | 701 | 741 | 729 |
| Medical deduction | 272 | 1,788 | 1,671 | 1,795 | 1,947 |
| Ten percent casualty deduction floor | | 666 | 734 | 800 | 880 |
| **Total, individual tax provisions** | **272** | **3,113** | **3,106** | **3,336** | **3,556** |
| *Business Tax Provisions:* | | | | | |
| Reduction in corporate preference items | 515 | 936 | 948 | 918 | 995 |
| Investment tax credit basis adjustment | 362 | 1,374 | 2,658 | 4,109 | 5,579 |
| Limit ITC to 85 percent of tax liability | 152 | 259 | 213 | 178 | 164 |
| Accelerated depreciation—1985 and 1986 | | | 1,541 | 9,907 | 18,442 |
| Construction period interest and taxes | 555 | 1,179 | 1,206 | 1,084 | 819 |
| Modifications to pre-ERTA and safe harbor leasing rules | 1,036 | 2,649 | 4,252 | 5,496 | 7,000 |
| Changes in taxation of foreign oil extraction income | 200 | 438 | 508 | 569 | 621 |
| Limit on possessions credit | 201 | 428 | 473 | 516 | 559 |
| Private purpose tax-exempt bonds | 63 | 261 | 539 | 748 | 1,076 |
| Mergers and acquisitions | 427 | 749 | 959 | 1,014 | 1,064 |
| Accounting for completed contracts | 882 | 2,235 | 2,535 | 2,390 | 2,559 |
| Original issue discount and coupon stripping provisions | 163 | 310 | 465 | 629 | 808 |
| Targeted jobs credit | −182 | −551 | −591 | −271 | −54 |

Table 2.—Estimated Revenue Effects of Tax Provisions of H.R. 4961, (Titles II, III, and IV), Fiscal Years 1983-1987—Continued

[In millions of dollars]

| Provision | 1983 | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|---|
| Accelerated corporate tax payments | 1,048 | 3,025 | 791 | 755 | 484 |
| **Total, business tax provisions** | **5,422** | **13,292** | **16,497** | **28,042** | **40,116** |
| ***Compliance Provisions:*** | | | | | |
| Withholding on interest and dividends | 1,344 | 5,246 | 3,975 | 4,605 | 5,181 |
| Other compliance provisions, including partnership audits and taxpayer safeguards [3] | 2,021 | 3,623 | 4,685 | 5,569 | 6,036 |
| **Total, compliance provisions** | **3,365** | **8,869** | **8,660** | **10,174** | **11,217** |
| ***Pension Provisions*** | **194** | **780** | **870** | **970** | **1,058** |
| ***Insurance Provisions*** | **1,942** | **2,155** | **2,920** | **3,138** | **3,370** |
| ***Employment Tax Provisions:*** | | | | | |
| Independent contractors | −117 | −107 | −79 | −85 | −92 |
| FUTA tax | 1,404 | 2,353 | 2,729 | 1,872 | 1,501 |
| Federal employees medicare tax | 617 | 837 | 927 | 1,066 | 1,163 |
| **Total, employment tax provisions** | **1,904** | **3,083** | **3,577** | **2,853** | **2,572** |
| ***Excise Tax Provisions:*** | | | | | |
| Airport and airway taxes [4] | 817 | 962 | 1,089 | 1,216 | 1,357 |
| Telephone tax [5] | 616 | 1,073 | 1,600 | 730 | ........ |
| Cigarette tax [6] | 1,275 | 1,829 | 1,859 | −34 | −13 |
| Repeal of Trans Alaska Pipeline System adjustment [7] | 90 | 145 | 154 | 142 | 128 |

Table 2.—Estimated Revenue Effects of Tax Provisions of H.R. 4961, (Titles II, III, and IV), Fiscal Years 1983–1987—Continued

[In millions of dollars]

| Provision | 1983 | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|---|
| Alaska Native Claims Settlement Corp | | | | | |
| **Total, excise tax provisions** | 2,798 | 4,009 | 4,702 | 2,054 | 1,472 |
| ***Miscellaneous Provisions:*** | | | | | |
| National Research Service Awards | −8 | −7 | −4 | −2 | (1) |
| Annual accrual accounting method for certain partnerships | | | | | |
| Foreign Corrupt Practices Act provisions | −30 | −30 | −30 | −30 | −30 |
| Disclosure of tax returns | | | | | |
| Veterans organizations | (2) | (2) | (2) | (2) | (2) |
| Amateur athletic organizations | (2) | (2) | (2) | (2) | (2) |
| Relief for the Jefferson County Mental Health Center | (8) | | | | |
| Award of certain litigation costs | (9) | (9) | (9) | (9) | |
| Personal holding companies | (2) | (2) | (2) | (2) | (2) |
| Additional refunds relating to repeal of the excise tax on buses | (1) | (1) | | | |
| **Total, miscellaneous provisions** | −38 | −37 | −34 | −32 | −30 |
| **Total, tax provisions** | 15,859 | 35,264 | 40,298 | 50,535 | 63,331 |
| Revenue gain resulting from additional IRS enforcement personnel | 2,100 | 2,400 | 2,400 | 1,300 | 600 |
| **Grand total, all tax provisions** | 17,959 | 37,664 | 42,698 | 51,835 | 63,931 |

[1] Negligible.

[2] Loss of less than $5 million.

[3] Additional gains in budget receipts are expected from the Administration's proposal to increase IRS personnel in taxpayer compliance enforcement activities: $2.1 billion in fiscal year 1983, $2.4 billion in 1984, $2.4 billion in 1985, $1.3 billion in 1986, and $0.6 billion in 1987.

[4] The figures represent net increases, after accounting for lower income tax receipts. Additional revenues from aviation excise taxes resulting from this bill before taking account of the income tax offset are estimated at $1,089 million in 1983, $1,283 million in 1984, $1,452 million in 1985, $1,621 million in 1986, and $1,809 million in 1987.

[5] The figures represent net increases, after accounting for lower income tax receipts. Increases in general fund receipts from this tax before taking account of the income tax offset are estimated at $821 million in fiscal year 1983, $1,431 million in 1984, $2,133 million in 1985, and $973 million in 1986.

[6] The figures represent net increases, after accounting for lower income tax receipts. Increases in general fund receipts from this tax before taking account of the income tax offset are estimated at $1,700 million in fiscal year 1983, $2,439 million in 1984, $2,479 million in 1985.

[7] The figures represent net increases, after accounting for lower income tax receipts. Increases in general fund receipts from this tax before taking account of the income tax offset are estimated at $139 million in fiscal year 1983, $260 million in 1984, $285 million in 1985, $267 million in 1986, and $241 million in 1987.

[8] Increases outlays by $50,000.

[9] Increases outlays by less than $5 million.