DESCRIPTION OF PROPOSALS

Scheduled for

SENATE FINANCE COMMITTEE MARKUP

on

December 14, 1981

Prepared by the Staffs

of the

Joint Committee on Taxation

and

Committee on Finance

December 14, 1981

JCX-42-81

COMMITTEE ON FINANCE

A G E N D A

Monday, December 14, 1981
Room 2221 Dirksen Senate Office Building

Senate Amendments

1.	Senator Armstrong	Codification of regulations dealing with Family Rental Tax (See attached staff document A)
2.	Senator Baucus	Tax Court judges' survivors annuities, with technicals (See attached staff document B)
3.	Senator Bentsen	State judges' deferred compensation plans under Code sec. 61 (See attached staff document C)
4.	Senator Chafee	Technical conforming amendment for business development companies (See attached staff document D)
5.	Senator Danforth	Modification of requirements for furnishing Form W-2 to terminated employees (See attached staff document E)
6.	Senator Matsunaga	Voluntary withholding of State tax for certain fishermen (See attached staff document F)
7.	Senator Mitchell	1-year extension of existing 1-year FUTA exemption for certain fishermen (See attached staff document G)
8.	Senator Moynihan	Rollover of gain on FCC-ordered disposition of broadcast property (See attached staff document H)
9.	Senator Moynihan	Exclusion of certain R&D expenditures from capital expenditure limitation on small issue IDBs (See attached staff document I)
10.	Senator Packwood	Reforestation trust fund transfer provision (See attached staff document J)
11.	Senator Symms	Declaratory judgments for special use valuation and for extended payment of estate taxes; also change to sec. 6166 "second death" provision (See attached staff document K)
12.	Senator Wallop	Expansion of oil shale credits for 1982 and 1983 (See attached staff document L)
13.	Senators Danforth and Moynihan	Trade Adjustment Assistance - Extension of "contribute importantly" causation standard for the life of the program (See attached staff document M)

House Bills

14. H.R. 4961	Miscellaneous Revenue Act of 1981 (See attached staff document N) a. Rental of residences to family members; business use of residences; b. Award of attorney fees in tax litigation c. Tax accrual acceleration limitation not to apply to certain taxpayers d. Treatment of certain lending or finance businesses for holding company tax purposes e. Additional two-year postponement in 1976 NOL rules f. Additional refunds relating to repeal of bus excise tax g. Unemployment compensation; SSI amendments
15. H.R. 4717	Miscellaneous Tax provisions (See attached staff document O) a. LIFO inventory recapture b. Extended carryback of NOLs of FNMA c. Leasing reporting requirements
16. H.R. 5159	Black Lung Benefits Revenue Act of 1981 (See attached staff document P)

SENATOR ARMSTRONG

Codification of Regulations Dealing with Family Rental Tax

Present law

Section 280A limits the deduction of certain expenses incurred for the use of a dwelling unit in connection with a trade or business or income-producing activity of the taxpayer if the taxpayer also uses the dwelling unit for personal purposes.

Business use of the home.--Unless specifically excepted from section 280A and otherwise allowable, no deductions are allowed with respect to a dwelling unit because of its connection to a taxpayer's trade or business or income producing activities, if the taxpayer uses the dwelling as a residence. One exception to the general rule of section 280A allows deductions attributable to a portion of the taxpayer's residence which is exclusively used on a regular basis as the taxpayer's principal place of business.

On August 7, 1980, proposed Treasury regulations under section 280A were published in the Federal Register (45 Fed. Reg. 52399). The proposed regulations would define "the taxpayer's principal place of business" as the principal place of the taxpayer's overall business activity. A taxpayer would have only one principal place of business regardless of the number of business activities in which the taxpayer is engaged. The proposed regulations do not follow the U.S. Tax Court decision in Curphey v. Commissioner, 73 T.C. 766 (1980), which allowed a hospital-employed dermatologist to deduct expenses for a home office which was the principal place of business for his real estate rental business.

Repairs and maintenance.--Section 280A also provides that the Secretary of the Treasury must prescribe by regulation the circumstances under which use of a dwelling unit for repairs and annual maintenance will not constitute personal use of the unit. Under the proposed regulations published on August 7, 1980, an individual would have to be engaged in repair or maintenance work for a day on a substantially full-time basis, i.e., the lesser of eight hours or two-thirds of the time present on the premises, to qualify the day's use of the unit as use for repairs and maintenance. The proposed regulations would require that all individuals on the premises on a day must be engaged in work on the unit on a substantially full-time basis, to avoid the day being treated as one of personal use. However, the proposed regulations would disregard the presence of individuals, such as small children, who are incapable of working.

Explanation of proposal

Business use of the home.--The proposal would amend section 280A(a)(1)(A) to provide that the general limitation on deductions in section 280A(a) shall not apply to expenses allocable to the regular and exclusive use of a portion of a taxpayer's residence as a principal place of business for any trade or business of the taxpayer. Thus, a taxpayer could have a distinct principal place of business for each separate trade or business and could deduct expenses attributable to the use of a residence as the principal place of business for one or more such businesses, provided the regular and exclusive use requirements are met.

Repair and maintenance.--The proposal also would provide that, notwithstanding any ruling, proposed regulation, or regulation to the contrary, a dwelling would not be treated as used for the personal purposes of the taxpayer on a day the taxpayer repairs or maintains the dwelling on a substantially full-time basis because other persons, who are on the premises and who are capable of working, do not work on a substantially full-time basis.

The Treasury Department has indicated its intention to amend its regulations to accomplish the results embodied in the proposed amendments. The provisions of the proposal were included in S. 31. (The proposal does not include other provisions which were included in S. 31 relating to the rental of dwelling units to family members.)

Effective date

The amendments made by the proposal would apply to taxable years beginning after December 31, 1975, the taxable years to which Code section 280A applies.

Revenue effect

The proposal would not affect budget receipts.

SENATOR BAUCUS

Tax Court Judges' Survivors Annuities, with Technicals

Present law

Annuities for Survivors of Tax Court judges

Present law provides that, at the election of a judge of the United States Tax Court, three percent of the judge's salary is withheld and credited to the "Tax Court judges survivors annuity fund." If a judge electing coverage under the survivors annuity fund dies while a judge and after completing at least five years of service for which salary was withheld for the fund (or for which salary was withheld under the civil service retirement laws), a surviving spouse or surviving dependent child is entitled to an annuity from the fund. If the surviving spouse has not attained age 50 at the date of the judge's death, the annuity commences when the surviving spouse attains age 50. The annuity payable to a surviving spouse terminates upon the spouse's remarriage or death. The annuity payable to a child generally terminates when the child attains age 18.

The annuity payable to a surviving spouse of a judge is equal to a stated percentage (generally 1-1/4 percent) of the average annual salary (whether judge's salary or compensation for other allowable Federal service) for the five consecutive years for which the judge received the largest average annual salary, multiplied by the sum of the judge's years of judicial or other allowable Federal service. However, the annuity for the surviving spouse cannot exceed 37-1/2 percent of such average annual salary. The amount of the annuity payable to a surviving dependent is based upon the annuity payable to a surviving spouse (subject to certain limits).

Certain Tax Court procedural rules

Under present law, the Chief Judge of the Tax Court may assign "small tax cases" (i.e., certain cases in which the deficiency is not more than $5,000) and certain declaratory judgment actions to commissioners (special trial judges) for hearing and decision. Special procedural rules apply to small tax cases. Present law also requires a judge of the Tax Court to report in writing the Court's findings of fact and opinion.

Explanation of the proposal

Annuities for survivors of Tax Court judges

The proposal generally would increase the amount of an annuity payable to a surviving spouse or dependent child of a judge of the Tax Court by (1) basing such amount upon the judge's average annual salary for the three (rather than five) consecutive years for which the judge received the largest average annual salary, and (2) increasing the maximum annuity for a surviving spouse from 37-1/2 percent to 40 percent of the judge's average annual salary.

The proposal also would adjust an annuity payable to a surviving spouse or a surviving dependent of a Tax Court judge for cost-of-living increases by increasing the amount of the annuity when the salary of judges of the Tax Court is increased.

The proposal would affect each annuity payable from the survivors annuity fund which is based in whole or in part upon a deceased judge having rendered some portion of his or her final 18 months of service as a judge of the Tax Court. Under the bill, each such annuity would be increased by three percent for each five percent when the salaries of judges of the Tax Court are increased. If the salary increase is less than five percent, the increase would be disregarded in computing current and future survivor annuities.

The proposal includes a catch-up provision for survivor annuities in pay status on the date of enactment. Under this provision, such an annuity would be immediately increased to reflect increases in the salary of judges of the Tax Court after December 31, 1963.

The proposal is the same as S. 829, except that the catch-up provision date has been changed from 1970 to 1963, and except that certain Tax Court procedural rules (described below) have been added.

Certain Tax Court procedural rules

The proposal provides that commissioners (special trial judges) may hear and decide regular cases (i.e., cases that are not small tax cases) if the deficiency is not more than $5,000. In addition, small tax cases would be expanded to include cases involving excise taxes on excess contributions to individual retirement accounts. The bill also provides that judges of the Tax Court may in appropriate cases orally state, and record in the transcript of the proceedings, their findings of fact or opinion on the issues presented.

Under the provision, a retired judge of the Tax Court would be known and designated as a Senior Judge.

Effective dates

Annuities for survivor of Tax Court judges

The provision generally would apply with respect to annuities payable to survivors of judges of the Tax Court dying after the date of enactment. Except as described in the catch-up provisions for survivor annuities in pay status, the provision relating to cost-of-living increases would apply with respect to salary increases taking effect after the date of enactment.

Tax Court procedural rules

The provisions relating to certain procedural rules of the Tax Court would be effective upon enactment.

Revenue effect

It is estimated that the provisions relating to annuities for survivors of judges of the Tax Court would increase fiscal year budget outlays by less than $50,000 annually.

SENATOR BENTSEN

State Judges Deferred Compensation Plans Under Code sec. 61

Present law

Eligible State deferred compensation plan

Under present law (Code sec. 457(a)), employees of a State or local government or a rural electric cooperative are permitted to defer compensation under an eligible State deferred compensation plan if the deferral does not exceed prescribed annual limits (generally the lesser of $7,500 or 33-1/3 percent of includible compensation). Amounts of compensation deferred by a participant in an eligible plan, plus any income attributable to the investment of such deferred amounts, are includible in the income of the participant or the participant's beneficiary only when paid or otherwise made available under the plan.

Treatment of participants in an ineligible plan

If a deferred compensation plan fails to meet the requirements of an eligible plan, then all compensation deferred under the plan is includible currently in income by the participants unless the amounts deferred are subject to a substantial risk of forfeiture (sec. 457(e)). If amounts deferred are subject to a substantial risk of forfeiture, then they are includible in the gross income of participants or beneficiaries in the first taxable year in which there is no substantial risk of forfeiture.

This rule for the tax treatment of participants in an ineligible plan does not apply, however, if the tax treatment of a plan participant is governed by tax rules for the plan that are set forth elsewhere in the Code. For example, the rule does not apply if the ineligible plan is a tax-qualified pension plan (sec. 401(a)), a tax-sheltered annuity program (sec. 403(b)), or includes a trust forming a part of a nonqualified pension plan (sec. 402(b)).

Explanation of proposal

Under the proposal, participants in a qualified State judicial plan would not be subject to the rule requiring participants in an ineligible plan to include plan benefits in gross income merely because there is no substantial risk that the benefits will be forfeited.

A State's retirement plan for the exclusive benefit of its elected judges or their beneficiaries would be a qualified State judicial plan if (1) the plan has been continuously in existence since December 31, 1978, (2) all judges eligible to benefit under the plan are required to participate and to contribute the same fixed percentage of their basic or regular rate of compensation, and (3) a judge's retirement benefit under the plan is a percentage of the compensation of judges of the State holding similar positions.

In addition, the plan could not pay benefits with respect to a participant which exceed the limitations on benefits permitted under tax-qualified plans, and could not provide an option to plan participants as to contributions or benefits the exercise of which would affect the amount of the participant's currently includible compensation. Further, a State's judicial retirement plan would not be a qualified State judicial plan if judges participating in the plan were also eligible to participate, on the basis of their judicial service, in any eligible State deferred compensation plan.

The proposal is the same as S. 1855.

Effective date

The provisions of the proposal would apply to taxable years beginning after December 31, 1978.

Revenue effect

The provisions of the proposal are estimated to have a negligible effect on budget receipts.

SENATOR CHAFEE

Technical Conforming Amendment for Business Development Companies

Present law

Under present law, a regulated investment company (commonly called a "mutual fund" or "money market fund") is treated, in essence, as a conduit for tax purposes. This treatment is achieved by allowing a regulated investment company a deduction for dividends paid to its shareholders. Congress provided conduit treatment for regulated investment companies so that small investors could obtain the advantages of a diversified portfolio of investments and expert investment management without the imposition of a second level of tax generally applicable to corporations.

In order to qualify as a regulated investment company, several requirements must be met. First, the company must distribute at least 90 percent of its income. Second, the company must meet several tests designed to insure that most of its income is from passive sources and that its assets are diversified. Third, a regulated investment company must be a domestic corporation other than a personal holding company. Finally, it either must be registered with the Securities and Exchange Commission at all times during the taxable year as a management company or unit investment trust under the Investment Company Act of 1940, or it must be a common trust fund or similar fund which is not included in the term "common trust fund" under the Internal Revenue Code and which is excluded by the Investment Company Act from the definition of investment company (Code sec. 851(a)). In order to register under the Investment Company Act of 1940, a corporation must have at least 100 stockholders or must be making or presently proposing to make a public offering (the "public offering requirement").

Under these rules, a number of companies that provide capital and managerial assistance to small businesses have been able to register under the Investment Company Act because they have at least 100 stockholders or satisfy the public offering requirement and, as a result of this registration, have qualified as regulated investment companies.

Under the Small Business Incentive Act of 1980 (P.L. 96-477), certain investment companies providing capital and management assistance to small businesses (called "business development companies") may elect an alternative form of regulation specifically designed for these types of organizations in lieu of registering under the Investment Company Act. However, any business development company electing this alternative form of regulation would be prevented from qualifying as a regulated investment company because the company did not register under the Investment Company Act.

Explanation of the proposal

The proposal would enable a "business development company" electing the alternative form of regulation under the Small Business Incentive Company Act of 1980 to qualify as a regulated investment company in those cases where the company could qualify for registration under the Investment Company Act. Thus, only companies which have at least 100 stockholders or which satisfy the public offering requirement could qualify as regulated investment companies.

The proposal was included as part of S. 1304. (The proposal does not include another provision in S. 1304, which would have allowed all business development companies and small business investment companies to qualify as regulated investment companies; under the proposal, only business development companies with at least 100 stockholders or that satisfy the public offering requirement could qualify as regulated investment companies.)

Effective date

The proposal would be effective for taxable years ending after the date of enactment.

Revenue effect

The proposal would not have any effect on budget receipts.

SENATOR DANFORTH

Modification of Requirements for Furnishing Form W-2 to Terminated Employees

Present law

Present law generally requires an employer to provide an employee with a Form W-2 no later than January 31 of the year following the year in which wages are paid. However, the law requires that, in the case of an employee whose employment terminates during the year, Form W-2 must be supplied to the employee with the final payment of wages.

Explanation of the proposal

Under the proposal, the employer of an employee whose employment terminates during the year would be required to furnish the employee with a Form W-2 no later than January 31 of the following year, unless the employee requests earlier receipt. If the terminating employee makes a written request for early receipt, then the employer would be required to furnish the Form W-2 no later than 30 days after receipt of the written request. The proposal is the same as S. 978.

Effective date

The provisions of the proposal would apply to employees whose employment terminates after the date of enactment.

Revenue effect

The proposal would not have any effect on budget receipts.

SENATOR MATSUNAGA

Voluntary Withholding of State Tax for Certain Fishermen

Present law

Under present law, employers must withhold Federal employment taxes from wages paid to employees. Furthermore, employers generally are permitted (and may be required by State law) to withhold State income taxes from wages paid to employees. However, withholding of State taxes from the wages of seamen or fishermen is prohibited (46 U.S.C. sec. 601). This prohibition is intended to preclude more than one State from withholding in the case of seamen or fishermen employed on a vessel operating between ports of more than one State.

Explanation of proposal

The proposal would provide that a seaman or fisherman employed in the coastwise trade between ports of the same State may enter into a voluntary agreement with an employer for withholding of State income taxes. The proposal is the same as S. 230.

Effective date

The provisions of the proposal would be effective upon enactment.

Revenue effect

The proposal would not have any effect on Federal budget receipts.

SENATOR PACKWOOD

Reforestation Trust Fund Transfer Provision

Present law

There is, under present law, a Reforestation Trust Fund, the funds of which are to be used to supplement congressional appropriations for reforestation and timber stock improvement on publicly owned national forests, in order to eliminate and prevent a backlog in reforestation of the National Forest System. Funds for this trust fund are derived from import duties on plywood and lumber. The Secretary of the Treasury is required to transfer receipts from these tariffs to the Reforestation Trust Fund in maximum amounts of $30 million for each fiscal year during the six-year period from October 1, 1979, through September 30, 1985.

For each of the five fiscal years from fiscal year 1981 through fiscal year 1985, appropriations have been authorized from the trust fund to the Secretary of Agriculture to pay estimated necessary direct costs and properly allocable administrative costs for reforestation and related programs (under section 3(d)(2) of the Forest Rangeland Resources Planning Act of 1974 (16 U.S.C. 1601(d)(2)), but only to the extent these estimated costs exceed amounts appropriated out of the general fund for these purposes.

Explanation of proposal

In place of the present law requirements for the transfer to the Trust Fund of up to $30 million from revenues attributable to tariffs on timber, the proposal would transfer revenue received from timber sales and forest products on Federal lands.

Specifically, the Secretary of Treasury would transfer to the trust fund,up to $30 million, the following: 65 percent of the amounts received from sales made by the Secretary of Agriculture of trees, portions of trees, or forest products located on National Forest System lands, and all amounts received from such sales made by the Secretary of Interior from Federal lands (other than lands held in trust for any Indian tribe). This proposal would not affect existing commitments for uses of these funds. This change would apply to sales made after December 31, 1981.

The proposal is the same as section 2 of S. 1824. The proposal does not include provisions of S. 1824 relating to amortization of reforestation expenses.

Effective date

The amendment changing the source of funding for the Reforestation Trust Fund would be effective on January 1, 1982.

Revenue effect

The proposal would have no effect on budget receipts, but would transfer existing receipts from the general fund of the Treasury to the Reforestation Trust Fund.

SENATOR MOYNIHAN

Exclusion of Certain R&D Expenditures from
Capital Expenditure Limitation on Small Issue IDBs

Present law

Interest on certain State and local industrial development bonds is exempt from Federal income tax, pursuant to an exception for "small issues," if the aggregate amount of outstanding exempt small issues in the same municipality or county plus capital expenditures (financed otherwise than out of small issue bond proceeds) in the same municipality or county over a six-year period, does not exceed $10 million (Code sec. 103(b)(6)). Because research and experimentation expenditures are considered capital expenditures, such expenses are taken into account under present law in determining whether the $10 million limitation is exceeded, whether or not the taxpayer elects to deduct currently research expenses under section 174 (Rev. Rul. 77-27, 1977-1 C.B. 23).

Explanation of proposal

Under the proposal, expenditures for research wages or research supplies which the taxpayer elects to deduct currently (under Code sec. 174) would not be taken into account for purposes of the capital expenditure limitation on small issue industrial development bonds. The proposal generally is the same as S. 768, except that the excluded expenditures would be limited to expenditures (which the taxpayer elects to deduct currently) for research wages or research supplies, and except that S. 768 would have applied to capital expenditures made after December 31, 1980 for purposes of applying the $10 million limitation in the case of obligations issued prior to the bill's enactment.

Effective date

The proposal would apply to research or experimental expenditures with respect to obligations issued after the date of enactment of the proposal.

Revenue effect

It is estimated that the proposal would reduce fiscal year receipts by $1 million in 1982, $4 million in 1983, $8 million in 1984, $13 million in 1985, and $18 million in 1986.

SENATOR MOYNIHAN

Rollover of Gain on FCC-Ordered Disposition of Broadcast Property

Present law

Present law (Code sec. 1071) provides for nonrecognition of gain realized on the sale or exchange of property (including stock) if (1) the disposition is certified by the Federal Communications Commission (FCC) as necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the FCC with respect to the ownership and control of "radio broadcasting stations," and (2) if the taxpayer elects to treat the disposition as an involuntary conversion. Pursuant to such an election, gain is not recognized to the extent that the taxpayer purchases replacement property that is similar or related in service or use to the property sold or exchanged (Code sec. 1033(a)).

Treasury regulations provide that the term "radio broadcasting" as used in Code section 1071 includes telecasting (Treas. Reg. §1.1071-1(d)). Neither the statute nor the regulations expressly include other communications media property within the definition of "radio broadcasting."

In Rev. Rul. 78-269, 1978-2 C.B. 210, the Internal Revenue Service held that gain is not recognized under Code sections 1071 and 1033 where a corporation divests itself, pursuant to an FCC order and certification, of stock in a newspaper publishing company, and reinvests in stock of a television broadcasting station. In a later "private letter" ruling, the Service held that gain must be recognized where a corporation, pursuant to an FCC order and certification, divests itself of a television station and reinvests in newspaper stock. In the private letter ruling, the Service distinguished its holding in Rev. Rul. 78-269 on the basis that a reinvestment in newspaper stock did not constitute an investment in broadcast property (within the meaning of Code sec. 1071) or in any property similar or related in service or use to the television station sold or exchanged.

Under present law, the FCC may order a taxpayer who owns multiple communication properties-for example, two television stations, a television station and a radio station, or a television station and a newspaper-within the same broadcast area to dispose of all but one of the properties. The FCC generally does not order the taxpayer to dispose of a particular station within the area of its multiple broadcast ownership. Rather, the taxpayer generally may decide which broadcasting media is sold or exchanged pursuant to such an FCC order.

Explanation of proposal

The proposal would extend the nonrecognition provisions of present law, relating to "rollover" of gain on certain FCC-ordered divestitures, to situations in which the proceeds are reinvested in newspaper property. Also, the proposal would make a technical amendment to Code section 1071 by amending the statute to refer specifically to FCC-ordered dispositions of television broadcasting stations as well as to radio broadcasting stations. (This technical amendment would be consistent with existing Reg. §1.1071-1(d).)

The amendments which would be made by the proposal are intended to apply to the FCC-required disposition of television station WWNY in Watertown, New York, by Johnson Newspaper Corporation, and to other similarly situated taxpayers where disposition proceeds are reinvested in a newspaper. The proposal is the same as S. 499.

Effective date

The amendment made by the proposal would be effective on January 1, 1980.

Revenue effect

It is estimated that the proposal would reduce budget receipts by an amount not to exceed $10 million annually.

SENATOR MITCHELL

One-Year Extension of Existing One-Year FUTA Exemption for Certain Fishermen

Present law

Services performed by members of the crew on boats engaged in catching fish or other forms of aquatic animal life are exempt from FICA tax if their remuneration is a share of the boat's catch (or cash proceeds from the sale of a share of the catch) and if the crew of such boat normally is made up of fewer than ten individuals. In addition, the remuneration received by those fishing boat crew members whose services are exempt for purposes of FICA is not considered to be wages for purposes of income tax withholding. Furthermore, wages paid during 1981 to fishing boat crew members who are self-employed for purposes of FICA are not subject to FUTA taxes (sec. 822 of the Economic Recovery Tax Act of 1981).

Explanation of proposal

The proposal would extend for one year (through 1982) the FUTA tax exemption for wages paid to fishermen whose remuneration is exempt for purposes of FICA. The proposal is the same as S. 791, except that it is limited to a one-year extension of the FUTA exemption.

Effective date

The provisions of the proposal would be effective for remuneration paid during 1982.

Revenue effect

The proposal is estimated to reduce fiscal year budget receipts by a negligible amount in 1982, and by less than $1 million in 1983.

SENATOR SYMMS
Estate Tax Amendments

1. Declaratory Judgments for Extended Payment of Estate Taxes

Present law

For estates of decedents dying after December 31, 1981, section 422 of ERTA combined the provisions of sections 6166 and 6166A which permit installment payment of estate tax attributable to interests in closely held businesses. New section 6166 is available to all estates in which the value of an interest in a closely held business exceeds 35 percent of the adjusted gross estate. If the estate qualifies, estate taxes attributable to the interest in closely held businesses can be deferred for up to 14 years (annual interest payments for four years, followed by up to ten annual installments of principal and interest). A special four-percent interest rate applies to tax on the first $1 million of value of an interest in a closely held business (sec. 6601(j)).

Because the decision of the Treasury Department to deny an election to pay all or a portion of the estate tax attributable to interests in closely held businesses or a decision to accelerate the remaining tax involves a dispute as to the timing of estate tax payments rather than the amount of tax, no deficiency is involved and, therefore, the decision is not subject to judicial review.

Explanation of proposal

The proposal would establish a procedure for obtaining a declaratory judgment with respect to (1) an estate's eligibility for deferred payment of estate taxes attributable to an interest in a closely held business under section 6166, (2) the computation of the adjusted gross estate, based on the facts and circumstances in existence on the date (including extensions) for filing the estate tax return or, if earlier, the date such return was filed, and (3) whether there is an acceleration of the deferred payments. Jurisdiction to issue a declaratory judgment would be limited to the Tax Court and the determination would have the force and effect of a Tax Court decision and be reviewable as such. This remedy would be available only if the petitioner (i.e., the executor of the decedent's estate) had exhausted all available administrative remedies within the Treasury Department. The provisions of the proposal relating to declaratory judgments are the same as S. 1733.

Effective date

The proposal would apply to estates of decedents dying after December 31, 1981, except that in the case of controversies concerning acceleration of unpaid tax, the proposal would apply to dispositions and withdrawals occurring after December 31, 1981.

2. Declaratory Judgment for Special Use Valuation

Present law

If certain requirements are met, present law allows family farms and real property used in a closely held business to be included in a decedent's estate at its current use value, rather than its full fair market value, provided that the gross estate may not be reduced by more than a specified amount (sec. 2032A).

If, within 10 years of the decedent's death, the property is disposed of to nonfamily members or ceases to be used for the farming or other closely held business purposes based upon which it was valued in the decedent's estate, all or a portion of the Federal estate tax benefits obtained by virtue of the reduced valuation are recaptured by means of a special "additional estate tax" imposed on the qualified heir. A special lien is imposed on the real property for the amount of the additional estate tax.

To compute the amount of the reduction in estate tax value from current use valuation and the maximum amount of the potential "additional estate tax," and to determine the amount of the special estate tax lien required where an estate elects current use valuation, both the current use value and the fair market value of the qualified property must be established as of the date of death. Since the issue of the fair market value of specially valued property may not affect any presently assessable amount of tax where it is the only unresolved issue in an estate, there is no opportunity for judicial review of the issue under present law unless the entire use valuation election is disallowed.

Explanation of proposal

The proposal would provide a procedure for finally determining the fair market value of specially valued property when that value is the only unresolved issue in the estate. Under the proposal, the administrative determination of the Treasury Department would be subject to review by the U.S. Tax Court, if the executor petitioned that court within ninety days after receiving notice of the Treasury determination. A decision of the Tax Court would be binding on all parties in future actions in which the fair market value of the specially valued property was at issue. The decision of the Tax Court would be reviewable in the same manner as other decisions of that court. The provisions of the proposal relating to declaratory judgments are the same as S. 1733.

Effective date

The proposal would apply to estates of decedents dying after December 31, 1981.

3. Change to sec. 6166 "Second Death" Provision

Present law

For estates of decedents dying after December 31, 1981, section 422 of ERTA combined the provisions of sections 6166 and 6166A which permit installment payment of estate tax attributable to interests in closely held businesses. New section 6166 is available to all estates in which the value of an interest in a closely held business exceeds 35 percent of the adjusted gross estate. If the estate qualifies, estate taxes attributable to the interest in closely held businesses can be deferred for up to 14 years (annual interest payments for four years, followed by up to ten annual installments of principal and interest). A special four-percent interest rate applies to tax on the first $1 million of value of an interest in a closely held business (sec. 6601(j)).

Under section 6166, the remaining unpaid tax balance is accelerated if there is a disposition of a specified fraction of the value of a decedent's interest in the business. For purposes of the acceleration rules, the transfer of the decedent's interest in a closely held business from his estate to his heirs is not considered a disposition. This exception applies whether or not the interest passes to family members.

With respect to transfers made after December 31, 1981, ERTA provided that the transfer of an interest in a closely held business from an heir (or subsequent transferee) at his death to a family member (within the meaning of sec. 267(c)(4)) of the heir (or subsequent transferee) will not be considered a disposition.

Explanation of proposal

The proposal would further expand the exception from the acceleration rules for subsequent transfers caused by the death of an heir or subsequent transferee by eliminating the requirement that the interest in a closely held business pass to a family member of the heir or subsequent transferee. Thus, under the proposal, any transfer of an interest in a closely held business caused by the death of the heir (or subsequent transferee) would not result in acceleration of the unpaid tax. The proposal is the same as S. 1734.

Effective date

The proposal would apply to transfers occurring after December 31, 1981.

4. Revenue Effect

The three estate tax proposals described above are estimated to reduce budget receipts by less than $5 million annually.

SENATOR WALLOP

Expansion of Oil Shale Credits for 1982 and 1983

Present law

Equipment for producing, extracting, processing, transporting, and refining shale oil generally qualifies for the 10-percent investment tax credit (Code sec. 48(a)(1)). In addition, the Energy Tax Act of 1978 provided a 10-percent energy investment tax credit for certain "shale oil equipment" (Code sec. 48(l)(7)). For this purpose, the term "shale oil equipment" means equipment for producing or extracting shale oil from oil-bearing shale rock. The term, however, specifically excludes equipment for hydrogenation, refining, and other processes subsequent to retorting. The term "shale oil" equipment includes qualifying equipment without regard to whether it is used in an above-ground or <u>in situ</u> process. In the latter instance, shale oil equipment includes equipment used to create the underground cavity. In either case, equipment for supplying water and for treating and handling spent oil shale rock is included in the definition of shale oil equipment.

The energy investment credit generally is available for property placed in service and expenditures incurred through December 31, 1982. In addition, the energy investment credit for shale oil equipment is available after 1982 and before 1991 where the following specified affirmative commitments are undertaken with respect to qualified property that involves long-term projects of two years or more: (1) complete all engineering studies for the project, and apply for all Federal, State, and local environmental and construction permits necessary for commencement of construction, prior to 1983 and (2) binding contracts have been made prior to 1986 to acquire or construct at least 50 percent of all equipment that is especially designed for the project (Code sec. 46(a)(2)(C)(iii).

Under present law, there are several other benefits available for oil shale production. A deduction for percentage depletion is allowed for 15 percent of the gross income from the extraction of shale oil. (Gross income, for this purpose, is based on the value of the oil after retorting but before hydrogenation.) Shale oil producers are allowed an income tax credit for the production of shale oil (Code sec. 44D(c)(1)(A)). The credit is equal to $3 a barrel, and phases out as the annual average wellhead price of uncontrolled domestic oil rises from $23.50 to $29.50 a barrel. (Both the credit and the phaseout are adjusted for inflation occurring after 1979, and the credit will be about 75 cents per barrel for shale oil produced in 1981.)

Explanation of proposal

The proposal would extend the definition of shale oil equipment for purposes of the energy investment tax credit to include equipment used in hydrogenation or similar processes subsequent to retorting. However, the proposal would not expand the definition of shale oil equipment to equipment used to refine shale oil.

The proposal is the same as S.725, except that the provisions of the proposal are limited to two years.

Effective date

The provisions of the proposal would apply to periods after December 31, 1981, and before January 1, 1984.

Revenue effect

The proposal is estimated to reduce fiscal year budget receipts by $10 million in 1982, $32 million in 1983, and $22 million in 1984.

SENATORS DANFORTH AND MOYNIHAN

S. 1865--Amendments to Trade Adjustment Assistance Act

Present law

The Omnibus Budget Reconciliation Act of 1981 (H.R. 3982) made several changes in the trade adjustment assistance program. One of these increased the standard for group eligibility for trade adjustment assistance.

The standard that increased imports must "contribute importantly" to injury to firms resulting in unemployment was increased to require that imports be a "substantial cause" of such injury. According to the Conference Report on H.R. 3982, the substantial cause standard is to be administered insofar as possible in the same way that it is under section 201 of the Trade Act of 1974. This section defines substantial cause as a cause "which is important and not less than any other cause." As a result of an amendment added in the Senate, however, the effective date of the change was postponed until 180 days after the date of enactment (February 9, 1982).

Proposal

S. 1865 would amend the trade adjustment assistance act by poviding that the "contribute importantly" standard would be maintained through the current life of the program, the end of fiscal year 1983. The Congressional Budget Office has advised the staff that CBO can make no estimate of the cost of this change.

SUMMARY OF H.R. 4961

Miscellaneous Revenue Act of 1981

Rental of residences to family members; business uses of residences

Under present law, Code section 280A limits the deduction of certain expenses incurred for the use of a dwelling unit in connection with a trade or business or income-producing activity of the taxpayer if the taxpayer also uses the dwelling unit for personal purposes. In determining whether a taxpayer uses a dwelling unit for personal purposes, the use of the dwelling unit by a co-owner or a member of the taxpayer's, or co-owner's, family is considered the personal use of the dwelling unit by the taxpayer, without regard to whether the family member co-owner is renting the dwelling unit at a fair rental. Section 280A applies to taxable years beginning after December 31, 1975.

Under H.R. 4961, a taxpayer would not be treated as using a residence for personal purposes during any period the dwelling unit is rented, at a fair rental, to another person for use as that person's principal residence. This exception also would apply to the rental of an undivided interest in a dwelling unit by one of the co-owners for use as a principal residence. This provision would allow for creative financing of residences through arrangements that give the co-owners similar long-term interests. The bill also would coordinate the application of section 280A with the deductions allowable under section 162(a)(2) and other provisions of the Code by reason of the taxpayer's being away from home in the pursuit of a trade or business.

The provision would apply to taxable years beginning after December 31, 1981.

Award of attorney fees in tax litigation

The Equal Access to Justice Act (P.L. 96-481) authorizes awards to a prevailing party, other than the United States, of fees and other expenses incurred by that party in any civil action (other than tort cases) brought by or against the United States, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust. This provision applies to tax cases in Federal district courts and the U.S. Court of Claims, but not to cases in the U.S. Tax Court.

Under present law, if it appears to the Tax Court that proceedings before it have been instituted by the taxpayer merely for delay, then the Court may award damages to the United States in an amount not to exceed $500.

H.R. 4961 generally would provide that a prevailing party in a civil tax proceeding brought by or against the United States may be awarded reasonable litigation costs (including attorney's fees) up to $50,000, if the position of the United States in the proceedings was unreasonable. The provisions of the bill would apply to civil tax proceedings in any United States court and would provide the exclusive mechanism through which litigation costs other than direct costs may be recovered in tax cases in those courts. The provisions of the bill relating to litigation costs apply to civil tax proceedings in United States courts (other than the Tax Court) pending on, or commenced after, October 1,1981, and to proceedings commenced in the U.S. Tax Court after December 31, 1982. These provisions of the bill would not apply to any proceeding commenced after September 30, 1984.

The bill also would provide that if it appears to the Tax Court that proceedings have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in proceedings before the Court is frivolous or groundless, then the Court may award damages not in excess of $5,000 to the United States. This provision would be effective for proceedings commenced after December 31, 1981.

Tax accrual acceleration limitation not to apply to certain taxpayers

Under present law, if a taxing jurisdiction changes the assessment date for a deductible tax (e.g., a State or local property or income tax), an accrual basis taxpayer cannot accrue a deduction for that tax on the new assessment date because that might result in a deduction of two taxes in the year of change (i.e., a tax for which the assessment date was not changed and a tax for which the assessment date was changed). Accrual method taxpayers therefore are required to continue to deduct the tax on the basis of the original assessment date.

H.R. 4961 would allow accrual method taxpayers to use the new assessment date (1) if their first accrual of the tax occurs after the assessment date was changed or (2) if they elect to switch to the new date and establish a suspense account for the amount that would have accrued using the old accrual date in either the year of change or one of the two immediately preceding years, whichever amount is greatest.

Treatment of certain lending or finance businesses for holding company tax purposes

Under present law, a tax is imposed on the undistributed personal holding company income of a personal holding company (sec. 541). Generally, personal holding company income includes interest. A corporation actively engaged in a lending or finance business is exempt from this tax if the corporation has qualifying business expenses equal to 15 percent of the first $500,000 of ordinary gross income from its lending or finance business, plus five 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 1980, H.R. 4961 would increase the 60-month limitation of present law to 144 months, and amend the definition of a lending or finance business to include the business of making loans in indefinite maturity credit transactions. Beginning with taxable years after 1981, the bill also would amend the business expense test of present law to require a lending or finance business to have qualifying business expenses equal to 15 percent of the first $500,000 of ordinary gross income from the lending or finance business, plus five percent of such ordinary gross income in excess of $500,000. Thus five percent of ordinary gross income in excess of $1 million would be added to the qualifying business expense test.

Additional two-year postponement in 1976 NOL rules

The Tax Reform Act of 1976 substantially revised the rules of section 382 which limit net operating loss carryovers of corporations that undergo a substantial change of ownership through stock purchases or reorganizations. In general, the 1976 Act amendments impose comparable continuity of interest requirements on the shareholders of the loss corporation, whether the change in ownership results from stock purchases or from a reorganization, and eliminates a continuity of business enterprise requirement that applied only if the change in ownership results from purchases.

The effective date of the 1976 Act amendment was deferred because of technical problems respecting those provisions. In the absence of further Congressional action, the amendments will become effective on January 1, 1982, with respect to plans of reorganization adopted on or after that date and for taxable years beginning after June 30, 1982, with respect to sales or exchanges of stock on or after January 1, 1982.

H.R. 4961 would provide for a two-year deferral of the effective date of the 1976 Act amendments until January 1, 1984.

Additional refunds relating to the repeal of bus excise tax

The 10-percent manufacturers excise tax on buses which had been imposed under prior law was repealed by the Energy Tax Act of 1978 for buses sold after November 9, 1978. The Act also established conditions under which a manufacturer was eligible for a credit or refund (without interest) for the excise tax paid on a bus sold to an ultimate purchaser after April 19, 1977, and before November 10, 1978.

H.R. 4961 would liberalize these conditions for eligibility to allow additional refunds of the bus excise tax.

Unemployment compensation; SSI amendments

H.R. 4961 includes provisions relating to the Federal-State unemployment compensation program, the Supplemental Security Income (SSI) program, the Child Support Enforcement program (CSE) and the social services program established under title XX of the Social Security Act.

The unemployment compensation provisions would extend for ten years the Reed Act (authority for States to use for administrative purposes certain funds credited to individual state unemployment trust fund accounts) and exclude from federal unemployment compensation taxes wages paid to certain alien farmworkers and to certain student interns. The provisions also would repeal the requirements enacted in the 1981 Budget Reconciliation Act regarding the eligibility of ex-servicemembers for unemployment benefits and replace them with new requirements based on prior law.

The SSI provisions would substitute a one-month "prospective" accounting period in the SSI program for the "retrospective" accounting period required under provisions enacted as part of the 1982 Budget Reconciliation Act, and clarify the intent of new provisions in that Act regarding the unnegotiated SSI checks.

The CSE and title XX provisions would repeal provisions in current law that require States to charge a ten-percent fee (chargeable to the absent, non-custodial parent) for child support enforcement services provided to non-AFDC families and reinstate options available to the States in prior law on this matter. In addition, the provisions would correct several inaccurate references contained in the Budget Reconciliation Act and make conforming amendments to that Act regarding the participation of the Territories in the title XX program.

Estimated Revenue Effects of Tax Provisions of H.R. 4961

(Millions of dollars)

Item	Fiscal year-- 1982	1983	1984	1985	1986
Rental of residences to family members; business use of residences	-8	-51	-68	-100	-148
Tax accrual acceleration limitation not to apply to certain taxpayers	-54	-111	-124	-136	-150
Treatment of certain lending or finance businesses for holding company tax purposes	1/	1/	1/	1/	1/
Additional two-year postponement in 1976 NOL rules	1/	1/	1/	--	--
Additional refunds relating to repeal of bus excise tax	2/	2/	--	--	--
Total revenue effect 3/	-69	-169	-198	-239	-301

1/ Loss of less than $5 million.

2/ Loss of less than $1 million.

3/ For budget scorekeeping purposes, these totals include $3 million for each provision estimated at "less than $5 million," and $1 million for the provisions estimated at "less than $1 million."

The provision of H.R. 4961 relating to attorneys fees in tax litigation is estimated to increase budget outlays by less than $5 million per year.

SUMMARY OF H.R. 4717

MISCELLANEOUS TAX PROVISIONS

Deferral of LIFO recapture effective date

Under present law, a liquidating corporation does not recognize gain or loss on the transfer of its inventory to its shareholders as part of the liquidation. Similarly, a corporation which sells its assets during a 12-month liquidation (sec. 337) does not recognize gain or loss on the bulk sale of its inventory. In either situation, if the liquidating corporation uses LIFO, any gain attributable to the corporation's LIFO reserve (i.e., the excess of the inventory's FIFO basis over its LIFO basis) is not subject to corporate tax. However, if a subsidiary corporation liquidates into a parent corporation and the adjusted basis of the subsidiary's assets, including inventory, carries over to the parent corporation, the LIFO reserve is subject to corporate tax when the inventory is disposed of in a taxable sale or exchange. Since FIFO inventory generally represents the most current costs of the inventory and LIFO inventory generally represents the oldest costs of the inventory, the LIFO reserve can represent a significant amount, depending upon how long LIFO has been used and the price increases in the inventory.

In the Crude Oil Windfall Profit Tax Act of 1980 (P.L. 96-223), Congress included a provision which required that a liquidating corporation must recognize the inventory's LIFO reserve as ordinary income. Also, a corporation that sells its LIFO inventory in the course of a 12-month liquidation (sec. 337) must recognize the inventory's LIFO reserve as ordinary income. The provision does not require the recognition of the LIFO reserve on corporate liquidations where the adjusted basis of the LIFO inventory in the hands of the acquiring corporation is carried over from the liquidating corporation.

This provision was made applicable to distributions and dispositions which are made pursuant to plans of liquidation adopted after December 31, 1981. The effective date was delayed to allow time for Congressional hearings on the provision and to permit transactions in the planning stage to be completed.

H.R. 4717 would extend the effective date for one additional year, through December 31, 1982.

Net operating loss treatment of the Federal National Mortgage Association

Under present law, taxpayers generally may carry back a net operating loss (NOL) for 3 years and carry forward an NOL for 15 years. Banks and certain other financial institutions are permitted a special 10-year carryback and 5-year carryover. The Federal National Mortgage Association (FNMA) is not eligible for the special 10-year NOL carryback, and thus must use the 3-year carryback and 15-year carryover rule.

H.R. 4717 would provide a 10-year carryback and a 5-year carryover for NOL's of the FNMA. Thus, the carryback period would be lengthened by 7 years and the carryover period would be shortened by 10 years. This treatment would apply only to that portion of an NOL of the FNMA that is not a FNMA mortgage disposition loss (the excess of losses over gains from the sale or exchange of mortgages, securities, and other evidences of indebtedness). For the FNMA mortgage disposition loss portion of an NOL, the present law 3-year carryback and 15-year carryforward would continue to apply. The bill would be effective for NOL's incurred in taxable years beginning after December 31, 1981.

Filing of information return relating to transactions under the safe harbor leasing provisions of P.L. 97-34

Under H.R. 4717, an information return is required to be filed with the Internal Revenue Service in order for an agreement to qualify as a "lease" under the provisions of the accelerated cost recovery system. The return must contain certain specified information, much of which is the same as that required to be filed under the temporary Treasury regulations. The bill requires that the return must be filed with the national office of the Internal Revenue Service not later than the 30th day after the date the agreement is executed, or January 31, 1982, whichever is later.

Estimated Revenue Effects

(Fiscal Years, In Millions of Dollars)

	1982	1983	1984	1985	1986
Deferral of LIFO Recapture Effective Date	-15	-260	a	a	a
Net Operating Loss Treatment of the Federal National Mortgage Association	—	-14	+14	—	—
Filing of Information Returns Relating to Transactions Under the Safe Harbor Leasing Provisions of the Economic Recovery Tax Act of 1981	—	—	—	—	—
Total	-15	-274	+14	—	—

a. Negligible

SUMMARY OF H.R. 5159

Black Lung Benefits Revenue Act of 1981

Present law

Under present law, a manufacturers excise tax is imposed on the sale or use of coal (except lignite) by the producer, equal to 50 cents per ton for underground-mined coal and 25 cents per ton for surface-mined coal. However, the tax cannot exceed two percent of the price for which the coal is sold. Amounts equal to the revenues of the excise tax on coal are automatically appropriated to the Black Lung Disability Trust Fund, as established by the Black Lung Benefits Revenue Act of 1977.

H.R. 5159

Under the bill, the coal excise tax is increased on January 1, 1982 to $1.00 per ton for underground-mined coal and 50 cents per ton for surface-mined coal, with a cap of four percent of the price for which the coal is sold. The tax will revert to present law levels by January 1, 1996, or, if earlier, when the trust fund has repaid advances and interest from the general fund of the Treasury.

In addition, the bill modifies the computation of interest on certain amounts owed to or by the trust fund. The bill amends the obligations of the fund to include certain claims that had been previously denied and subsequently approved, and to exclude payments of certain retroactive lump sum benefits. Also, the bill transfers provisions which establish the Black Lung Disability Trust Fund to the Internal Revenue Code.

Revenue effect

The provisions of the bill are estimated to increase receipts to the Black Lung Disability Trust Fund by $193 million in fiscal year 1982, $299 million in fiscal year 1983, $313 million in 1984, $327 million in 1985, and $349 million in 1986.

SUMMARY COMPARISON OF PROVISIONS

PRESENT LAW AND H.R. 5159 (BLACK LUNG BENEFITS REVENUE ACT OF 1981)

Item	Under present law	Under the bill
Excise tax on coal		
Lesser of--	(1) 50 cents per ton, underground mined 25 cents per ton, surface mined;	(1) $1 per ton, underground mined 50 cents per ton, surface mined;
	(2) 2 percent of sales price	(2) 4 percent of sales price
		Taxes revert to present law levels by 1/1/96 (earlier, if trust fund becomes solvent)
Obligations of trust fund		
A. Certain approved claims previously denied	No	Yes
B. Retroactive lump sum benefits while award is contested by operator	Yes	No
Interest rates charged		
A. On reimbursements by operators to trust fund	6 percent	15 percent in 1982; interest rate on tax deficiencies, after 1982
B. On advances by general fund to trust fund	Average rate on all marketable interest-bearing obligations of U.S. forming a part of public debt	Rate equal to current average market yield on outstanding marketable obliga-ions of the U.S. of comparable duration.
Provisions establishing trust fund	In Black Lung Benefits Revenue Act of 1977	Transferred to the Internal Revenue Code of 1954