[JOINT COMMITTEE PRINT]

SUMMARY
OF
H.R. 4717
AS PASSED BY THE SENATE

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

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INTRODUCTION

This pamphlet provides a summary of H.R. 4717 as passed, with amendments, by the Senate on December 16, 1981. This pamphlet has been prepared by the staff of the Joint Committee on Taxation.

The first part of the pamphlet summarizes the legislative history of the bill. The second part consists of a provision-by-provision summary of the bill as passed by the Senate, in the order the provisions appear in the Senate-passed bill, with a summary of present law. (The comparable provision, if any, in H.R. 4717 as passed by the House, or in H.R. 4961 as passed by the House, is noted.) The third part shows the estimated revenue effect of H.R. 4717 as passed by the Senate.

I. LEGISLATIVE HISTORY OF H.R. 4717

House bill

As ordered reported by the House Ways and Means Committee on December 9, 1981 (H. Rept. No. 97–405, Dec. 14, 1981), and passed by the House on December 15, 1981,[1] H.R. 4717 contained three provisions: (1) one-year postponement of effective date for LIFO inventory recapture rule; (2) modification of net operating loss rules for the Federal National Mortgage Association; and (3) requirement for filing an information return relating to transactions under the safe harbor leasing provisions in the Economic Recovery Tax Act of 1981 (P.L. 97–34).

Finance Committee action

On December 14, 1981, the Senate Finance Committee authorized a committee amendment to be offered as a floor amendment to H.R. 4717 after that bill had been passed by the House. The committee amendment included the following:

(1) provisions identical to the three provisions of H.R. 4717 as ordered reported by the Ways and Means Committee (and as subsequently passed by the House), except that the committee amendment provision on information returns relating to safe harbor leases differed from the comparable House provision;

(2) provisions identical or comparable to five of the provisions of H.R. 4961, a bill which had been ordered reported by the House Ways and Means Committee on November 19, 1981 (H. Rept. No. 97–404, Dec. 14, 1981), and which bill subsequently passed the House on December 15, 1981;[2] and

(3) certain other tax provisions.

The provisions in the committee amendment which were the same as, or comparable to, five provisions which had been ordered reported by the Ways and Means Committee in H.R. 4961 related to: (1) rental of residences to family members and other business uses of residences; (2) awarding of attorney fees in tax litigation; (3) treatment of certain lending or finance businesses for purposes of the tax on personal holding companies; (4) two-year delay in application of net operating loss rules added by the 1976 Tax Reform Act; and (5) certain refunds relating to repeal of the excise tax on buses.

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[1] See 127 Cong. Rec. H9617–21 (daily ed., Dec. 15, 1981).

[2] See 127 Cong. Rec. H9607–17 (daily ed., Dec. 15, 1981). The committee amendment did not include provisions identical or comparable to other provisions of H.R. 4961 (as passed by the House), relating to modification of rules for acceleration of accrual of taxes; unemployment compensation benefits for ex-servicemembers; one-month prospective budgeting for SSI benefits; negotiability of SSI checks; child support enforcement—cost of collection and other services; child support enforcement—technical amendments; and social services—technical amendments.

Senate floor action

On December 16, 1981, the Senate passed H.R. 4717, with amendments. (Since the House-passed bill was not referred to the Finance Committee, there is no Finance Committee report on that bill.) The first Senate floor amendment was a committee amendment in the nature of a substitute.[3] This floor amendment was generally the same as the committee amendment authorized by the Finance Committee on December 14, but did not include provisions of the December 14 committee amendment relating to (1) rental of residences to family members and other business uses of residences, (2) postponement of effective date for 1976 Tax Reform Act rules on net operating losses, and (3) information returns relating to safe harbor leases.[4]

The Senate also adopted seven other floor amendments to H.R. 4717: (1) 90-day delay in the effective date of certain 1980 Bankruptcy Tax Act rules relating to discharge of indebtedness in bankruptcy or insolvency; (2) provision for Medicare enrollment period for individuals formerly eligible for benefits under the Public Health Service Act; (3) limitation on the use of tax-exempt industrial development bonds; (4) amendments relating to the unemployment compensation tax and State unemployment compensation funds; (5) amendments relating to mortgage revenue bonds; (6) reduction in the excise taxes on certain wagering; and (7) a technical amendment to the provision of the committee floor amendment relating to financing of the Reforestation Trust Fund.[5]

Also on December 16, the Senate requested a conference with the House on H.R. 4717 and appointed conferees (Senators Dole, Packwood, Wallop, Long, and Byrd of Virginia). The House did not act on the Senate-passed bill prior to the sine die adjournment of the 97th Congress, 1st Session on December 16, 1981.

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[3] The committee amendment adopted on the Senate floor was printed at 127 Cong. Rec. S15578–82 (daily ed. Dec. 16, 1981). A technical explanation of this floor amendment was printed at 127 Cong. Rec. S15587–97 (daily ed., Dec. 16, 1981).

[4] On December 16, 1981, provisions relating to these three topics were added by Senate floor amendments to H.R. 5159, the Black Lung Benefits Revenue Act of 1981 (subsequently enacted as Public Law 97–119).

[5] See 127 Cong. Rec. S15598–621 (daily ed., Dec. 16, 1981).

II. SUMMARY OF H.R. 4717 AS PASSED BY THE SENATE

A. Title I.—Income Tax Provisions

1. One-year postponement of effective date of LIFO reserve rule (sec. 1 of the House bill, sec. 101 of the Senate amendment, and sec. 403((b) of the Crude Oil Windfall Profit Tax Act of 1980)

Present law

In the case of liquidation plans adopted prior to 1982, a liquidating corporation did not recognize gain or loss on a transfer of its inventory to its shareholders as part of the liquidation (Code sec. 336). Also, a corporation did not recognize gain or loss on a bulk sale of its inventory within 12 months of the adoption of the liquidation plan (sec. 337).

In the Crude Oil Windfall Profit Tax Act of 1980 (P.L. 96–223), the Congress provided that a corporation which distributes its LIFO inventory in a partial or complete liquidation must recognize as ordinary income an amount equal to its "LIFO reserve." Also, a corporation which sells its LIFO inventory in the course of a 12-month liquidation must recognize as ordinary income an amount equal to its LIFO reserve. These rules apply to distributions and dispositions made pursuant to plans of liquidation adopted after December 31, 1981.

The term LIFO reserve refers to the difference between (1) the cost of inventory valued by the LIFO method (last-in, first-out) and (2) the cost of inventory valued by the FIFO method (first-in, first-out). Under LIFO, the cost of goods sold is presumed to consist of the most recent inventory costs. Under the FIFO method, the cost of goods sold is presumed to consist of the oldest inventory costs. The cost of goods sold is subtracted from gross receipts to determine gross income, and therefore an inventory method that assigns a greater value to the cost of goods sold will result in a lower measure of gross income. Typically, in times of rising prices when the most recent inventory costs are greater than the earliest inventory costs, the use of the LIFO method will reduce the measure of gross income. This may be viewed as deferring taxation on the LIFO reserve amount until such time as the taxpayer has sold its entire inventory. In the case of pre-1982 liquidation plans, a corporation could dispose of its inventory through liquidation (except for a sec. 334(b) (1) liquidation of a subsidiary into a parent corporation) without carrying over the LIFO reserve for future taxation and without the recognition of income which would occur if the entire inventory were sold off in taxable transactions.

Senate amendment [1]

The Senate amendment postpones the effective date of the LIFO reserve rule, enacted in P.L. 96–223, for one year. Accordingly, the new LIFO reserve rule would apply only to distributions and dispositions made pursuant to plans of liquidation adopted after December 31, 1982.

2. Modification of operating loss rule for the Federal National Mortgage Association (sec. 2 of the House bill, sec. 102 of the Senate amendment, and sec. 172 of the Code)

Present law

Prior to enactment of the Economic Recovery Tax Act of 1981 (P.L. 97–34), taxpayers could carry back a business net operating loss (NOL) against income for the 3 taxable years preceding the loss year and carry forward any remaining unused losses to the 7 years following the loss year. The 1981 Act generally increased the carryforward period to 15 years and retained the 3-year carryback (Code sec. 172(b)).

In an exception to the general carryover rule, present law provides a 10-year carryback and a 5-year carryforward for NOLs of financial institutions subject to Code sections 585, 586, or 593 (relating to the bad debt treatment of commercial banks, small business investment corporations, and savings and loan associations and certain other thrift institutions, respectively). Since the Federal National Mortgage Association (FNMA) is not such a financial institution, it is not eligible for the 10-year carryback treatment, and thus must use a 3-year carryback and a 15-year carryforward.

Senate amendment [2]

The Senate amendment provides a 10-year carryback and 5-year carryforward of the NOL of the FNMA to the extent the amount of the NOL exceeds the FNMA mortgage disposition loss.

The FNMA mortgage disposition loss is the net loss from sale or exchange of mortgages, securities (not including stock), and other evidences of indebtedness to the extent that such net loss is not greater than the NOL for the taxable year. Gains and losses attributable to mortgage foreclosures would not be taken into account in determining the amount of an FNMA mortgage disposition loss. The FNMA mortgage disposition loss will continue to have a 3-year carryback and a 15-year carryforward, as under present law.

The provision is effective for NOLs for taxable years of the FNMA beginning after December 31, 1981. Thus, for example, an NOL for calendar 1982 in excess of the FNMA mortgage disposition loss could be carried back as far as 1972.

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[1] This provision of the Senate amendment is the same as sec. 1 of H.R. 4717 as passed by the House.

[2] This provision of the Senate amendment is the same as sec. 2 of H.R. 4717 as passed by the House.

3. Treatment of certain lending or finance businesses for purposes of the tax on personal holding companies (sec. 103 of the Senate amendment and sec. 542 of the Code)

Present law

The undistributed personal holding company income of a personal holding company is subject to a 50 percent tax (Code sec. 541). A corporation is a personal holding company if at least 60 percent of its adjusted gross income is personal holding company income and if more than 50 percent of its stock is owned by 5 or fewer shareholders. Personal holding company income generally is defined as certain types of passive investment income, including interest.

Certain types of corporations, actively engaged in a trade or business which produces income that usually would be considered passive investment income, are excluded from the personal holding company tax provisions. Present law excludes from this tax a corporation actively engaged in a lending or finance business 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 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.

Senate amendment [3]

Effective for taxable years beginning after 1980, the Senate amendment increases the 60-month loan maturity limitation of present law to 144 months, and amends the definition of a lending or finance business to include the business of making loans in indefinite maturity credit transactions.

Effective for taxable years beginning after 1981, the Senate amendment also modifies 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 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.

4. Allowance of regulated investment company status to certain small business development companies (sec. 104 of the Senate amendment and sec. 851(a) of the Code)

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.

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[3] This provision of the Senate amendment is identical to sec. 105 of H.R. 4961 as passed by the House.

To qualify as a regulated investment company under the Code, several requirements must be satisfied. One of these requirements is that the company must either (1) 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 (2) be a common trust fund or similar fund which is not included in the term "common trust fund" under the 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 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 in lieu of registering under the Investment Company Act. Any business development company electing this alternative form of regulation is precluded from qualifying as a regulated investment company under the Code because the company did not register under the Investment Company Act.

Senate amendment

The Senate amendment enables a business development company electing the alternative form of regulation under the Small Business Incentive Act of 1980 to qualify as a regulated investment company if the company could qualify for registration under the Investment Company Act of 1940. Thus, only companies which have at least 100 stockholders or which satisfy the public offering requirement can qualify as regulated investment companies. The amendment applies with respect to taxable years ending after the date of enactment.

5. Rollover of gain on FCC-ordered disposition of broadcast property (sec. 105 of the Senate amendment and sec. 1071 of the Code)

Present law

Present law provides for nonrecognition of gain realized on the sale or exchange of property (including stock in a corporation) if (1) the sale or exchange is certified by the Federal Communication 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) the taxpayer elects to treat the sale or exchange as an involuntary conversion within the meaning of section 1033 or elects to reduce basis in depreciable assets (section 1071). If the taxpayer elects involuntary conversion treatment, gain is not recognized to the extent the taxpayer purchases replacement property that is similar or related in service or use to the property sold or exchanged.

In Rev. Rul. 78–269, 1978–2 C.B. 210, the Internal Revenue Service held that gain is not recognized under sections 1071 and 1033 when 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 later private letter ruling,[4] however, the Service held that gain must be recognized when a corporation, pursuant to an FCC order and certification, divests itself of a television station and reinvests in a newspaper. In the private letter rulings, the Service distinguished its holding in Rev. Rul. 78–269 on the basis that a reinvestment in a newspaper did not constitute an investment in broadcast property within the meaning of section 1071 or in any property similar or related in service or use to the television station sold or exchanged.

Senate amendment

The Senate amendment modifies section 1071 to provide for nonrecognition of gain in FCC-ordered divestitures where the taxpayer reinvests in a newspaper. The amendment also makes a technical change to section 1071 by amending the first sentence of that section to refer to FCC-ordered dispositions of television broadcasting stations as well as radio broadcasting stations.

The Senate amendment applies to any sale or exchange of property with respect to which there is an FCC certification described in section 1071(a), but only if the taxpayer has reinvested the proceeds in, or exchanged such property for, other qualifying property after June 24, 1981.

6. Exclusion of certain research expenses from capital expenditure limitation for small issue industrial development bonds (sec. 106 of the Senate amendment and sec. 103(b)(6) of the Code)

Present law

Interest on State and local government obligations generally is exempt from Federal income tax (sec. 103(a)). However, subject to certain exceptions, interest on State and local issues of industrial development bonds is taxable (sec. 103(b)). An obligation constitutes an industrial development bond if (1) all or a major portion of the proceeds of the issue are to be used in any trade or business of a person other than a governmental unit or tax-exempt organization and (2) payment of principal or interest is secured by an interest in, or derived from payments with respect to, property or borrowed money used in a trade or business.

Present law provides an exception for certain "small issues" to the general rule of taxability of interest paid on industrial development bonds (sec. 103(b)(6)). This exception applies to issues of $1 million or less if the proceeds are used for the acquisition, construction, or improvement of land or depreciable property.

At the election of the issuer, the $1 million limitation may be increased to $10 million. If this election is made, the exception is restricted to projects for which the aggregate amount of outstanding exempt small issues and capital expenditures (financed otherwise than out of the proceeds of an exempt small issue) made over a six-year period [5] does not exceed $10 million. Both the $1 million and $10 mil-

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[4] LTR 8050025, Sept. 16, 1980; LTR 8006003, Nov. 13, 1979.

[5] The relevant six-year period is the period beginning three years before the date of the issue and ending three years after that date.

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lion limitations are determined by aggregating the face amount of all outstanding related issues, plus, in the case of the $10 million limitation, certain capital expenditures for all facilities used by the same or related principal users which are located within the same county or same incorporated municipality.

Under Treasury regulations, expenditures are treated as capital expenditures for purposes of the $10 million limitation if they are properly chargeable to capital account, whether or not such expenditures may be currently deductible for income tax purposes. Thus, research or experimental expenditures incurred in connection with a taxpayer's trade or business are taken into account for purposes of determining if the small issue limitation of $10 million is exceeded, whether or not the taxpayer elects under Code section 174(a) to deduct currently such research expenses.

Senate amendment

Under the Senate amendment, expenditures for research wages or for research supplies (as defined in secs. 44F(b)(2)(A) (i) or (ii)) which the taxpayer elects to deduct currently (under sec. 174(a)) are not taken into account for purposes of the $10 million capital expenditure limitation on small issue industrial development bonds.

The amendment applies to research wage and supply expenditures made after the date of enactment.

7. Expansion of oil shale tax credits for 1981 and 1982 (sec. 107 of the Senate amendment and sec. 48(l) of the Code)

Present law

The Energy Tax Act of 1978 provided a 10-percent energy investment tax credit for "shale oil equipment", defined for this purpose to mean equipment for producing or extracting oil from oil-bearing shale rock (sec. 48(l)(7)). Under present law, the statute expressly excludes equipment for hydrogenation, refining, or other processes subsequent to retorting from the definition of qualifying shale oil equipment.

Senate amendment

The Senate amendment expands the definition of shale oil equipment for purposes of the energy investment tax credit to include equipment used in hydrogenation or other similar processes subsequent to retorting that are necessary to bring about the chemical change in the hydrocarbons necessary to make the shale oil less viscous so that it may be transported to the refinery. The amendment does not expand the definition of shale oil equipment to include equipment, including hydrogenation equipment, used to refine shale oil.

The provisions of the amendment apply to periods beginning after December 31, 1980, and before January 1, 1983. Under present law, the energy investment credit for shale oil equipment generally is available after 1982 and before 1991 if specified affirmative commitments are undertaken with respect to qualified property that involves long-term projects of two years or more. This special affirmative commitment rule under present law does not apply to hydrogenation equipment made eligible as oil shale property under this proposal. Thus, the credit for hydrogenation equipment under the Senate amendment will not apply to any construction or acquisitions after December 31, 1982.

8. Modification of residential energy tax credit subsidized financing rules (sec. 108 of the Senate amendment and sec. 44C(c)(10) of the Code)

Present law

Under present law (sec. 44C(c)(10)), expenditures financed by Federal, State, or local grants which are exempt from Federal income tax are not eligible for the residential energy tax credit for conservation and renewable energy source expenditures. Further, any portion of qualified expenditures financed by subsidized energy financing is not eligible for the credit. Also, the expenditure limits for energy conservation expenditures ($2,000) and for renewable energy source expenditures ($10,000) are reduced by the portion of expenditures which is financed by subsidized energy financing or by nontaxable Federal, State, or local government grants.

Subsidized energy financing means financing provided under a Federal, State, or local government program, a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy. The term includes, but is not limited to, the direct or indirect use of bonds which are exempt from Federal income tax and which provide funds under such a program. Subsidized energy financing, however, does not include loan guarantees.

Senate amendment

The Senate amendment provides an exception to the definition of subsidized energy financing applicable to the residential energy credit. Specifically, subsidized energy financing will not include loans under a program which provides a State tax credit to a financial institution in order to provide residential energy loans to individuals at a below market rate of interest. Thus, an individual who receives financing made after December 31, 1980, under such a program will also be eligible for any applicable Federal residential energy tax credit.

9. Deferred compensation plans for State judges (sec. 109 of the Senate amendment and sec. 457(e) of the Code)

Present law

Under present law (sec. 457(a)), employees of a State or local government 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 33⅓ 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.

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 so 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)).

Senate amendment

Under the Senate amendment, 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 or appointed 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. Under the amendment, a judge employed by a political subdivision of a State is considered a judge of the State.

In addition, the plan may not pay benefits with respect to a participant which exceed the limitations on benefits permitted under tax-qualified plans, and may 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 will not be a qualified State judicial plan if judges participating in the plan are also eligible to participate, on the basis of their judicial service, in any eligible State or local government deferred compensation plan.

The Senate amendment applies to taxable years beginning after December 31, 1978.

B. Title II.—Estate Tax Provisions

1. Declaratory judgment for current use valuation (sec. 201 of the Senate amendment and new sec. 7479 of the Code)

Present law

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

Senate amendment

The Senate amendment provides a procedure for finally determining the fair market value of specially valued property when that value is the only unresolved issue in the estate. The amendment provides that the administrative determination of the Treasury Department is subject to review by the U.S. Tax Court, if the executor petitions that court within ninety days after receiving notice of the Treasury determination. Under the amendment, a decision of the Tax Court is binding on all parties in future actions in which the fair market value of the specially valued property is at issue. The decision of the Tax Court is reviewable in the same manner as other decisions of that court.

The amendment applies to estates of decedents dying after December 31, 1981.

2. Declaratory judgment for installment payment of estate taxes (sec. 202 of the Senate amendment and new sec. 7480 of the Code)

Present law

If the value of an interest in a closely held business exceeds 35 percent of the adjusted gross estate, the estate taxes attributable to an interest in the closely held business can be defered for up to 14 years (annual interest payments for 4 years, followed by up to 10 annual installments of principal and interest) (Code sec. 6166). A special 4-percent interest rate applies to tax on the first $1 million of value of an interest in a closely held business (sec. 6601(j)). If more than one-third of the value of the business is disposed of or is withdrawn from the business, the remaining unpaid installments are accelerated.

Because a decision of the Treasury Department to deny an election to pay all or a portion of the estate tax attributable to an interest in a closely held business or a decision to accelerate the remaining unpaid 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 under present law.

Senate amendment

The Senate amendment establishes 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, and (2) whether there is an acceleration of the deferred payments. Under the amendment, jurisdiction to issue a declaratory judgment is limited to the U.S. Tax Court, and the determination is not reviewable by any other court. This remedy is available only if the petitioner (i.e., the executor of the decedent's estate) has exhausted all available administrative remedies within the Treasury Department.

In the case of controversies concerning an estate's eligibility for installment payment of estate tax, the amendment applies to estates of decedents dying after December 31, 1981. In the case of controversies concerning acceleration of unpaid tax. the amendment applies to transactions occurring after December 31, 1981.

3. Change to section 6166 "second death" provision (sec. 203 of the Senate amendment and sec. 6166 of the Code)

Present law

If the value of an interest in a closely held business exceeds 35 percent of the adjusted gross estate, the estate taxes attributable to an interest in the closely held business can be deferred for up to 14 years (annual interest payments for 4 years, followed by up to 10 annual installments of principal and interest) (Code sec. 6166). A special 4-percent interest rate applies to tax on the first $1 million of value of an interest in a closely held business (sec. 6601(j)). If more than one-third of the value of the business is disposed of or is withdrawn from the business, the remaining unpaid installments are accelerated.

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, the Economic Recovery Tax Act of 1981 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.

Senate amendment

The Senate amendment further expands 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 amendment, any transfer of an interest in a closely held business caused by the death of the heir (or subsequent transferee) does not result in acceleration of the unpaid tax.

The Senate amendment applies to transfers occurring after December 31, 1981.

C. Title III.—Administrative Provisions

1. Awarding of reasonable litigation costs to taxpayer where taxpayer prevails and position of the United States was unreasonable (sec. 301 of the Senate amendment and new sec. 7430 of the Code)

Present law

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.

Senate amendment [6]

The Senate amendment generally provides 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 $25,000, if the position of the United States in the proceeding was unreasonable. The provisions of the amendment apply to civil tax proceedings in any United States court, including the U.S. Tax Court, and provide the exclusive mechanism through which litigation costs other than direct costs may be recovered in tax cases in those courts. The litigation costs provisions of the Senate amendment apply to all actions commenced after May 31, 1982, and before June 1, 1987.

The Senate amendment also provides 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 $2,500 to the United States. This provision is effective after December 31, 1981.

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[6] This provision of the Senate amendment is similar to sec. 103 of H.R. 4961 as passed by the House. The major differences are that the House-passed provision in H.R. 4961: (1) would provide a limitation of $50,000 on recoverable litigation costs; (2) would apply to civil tax proceedings in any United States court (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; (3) would not apply to any proceeding commenced after September 30, 1984; and (4) would provide a penalty for dilatory and groundless actions of up to $5,000.

2. Annuities for survivors of Tax Court judges; Tax Court procedures (sec. 302–303 of the Senate amendment and secs. 7447, 7448, 7456, 7459, and 7463 of the Code)

Present law

Annuities for survivors of Tax Court judges

If a judge of the United States Tax Court so elects, three percent of the judge's salary is withheld and credited to a survivors annuity fund. If a judge dies 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 (upon attaining age 50) or surviving dependent child (until age 18) is entitled to an annuity from the fund.

The annuity payable to a surviving spouse is equal to a percentage (generally 1¼ 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 37½ percent of such average annual salary. The amount of the annuity payable to a surviving dependent is based upon the amount payable to a surviving spouse, subject to certain dollar 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 requires a judge of the Tax Court to report the Court's findings of fact and opinion in writing.

Senate amendment

Annuities for survivors of Tax Court judges (sec. 302)

The Senate amendment generally increases the amount of an annuity payable from the Tax Court judges' survivors annuity fund 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 37½ percent to 40 percent of the judge's average annual salary. The amount of an annuity first payable to a surviving dependent remains subject to the present-law dollar limits.

The amendment also adjusts 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 amendment affects 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. Each such annuity would be increased by three percent for each five percent by which the salary of judges of the Tax Court is increased. If the salary increase is less than five percent, the increase would be disregarded in computing current and future survivor annuities.

The provisions of the amendment generally increasing the amount of an annuity payable from the survivors annuity fund apply to annuities payable with respect to judges of the Tax Court dying after the date of enactment. Except as described in a catch-up provision for survivor annuities in pay status, the provisions relating to cost-of-living increases generally apply with respect to salary increases taking effect after the date of enactment. Under the catch-up provision, a survivor annuity in pay status on the date of enactment would be immediately increased to reflect increases in the salary of judges of the Tax Court after December 31, 1963.

Certain Tax Court procedural rules (sec. 303)

The Senate amendment 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, subject to the $5,000 limitation, small tax cases are expanded to include cases involving (1) the excise tax on excess contributions to individual retirement accounts, (2) the excise taxes relating to public charities, private foundations, qualified pension, etc. plans, and real estate investment trusts, and (3) the crude oil windfall profit tax.

The amendment also provides that a judge of the Tax Court may in appropriate cases orally state, and record in the transcript of the proceedings, the findings of fact or opinion on the issues presented.

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

The provision which allows cases involving certain excise taxes to be treated as small tax cases is effective with respect to Tax Court proceedings commenced after the date of enactment. The other provisions of the amendment relating to Tax Court procedural rules are effective upon enactment.

3. Time for furnishing Form W–2 to terminated employee (sec. 304 of the Senate amendment and sec. 6051 of the Code)

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, in the case of an employee whose employment terminates during the year, the law provides that a Form W–2 must be supplied to the employee with the final payment of wages. (Treasury Regulations generally have taken the position that the employer may furnish a Form W–2 to an employee whose employment terminates prior to the close of the calendar year at any time after the termination but no later than January 31 of the following year.)

Senate amendment

The Senate amendment requires the employer of an employee whose employment terminates during the year 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 employee makes a written request for early receipt, then the employer will be required to furnish the Form W-2 no later than 30 days after receipt of the request.

The amendment applies to employees whose employment terminates after the date of enactment.

4. Withholding of State income tax from seamen's wages on a voluntary basis (sec. 305 of the Senate amendment and sec. 601 of 46 U.S.C.)

Present law

Present law requires employers to 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 income taxes from the wages of seamen or fishermen is prohibited by Federal law (46 U.S.C. sec. 601).

Senate amendment

The Senate amendment provides that a seaman or fisherman employed in the coastwise trade between ports of the same State may enter into a voluntary agreement with employers for withholding from wages of amounts as State income taxes.

The amendment is effective upon enactment.

D. Title IV.—Miscellaneous Provisions

1. Additional refunds relating to repeal of the excise tax on buses (sec. 401 of the Senate amendment and sec. 231(c)(2) of the Energy Tax Act of 1978)

Present law

Before enactment of the Energy Tax Act of 1978, a 10-percent manufacturers excise tax was imposed on buses sold by a manufacturer, a producer, or an importer. The Energy Tax Act repealed that manufacturers excise tax on buses sold after November 9, 1978.

The Energy Tax Act also contained provisions which effectively allowed. under certain conditions, exemption from the excise tax for buses sold to ultimate purchasers after April 19, 1977, and before November 10, 1978. Under these provisions, a manufacturer, a producer, or an importer was allowed a credit or refund (without interest) for the excise tax paid if—

(1) the manufacturer, etc. possessed evidence of sale to the ultimate purchaser and of reimbursement of tax to that purchaser;

(2) the manufacturer, etc. filed a claim for credit or refund with the Treasury Department before September 5, 1979; and

(3) the manufacturer, etc. reimbursed the ultimate purchaser for the tax paid on qualified sales of buses before September 5, 1979.

Senate amendment [7]

In general, the Senate amendment changes section 231(c) of the Energy Tax Act of 1978 to broaden the conditions under which a manufacturer, a producer, or an importer is eligible for a credit or refund of the manufacturers excise tax paid on buses that were sold to ultimate purchasers after April 19, 1977, and before November 10, 1978. Under the amendment, the date before which the ultimate purchasers must have been reimbursed is extended from September 5, 1979, to January 1, 1983. The amendment does not, however, change the requirement of present law that a manufacturer, etc. must have filed a claim for credit or refund with the Treasury before September 5, 1979.

In addition, the amendment relaxes the present law requirement that the manufacturer, etc. possess evidence of reimbursement of the tax to the ultimate purchaser. Under the amendment, the manufacturer, etc. may make reimbursement at the same time it receives the refund. Such simultaneous reimbursement must occur under an arrangement, such as an escrow, satisfactory to the Treasury.

The amendment is effective on the date of enactment.

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[7] This provision of the Senate amendment is identical to sec. 107 of H.R. 4961 as passed by the House.

2. One-year extension of existing one-year FUTA tax exemption for certain fishermen (sec. 402 of the Senate amendment and sec. 3306 of the Code)

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.

Senate amendment

The Senate amendment extends for one year (through 1982) the FUTA tax exemption for wages paid to fishermen whose remuneration is exempt for purposes of FICA.

The amendment applies to remuneration paid during 1982.

3. Financing of the Reforestation Trust Fund (sec. 403 of the Senate amendment and sec. 303(b)(1) of the Act of October 14, 1980)

Present law

Receipts from lumber and plywood import duties are appropriated to the Reforestation Trust Fund to supplement appropriations for reforestation and timber stock improvement on publicly owned national forests. The Secretary of the Treasury is required to transfer receipts from these tariffs to the Reforestation Trust Fund in amounts up to $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.

Senate amendment

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 lumber and plywood, the Senate amendment would require the Secretary of the Treasury to transfer to the trust fund, up to $30 million per year, 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. The amendment would not affect existing commitments for uses of these funds. The amendment applies to sales made after December 31, 1981.

4. Eligibility requirements for trade adjustment assistance (sec. 404 of the Senate amendment and sec. 2514(a)(2)(A) of the Omnibus Budget Reconciliation Act of 1981)

Present law

Under present law, workers may be eligible for trade adjustment assistance (TAA) benefits if increased imports "contribute importantly" to any injury sustained by the firm for which they work which results in unemployment. Pursuant to the Omnibus Budget Reconciliation Act of 1981, the "contribute importantly" standard is changed on February 9, 1982 to require a higher standard of causation between imports and resulting unemployment. As of that date, workers will be eligible for benefits only if the increased imports are a "substantial cause" of injury to the firm and the resulting unemployment.

Senate amendment

The Senate amendment amends the Omnibus Budget Reconciliation Act of 1981 by maintaining the "contribute importantly" causation standard through the end of the trade adjustment assistance program, the end of fiscal year 1983. The amendment is effective on enactment.

5. Due date for energy task force study on oil supply disruption (sec. 405 of the Senate amendment)

Present law

It is understood that there is an interagency task force studying the threat of a petroleum supply disruption on the Nation's economy and ways of limiting the effects of any such disruption. There is no provision in current law, however, which would require this task force to submit a report on its study to the Congress at any particular date.

Senate amendment

The Senate amendment directs the Secretary of the Treasury to submit to the Congress by June 15, 1982, the report of the interagency task force evaluating the alternative fiscal policies which could be used to help mitigate the adverse economic effects of an oil supply disruption, including possible recycling to consumers of increased Federal revenues resulting from such a disruption. The amendment is effective on the date of enactment.

6. Delay of Bankruptcy Tax Act effective date relating to discharge of indebtedness (sec. 406 of the Senate amendment and sec. 7(a)(2) of the Bankruptcy Tax Act of 1980)

Present law

In 1978, the Congress repealed the Bankruptcy Act, including provisions of that statute which had set forth the Federal income tax consequences of discharge of indebtedness in a bankruptcy proceeding (P.L. 95-598). Under these former rules, a debtor corporation was required to reduce the basis of its assets by the amount of indebtedness discharged in an insolvency reorganization or certain other proceedings (but the debtor was not required to reduce basis below the fair market value of assets on the date the bankruptcy court confirmed the reorganization plan). Thus the repealed rules permitted a taxpayer to apply the amount of discharged debt to reduce the basis of non-depreciable assets which might never be sold, such as stock in a subsidiary corporation, and hence to postpone indefinitely (rather than simply to defer) the tax consequences of debt discharge.

The Bankruptcy Tax Act of 1980 (P.L. 96–589) was a comprehensive revision of the tax rules for bankruptcy, insolvency, and debt discharge. The Act provides that no amount is included in gross income by reason of a debt discharge in a bankruptcy case or insolvency. Under the Act, the amount of debt discharge first reduces net operating losses or certain other tax attributes of the debtor company before reducing basis in assets. To provide flexibility, the Act allows the debtor instead to reduce basis of depreciable property (Code secs. 108, 1017).

The Bankruptcy Tax Act was enacted December 24, 1980. In general, the Act's provisions on debt discharge apply to bankruptcy cases beginning after December 31, 1980, and to other discharges (outside bankruptcy) occurring after December 31, 1980. However, the rule requiring that the amount of debt discharge in bankruptcy or insolvency must first be applied to reduce NOL's, or basis in depreciable assets, was postponed (for one additional year) until bankruptcy cases beginning after 1981 or, in the case of an insolvent debtor outside bankruptcy, where the discharge occurred after 1981.

Senate amendment

The Senate amendment postpones, for an additional three months, the 1980 Act rule relating to the tax consequences of debt discharge in bankruptcy cases or insolvency. Thus, the new rule would apply to bankruptcy cases commencing on or after April 1, 1982, and in the case of a debtor outside bankruptcy which is insolvent at the time of the debt discharge, to debt discharges occurring on or after April 1, 1982.

7. Medicare enrollment period for individuals formerly eligible for benefits under the Public Health Service Act (sec. 407 of the Senate amendment and sec. 322(a) of the Public Health Service Act)

Present law

Individuals who voluntarily choose to enroll in the Supplementary Medical Insurance (Part B) portion of the Medicare program may enroll during one of two periods: (1) their initial enrollment period, which is based on the date when such individuals meet the eligibility requirements for enrollment or (2) during a general enrollment period, during which persons who failed to enroll during their initial period or whose enrollment has been terminated may first enroll or re-enroll. Individuals who elect to enroll after their initial opportunity to do so, or who re-enroll after a termination of coverage, are required (with certain minor exceptions) to pay increased monthly premiums for delinquent enrollment of 10 percent for each 12 months of delay in enrollment or re-enrollment.

Senate amendment

The Senate amendment would establish a special Part B enrollment period (from April 1 through December 31, 1982) for certain individuals (generally elderly merchant seamen) who were formerly eligible for benefits under section 322(a) of the Public Health Services Act (between March 10 and through September 30, 1981) and who were eligible but not enrolled in the Medicare Part B program. No portion of any period during which such persons were entitled to benefits under the Public Health Service Act would count in determining any increase in monthly premiums for delinquent enrollment. Part B coverage for persons electing to enroll during the special enrollment period would begin January 1, 1982. The amendment is effective on the date of enactment.

8. Amendments to the Mortgage Subsidy Bond Tax Act (sec. 408 of the Senate amendment and secs. 103(b)(4) and 103A(i) of the Code)

Present law

The Mortgage Subsidy Bond Tax Act of 1980 was enacted generally to direct the subsidy from the use of tax-exempt bonds for housing to those individuals who have the greatest need for the subsidy, to increase the efficiency of the subsidy, and to reduce the overall revenue loss to the Federal Government from the use of tax-exempt bonds for housing.

Present law provisions affected by the Senate amendment in H.R. 4717 are summarized below.

Single-family mortgage bonds

Arbitrage limitations on mortgage investments.—The maximum amount by which the effective interest rate on mortgages financed with tax-exempt mortgage bonds can exceed the yield on the issue is one (1.0) percentage point.

Loss on reserve liquidations.—The dollar amount of reserves must be reduced as mortgages are paid off since higher reserves no longer are needed to secure these mortgage amounts.

Industrial development bonds for multi-family rental projects

Definition of "low or moderate income".—Tax-exempt industrial development bonds may be used for multi-family rental projects only if 20 percent of the units (15 percent in targeted areas) are occupied by individuals of "low or moderate income". The definition of "low or moderate income" is defined by reference to the meaning of that term under section 8 of the United States Housing Act of 1937.

Duration of targeting requirement.—The 20-percent requirement (15 percent in targeted areas) must be met for 20 years with respect to any obligations issued before January 1, 1984.

Senate amendment

Single-family mortgage bonds

Arbitrage limitations on mortgage investments.—The Senate amendment replaces the 1.0 percent limit with a limit which varies with the size of the issue, beginning at one and one-sixteenth ($1\frac{1}{16}$) percentage points but not to exceed one and one-eighth ($1\frac{1}{8}$) percentage points. The limitation is 1.0625 percentage points plus 0.01 percentage point (not to exceed 1.125 percentage points) for each $10 million that the aggregate face amount of the issue is less than $100 million.

Loss on reserve liquidations.—The Senate amendment provides that the rule of present law requiring liquidations of reserves will not apply to the extent it requires the disposition of any asset at a loss in excess of the amount of undistributed arbitrage profits on nonmortgage investments at such time. However, the rule will continue to apply if there are assets in the reserves which are not in loss positions and which can be sold to meet the liquidation rule. Similarly, the rule will apply where loss assets appreciate so that they no longer are in a loss position.

Industrial development bonds for multi-family rental projects

Definition of "low or moderate income."—The Senate amendment provides a separate definition of individuals of "low or moderate income" by adopting the definition of "low or moderate income" under the section 8 program except that the applicable percentage will be 80 percent of area median income (regardless of the percentage used under the section 8 program).

Duration of targeting requirement.—The Senate amendment also provides that the requirement that 20 percent of the housing units be occupied by individuals of low or moderate income (15 percent in targeted areas) applies from the date the project is first occupied and continues until the later of (1) 10 years after over one-half the project is first occupied, (2) a date ending when 50 percent of the maturity of the bond has gone by, or (3) the date on which any section 8 (or comparable) assistance terminates.

Effective date

The Senate amendment is effective as if included in the Mortgage Subsidy Bond Tax Act of 1980.

9. Reduction in excise tax on wagers and occupational tax on wagering in States authorizing wagering (sec. 409 of the Senate amendment and secs. 4401 and 4421 of the Code)

Present law

Under present law, a two-percent excise tax is imposed on the amount of certain wagers. For this purpose, a wager means (1) a wager placed with a person who is in the business of accepting wagers on the outcome of a sports event or contest, (2) a wager with respect to a sporting event or contest placed in a wagering pool conducted for profit, and (3) a wager placed in a lottery conducted for profit (including the numbers game, policy, and similar types of wagering). However, this excise tax is not imposed on (1) wagers placed with a parimutuel wagering enterprise licensed under State law, (2) wagers placed in coin-operated gaming devices, such as slot machines, and (3) State-conducted wagering, such as sweepstakes and lotteries (secs. 4401–4405, 4421–4424). Under present law, the two-percent excise tax is imposed on so-called off-track betting authorized by State law.

Every person engaged in the business of accepting wagers is liable for the tax with respect to wagers which are placed with such person and which are subject to the tax.

Under present law, an occupational tax of $500 per year is imposed on each person who is liable for the two-percent excise tax on wagers and on each person who is engaged in receiving wagers for or on behalf of such person (secs. 4411–4414).

Senate amendment

The Senate amendment reduces the two-percent excise tax on certain wagers to 0.25 percent for wagers authorized by State law. Also, under the amendment, the $500 occupational tax is reduced to $50 in the case of persons authorized by State law to accept wagers in a wagering business authorized by State law. In States where wagering is illegal, the two-percent excise tax and $500 occupational tax will continue to apply.

The amendment applies to taxable periods beginning after December 31, 1981.

10. Limitation on use of small issue industrial development bonds (sec. 410 of the Senate amendment and sec. 103(b)(6) of the Code)

Present law

Interest on State and local government obligations generally is exempt from Federal income tax (sec. 103(a)). However, subject to certain exceptions, interest on State and local issues of industrial development bonds is taxable (sec. 103(b)). An obligation constitutes an industrial development bond if (1) all or a major portion of the proceeds of the issue are to be used in any trade or business of a person other than a governmental unit or tax-exempt organization and (2) payment of principal or interest is secured by an interest in, or derived from payments with respect to, property or borrowed money used in a trade or business (sec. 103(b)(2)).

Present law provides an exception for certain "small issues" to the general rule of taxability of interest paid on industrial development bonds (sec. 103(b)(6)). This exception applies to issues of $1 million or less if the proceeds are used for the acquisition, construction, or improvement of land or depreciable property.

At the election of the issuer, the $1 million limitation may be increased to $10 million. If this election is made, the exception is restricted to projects where the aggregate amount of outstanding exempt small issues and capital expenditures (financed otherwise than out of the proceeds of an exempt small issue) made over a six-year period[8] does not exceed $10 million. Both the $1 million and $10 million limitations are determined by aggregating the face amount of all outstanding related issues, plus, in the case of the $10 million limitation, certain capital expenditures for all facilities used by the same or related principal users which are located within the same county or same incorporated municipality.

Under present law, there are no restrictions on the types of facilities or purposes for which the proceeds of qualified "small issues" of industrial development bonds may be used, other than the requirement that the proceeds be used for land or depreciable property and

[8] The relevant six-year period is the period beginning three years before the date of the issue and ending three years after that date.

not for residential real property for family units.[9] In addition, other than the $10 million election, there are no requirements that information concerning the issue be reported to the Internal Revenue Service.

Senate amendment

The Senate amendment restricts the purposes and types of facilities for which the proceeds of certain "small issues" of industrial development bonds may be used.[10] Under the amendment, interest on "small issue" industrial development bonds is subject to Federal income tax if any portion of the proceeds of such issue is to be used for any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), ski resort, racquet sports facility (including handball and racquet ball courts), hot tub facility, suntan facility, or racetrack.

The amendment also establishes reporting requirements for issuers of "small issue" industrial development obligations. By March 1 of each calendar year, any person who issued "small issue" industrial development bonds during the preceding year must report to the Treasury with respect to each issue the following: (1) any purchasers of more than 25 percent of the face value of the issue, (2) the underwriter (if any), (3) the interest rate, (4) the issue's rating (if any), (5) the face amount, (6) a description of any facility to be financed from the proceeds of the issue and its location, (7) each user of a facility financed from the proceeds of the issue, (8) bond counsel, and (9) any other information the Treasury determines appropriate.

The amendment applies to obligations issued after the date of enactment of the amendment.

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[9] Under section 103(b)(4), interest on industrial development bonds is exempt from Federal income tax if substantially all the proceeds of such issue are to be used to provide one or more of the exempt facilities listed therein. One of the classes of exempt facilities is "sports facilities" (sec. 103(b)(4)(B)). However, under Treasury regulations, in order to qualify as an exempt facility, a facility must serve or be available on a regular basis for general public use (Reg. § 1.103–8(a)(2)). In order for a "sports facility" to qualify as an exempt facility, it must be available for use by members of the general public either as participants or as spectators (Reg. § 1.103–8(c)(1)).

[10] The amendment does not affect the qualification of issues under the exempt facilities rules of section 103(b)(4).

E. Title V.—Unemployment Compensation Provisions

(Secs. 501–503 of the Senate amendment, sec. 903(c) of the Social Security Act, and sec. 3306(c) of the Code)

Present law

Section 903 of the Social Security Act provides for the transfer of Federal unemployment tax funds to individual State accounts when all other FUTA accounts have reached their statutory limits, all advances have been repaid, and an excess is available. These funds generally may be used by the States either to pay unemployment benefits or, with approval of the State legislators, for administrative purposes. However, under present law, funds credited to these accounts on June 30, 1956 (and subsequent years) no longer will be available for administrative purposes.

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

Present law excludes from FUTA wages paid to alien farmworkers admitted to the United States pursuant to sections 214(c) and 101 (a)(15)(H)(ii) of the Immigration and Nationality Act. This FUTA tax exemption expired on December 31, 1981.

Senate amendment [11]

The Senate amendment extends for 10 years the authority for States to use, for administrative purposes, funds credited to their individual State unemployment trust fund accounts.

In addition, the amendment exempts from FUTA the wages of student interns, regardless of age. This provision will apply to service performed after the date of enactment.

The amendment also extends for two years (through December 31, 1983) the temporary FUTA tax exclusion for alien farmworkers.

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[11] These provisions of the Senate amendment are identical to secs. 201–203 of H.R. 4961 as passed by the House.

III. ESTIMATED REVENUE EFFECTS OF H.R. 4717 AS PASSED BY THE SENATE

(Millions of dollars)

Provision	Fiscal year— 1982	1983	1984	1985	1986
Title I—Income Tax Provisions:					
Sec. 101.—One-year postponement of effective date for LIFO reserve rule	−15	−260	([3])	([3])	([3])
Sec. 102.—Modification of net operating loss rule for the Federal National Mortgage Association	---	−14	+14	---	---
Sec. 103.—Treatment of certain lending or finance businesses for purposes of the tax on personal holding companies	([2])	([2])	([2])	([2])	([2])
Sec. 104.—Allowance of regulated investment company status to certain small business development companies	---	---	---	---	---
Sec. 105.—Rollover of gain on FCC-ordered disposition of broadcast property	([4])	([4])	([4])	([4])	([4])
Sec. 106.—Exclusion of certain research expenses from capital expenditure limitation for small issue industrial development bonds	−1	−4	−8	−13	−18
Sec. 107.—Expansion of oil shale tax credits for 1981 and 1982	−10	−9	([2])	---	---
Sec. 108.—Modification of residential energy tax credit subsidized financing rules	−5	−6	−6	−7	−8
Sec. 109.—Deferred compensation plans for State judges	([3])	([3])	([3])	([3])	([3])
Title II—Estate Tax Provisions:					
Sec. 201.—Declaratory judgment for current use valuation					
Sec. 202.—Declaratory judgment for installment payment of estate taxes	([2])	([2])	([2])	([2])	([2])
Sec. 203.—Change to section 6166 "second death" provision					

See footnotes at end of table.

III. ESTIMATED REVENUE EFFECTS OF H.R. 4717 AS PASSED BY THE SENATE—Continued

(Millions of dollars)

Provision	Fiscal year— 1982	1983	1984	1985	1986
Title III—Administrative Provisions:					
Sec. 301.—Awarding of certain litigation costs	([a])	([a])	([a])	([a])	([a])
Sec. 302.—Tax Court judges' survivors annuities	([b])	([b])	([b])	([b])	([b])
Sec. 303.—Tax Court procedural rules					
Sec. 304.—Time for furnishing Form W-2 to terminated employee					
Sec. 305.—Withholding of State income tax from seamen's wages on a voluntary basis					
Title IV—Miscellaneous Provisions:					
Sec. 401.—Additional refunds relating to repeal of the excise tax on buses	([1])	([1])			
Sec. 402.—One-year extension of existing one-year FUTA tax exemption for certain fishermen	([3])	([1])			
Sec. 403.—Financing of Reforestation Trust Fund					
Sec. 404.—Eligibility requirements for trade adjustment assistance	([c])	([c])			
Sec. 405.—Due date for energy task force study on oil supply disruption					
Sec. 406.—Delay of Bankruptcy Tax Act effective date relating to discharge of indebtedness	([3])	([1])	([1])	([3])	([3])
Sec. 407.—Medicare enrollment period amendments	([d])	([d])	([d])	([d])	([d])
Sec. 408.—Amendments to Mortgage Subsidy Bond Tax Act	−1	−4	−9	−15	−22
Sec. 409.—Reduction in excise tax on wages and occupational tax on wagering in States authorizing wagering	−8	−14	−14	−16	−17
Sec. 410.—Limitation on use of small issue IDBs	+2	+9	+22	+38	+58

See footnotes at end of table.

III. ESTIMATED REVENUE EFFECTS OF H.R. 4717 AS PASSED BY THE SENATE—Continued

(Millions of dollars)

Provision	Fiscal year— 1982	1983	1984	1985	1986
Title V—Unemployment Compensation Provisions:					
Sec. 501.—Extension of Reed Act	---	---	---	---	---
Sec. 502.—Removal of age limitation for exclusion from FUTA of wages paid to student interns	(5)	(5)	(5)	(5)	(5)
Sec. 503.—Extension of exclusion from FUTA of wages paid to certain alien farmworkers	−1	−1	---	---	---
Total [6]	**−51**	**−317**	**−16**	**−24**	**−18**

[1] Loss of less than $1 million.
[2] Loss of less than $5 million.
[3] Negligible loss.
[4] Loss of less than $10 million.
[5] Reduces budget receipts by less than $500,000.
[6] For budget scorekeeping purposes, these totals include $1 million for each of the provisions estimated at "less than $1 million," $3 million for each provision estimated at "less than $5 million," and $5 million for each provision estimated at "less than $10 million." These figures do not take into account the outlay effects of the bill.
[a] Increases outlays by less than $5 million.
[b] Increases outlays by less than $50,000.
[c] Increases outlays by an indeterminate amount.
[d] Increases outlays by about $500,000 annually.