[COMMITTEE PRINT]

SUMMARY OF COMMENTS ON H.R. 25

A BILL TO SIMPLIFY THE INTERNAL REVENUE CODE OF 1954 BY REPEALING PROVISIONS WHICH ARE OBSOLETE OR ARE UNIMPORTANT AND RARELY USED

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

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SUMMARY OF COMMENTS ON H.R. 25

Following the introduction of H.R. 17971 (the "Internal Revenue Code Simplification Act of 1970") in the 91st Congress (June 9, 1970), the Committee on Ways and Means invited comments on the bill. The bill, popularly referred to as the "deadwood" bill, was the result of several years' review of the various code provisions thought to be obsolete, or unimportant and rarely used. The bill would repeal or amend approximately 1,000 sections of the code.

After further revision, the bill was reintroduced in the 92d Congress as H.R. 25 (the "Internal Revenue Code Simplification Act of 1971").

The following is a summary of the comments on the bill received in 1970; it does not include comments on provisions of the 1970 bill which were changed or eliminated in response to those comments in the preparation of H.R. 25, it does not include comments which suggested additional items for the bill (a number of which gave rise to changes in the preparation of H.R. 25), and it generally does not include comments which approved particular provisions of the bill.

GENERAL COMMENTS ON THE BILL

Members of American Bar Association, Section of Taxation.[1] Some members suggest that where any code provisions are deleted, then the provisions should be renumbered.

Some members suggest that no code effective date references be deleted which relate to taxable years within 10 years of the date of the Act. (Another suggestion was to keep all effective date references relating to taxable years beginning after 1959.) This suggestion relates specifically to bill secs. 108, 162(e), 279, 281, 286, 287, and 336(b). Other members comment that the bill should provide a general savings clause with respect to the provisions which are repealed but which may have application to prior taxable years that are still open.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Recommends that code subsections, paragraphs, etc., be redesignated where items are deleted. Suggests careful consideration and review of the repeal of any code provisions, to check conforming changes necessitated by the Tax Reform Act of 1969 and to trace the possible taxpayer consequences of such repeal.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice President. Suggests that code provisions retain specific references to effective dates for at least 15 years, since taxpayers' tax returns may be open for as many as 15 years.

Comment:[2] (1) Several persons recommended that when any provision of H.R. 25 strikes out a subsection of a section of the Internal Revenue Code, or a paragraph of a subsection, then the remaining subsections or paragraphs should be redesignated.

[1] Comments contained in this summary referring to members of the American Bar Association are comments from individual members of the Section of Taxation and do not represent official American Bar Association, Section of Taxation positions.

[2] The indented material is staff responses to the comments summarized in this pamphlet, presenting the reasons why the particular provision was included in the bill in its present form.

For many years the Office of House Legislative Counsel has followed the general practice of not redesignating subsections or paragraphs in the code upon the striking of a subsection or paragraph. H.R. 25 generally follows this practice, which eliminates the need for conforming changes in other sections of the code which refer to the remaining subsections or paragraphs. Moreover, we understand the compilers of the United States Code prefer that a stricken provision in the Internal Revenue Code not be followed by a redesignation of remaining provisions.

Comment: (2) A few persons raised objections to the technique employed in a number of instances in H.R. 25, under which a code provision of very limited application (usually because of the passage of time) is repealed, but with a savings clause in the effective date provision (not added to the code) to provide for continued application of the repealed provision after the effective date in appropriate cases. As an example, sec. 123(a) of the bill repeals section 108(b) of the Internal Revenue Code, which provides that in the case of a railroad which went into receivership or bankruptcy before January 1, 1960, no income will result from cancellation of indebtedness effected pursuant to an order of the court in the receivership or bankruptcy proceeding. Since this provision (because of the passage of time) can now apply to only 1 or 2 railroads, the bill repeals the provision and thereby eliminates 186 words from the Internal Revenue Code. But sec. 123(b) of the bill provides that if this provision would have applied to a railroad (which went into receivership or bankruptcy before January 1, 1960) if the cancellation of indebtedness had occurred during 1971, then the provision will continue to apply even though the cancellation occurs after December 31, 1971.

Comment: (3) Suggestions were made that an Internal Revenue Code provision should not be treated as deadwood until a specified number of years (some suggested 10 years, others 15 years) have passed after the last taxable year to which it applied. It was stated that sometimes tax returns may be open for as many as 15 years and that the taxpayer ought to be able to pick up the current issue of the Internal Revenue Code to determine what his tax liability was for the earlier years.

If this suggestion were to be followed, the present code would probably be three times its present size. For example, the Tax Reform Act amended section 217 of the code to expand (and in some cases to restrict) the deductibility of moving expenses, and the amended provision contains only the rules applicable to taxable years beginning after 1969. The present code does not set forth the rules on moving expenses for years beginning before 1970. Under the suggestion made, the code would set forth both sets of rules. Also, this suggestion would have required that, at least until 1969, the 1954 Code would have included the entire text of the 1939 Code; even now, under this suggestion, the code would be required to include in section 1, the individual income tax rate tables applicable to pre-1964 years, the tables applicable to 1964, and the tables applicable to 1965 through 1969, as well as the current table. Generally, this has not been done in the past.

COMMENTS ON SPECIFIC BILL SECTIONS

Sec. 108 (amends sec. 46 of code)—investment credit.

Member of American Bar Association, Section of Taxation. Opposes bill sec. 108(b) which repeals section 46(b)(4) of the code (relating to the computation of a carryback of an unused credit to a taxable year beginning in 1961 and ending in 1962). Indicates an uncertainty "as to the effect of this repeal on a carryback resulting from the opening up of unused credit by reason of a disposition which requires a recapture of investment credit." (Other members commenting on this change support the repeal indicating (1) that the provision was specifically inserted to cover the situation where a 3-year carryback of unused investment credit would include a fiscal year only partly covered by the credit (1961–62) and that the provision has served its purpose, and (2) that the provision is "obsolete material".)

Comment: This section repeals a special provision in section 46 for the computation of the investment credit for a taxable year beginning in 1961 and ending in 1962. It has been suggested that this provision be left in the code because some taxable years beginning in 1961 and ending in 1962 may still be open.

The stricken provision is in fact obsolete. See comment (3) under *General Comments* above.

Sec. 115 (amends sec. 61 of code)—general definition of gross income.

Member of American Bar Association, Section of Taxation. Comments that no major benefit is obtained by shortening code section 61 which strikes out the reference to 15 specific items of gross income, since the courts generally refer to the specific items of gross income and would be called upon to consider the history of code section 61 anyway. (Other members approve the change.)

Comment: The 15 items really add nothing to what constitutes gross income. Their presence hurts, rather than helps, the finding that gross income includes, for example, the recovery of a bad debt previously deducted with a tax benefit, since this kind of income is not included in the 15 items.

Sec. 116 (adds new secs. 64 and 65 to code)—definition of ordinary income and ordinary deductions.

Members of American Bar Association, Section of Taxation. Questions whether the new code section 64 (relating to a definition of "ordinary income") might cause difficulty in applying certain of our tax treaties. Feels that it might cause trouble in the case of nonresident aliens and foreign corporations not engaged in business in the United States who are subject to tax on "fixed or determinable annual or periodic gains, profits, and income". Also, expresses concern with this new definition in the case of the taxation of U.S. citizens and residents with respect to foreign personal holding companies and controlled foreign corporations.

Comments that the use of the terms "ordinary income" and "gain constituting ordinary income" in new code section 65 may cause confusion or might give rise to the argument that characterization as "gain" had been eliminated in those provisions not embodying the word "gain."

Another member comments that he believes that the definition of ordinary income in new code section 65 should exclude expressly gain from the sale or exchange of property described in code section 1231.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. States that it is not clear how capital loss carrybacks and carryovers are to be treated in view of these new definitions.

Comment: The criticism with respect to the definition of ordinary income does not appear to have any substance to it. Treasury did not find any difficulty with the use of the new terms.

Sec. 117 (amends sec. 72 of code)—annuities.

Member of American Bar Association, Section of Taxation. Inquires as to whether the elimination of code section 72(p) (containing a reference to code section 1021, which prohibits a negative basis on the sale of an annuity) suggests that there can be a negative basis.

Comment: The deletion of code section 72(p) conforms to the repeal (in sec. 301 of the bill) of code section 1021. It is repealed because the rule of no negative basis is implicit in many provisions of the code so there seems to be no reason to make it explicit in this one case. See comment under sec. 302 of the bill, below.

Sec. 123 (amends sec. 108 of code)—income from discharge of indebtedness.

Association of American Railroads. Recommends that code section 108(b) (relating to an exclusion from income for railroad corporations for income arising upon the discharge of indebtedness pursuant to a receivership proceeding or reorganization proceeding under the Bankruptcy Act which was commenced before January 1, 1960) not be repealed. Indicates that this section should not be considered obsolete. In addition, proposes that the relief provision not be limited to the 1960 statutory date, but rather that the provisions should be open-ended and apply to any railroad reorganization under section 77 of the Bankruptcy Act, no matter when commenced or terminated.

Comment: The code provision applies only to receiverships commenced before January 1, 1960. The bill preserves any existing rights to exclusions from income. It would appear that if it is decided to provide special treatment for post-1959 cases, it would be better to have a clean slate on which to write the applicable rules. Any departure from the old rules would be more difficult if the old rules are still in the code when new rules are being considered.

Sec. 132 (amends sec. 152 of code)—Definition of dependent.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Believes that the provision which includes so-called "sick cousins" (a relative, not otherwise includable as a dependent, who is receiving institutional care outside the taxpayer's home) should not be eliminated from the list of dependents in code section 152(a).

Comment: The provision for a sick cousin was added to the law in 1954 to take care of a particular case where a cousin of a taxpayer was receiving institutional care. The chances are that the passage of time (17 years) has eliminated the need for this provision.

Sec. 136 (amends sec. 164 of code)—taxes.

Member of American Bar Association, Section of Taxation. Questions whether subsection (b), which deletes code section 164(f) (relating to payments to the Atomic Energy Commission for municipal services in atomic energy communities), involves a policy decision to terminate the applicability of the section to new arrangements entered into after December 31, 1971.

Comment: This provision was intended to deal with the arrangement at Oak Ridge, Tennessee. The provision, therefore, is retained in the public laws so that the situation at Oak Ridge is preserved if payments are still being made to the Commission for municipal-type services. It is not believed that it was designed to induce new arrangements.

Sec. 139 (amends sec. 167 of code)—change in method of depreciation.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Believes that it is premature to eliminate code section 167(e)(3) (relating to the change in method of depreciation with respect to sec. 1250 property) at this time.

Comment: Sec. 167(e)(3) of the code provides a transitional rule for a change in the method of depreciation with respect to section 1245 property. Since this rule is applicable only to the first taxable year beginning after July 24, 1969, it will be obsolete before the effective date of this change (taxable years beginning on or after January 1, 1972; see sec. 384 of the bill).

Sec. 140 (repeals sec. 168 of code)—amortization of emergency facilities.

Members of American Bar Association, Section of Taxation. One member opposes the repeal of this section indicating that although the section does not permit certification of emergency facilities after 1959, favors leaving the section in the code in the event of emergencies similar to World War II and the Korean war where rapid amortization may again be needed to encourage expansion in vital industries. (Other members support the repeal of this provision commenting that the provision is obsolete.)

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Recommends that this section of the bill be deleted. Maintains that code section 168 (relating to the allowance of 5-year amortization for "emergency facilities" certified before 1960) has continuing application and the repeal of it would constitute a substantive change.

Comment: The bill contains a savings clause which provides that if a certificate was issued before 1960 and the emergency facility placed in service within one year after date of enactment, section 168 would continue to apply with respect to such facility if the section would have applied in the absence of a repeal. The last "if" clause was added at the request of the Treasury because the Treasury feels that code section 168 would not apply if a facility were placed in service at this late date.

Sec. 150 (amends sec. 269 of code)—presumption in the case of disproportionate purchase price.

Members of American Bar Association, Section of Taxation. States that the repeal of code section 269(c) (relating to a presumption in

the case of a disproportionment purchase price paid for control of a corporation or the property of a corporation) is a substantive change. Other members, however, support the repeal.

Comment: Section 269(c) first appeared in 1954. On its face, that provision creates a presumption in favor of the Government. However, it appears to be a meaningless provision. The Treasury Department does not object to its repeal since the presumption has not been helpful to the Government in the administration of section 269.

Sec. 152 (amends sec. 281 of code)—terminal railroad corporations and their shareholders.

Chicago and Western Indiana Railroad Company, R. E. Dowdy, President & General Manager. Opposes subsection (b), which eliminates code section 281(e) (relating to the computation of taxable income of terminal railroad corporations and their shareholders for taxable years ending before the date of enactment of that section). States that such a removal would permit the application of code section 281 without restriction and would subject C. & W.I. and its shareholders to adverse results for certain previous taxable years that did not come under section 281(e).

Comment: Code section 281(e) applies only to taxable years ending before October 23, 1962; repeal of this provision as to taxable years beginning on or after January 1, 1972 (sec. 384 of the bill), will not retroactively affect the rights of taxpayers under code section 281(e).

Sec. 160 (amends sec. 301 of code)—certain distributions by personal service corporations and distributions of antitrust stock.

Member of American Bar Association, Section of Taxation. Indicates that subsection (a), which repeals code section 301(e) (relating to tax-free distributions by certain personal service corporations out of earnings and profits which were taxed under certain provisions of the Revenue Acts of 1918 and 1921), may be substantive, and therefore the provision should be continued in effect, at least, as a part of the Statutes at Large if it is deemed that there still may be personal service corporations in existence.

Comment: It is believed that with the passage of time this provision has become deadwood. At least we have heard from no one with a case where it would have application in the future.

Sec. 162 (amends sec. 312 of code)—earnings and profits.

Member of American Bar Association, Section of Taxation. Believes that this section, which amends code section 312 (relating to earnings and profits computations for events in past years), should not be enacted, since the provisions may continue to be applicable so long as there is no effective statute of limitations with respect to the recomputation or revision of earnings or profits of prior years.

Comment: No attempt has ever been made to keep in the code all prior rules which affect current computations of accumulated earnings and profits. For example, deductions taken for World War II 60-month amortization reduced earnings and profits, but the amortization provisions were not carried over into the 1954 Code on that account. The repeal of the obsolete provisions of section 312 does not mean that such provisions are not applicable in the

computation of the earnings and profits for the past years in computing in the future the *accumulated* earnings and profits.

Sec. 164 (amends sec. 333 of code)—election as to recognition of gain in certain liquidations.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Suggests that bill subsection (c), which repeals code section 333(g) (relating to the liquidation of certain personal holding companies), allow the corporation to elect to come under the existing provision if it gives notification to the Secretary within 12 months after the date of enactment. Believes that changes in the Internal Revenue Code should provide reasonably sufficient time for taxpayers to become aware of the changes and plan in accordance with such changes. (A member of the American Bar Association, Section of Taxation concurs in the repeal.)

Comment: This section strikes out of section 333 a special rule for the liquidation of corporations which became personal holding companies as a result of provisions added by the Revenue Act of 1964. The bill contains a savings clause for cases where a corporation prior to January 1, 1968, notified the Secretary that it wished to have section 333(g)(2)(A) apply to it. It has been suggested that taxpayers for a short period after the date of the enactment of the bill should be allowed to give such notification to the Secretary.

The prior deadwood bill (H.R. 17971) permitted notification to be given up to January 1, 1971. That was a mistake since present law requires the notification to be given before January 1, 1968. Repealing the provision as deadwood should not be an occasion for liberalizing the application of the section so far as notification is concerned.

Sec. 171 (repeals sec. 373 of code)—nonrecognition of loss in certain railroad reorganizations.

Member of American Bar Association, Section of Taxation. Suggests that it be made clear that the repeal of code section 373 will not be retroactive in effect so as to change the tax consequences of transactions to which section 373 applied or to change the basis of property acquired in such transactions.

Comment: Sec. 384 of the bill makes this amendment applicable to taxable years beginning on or after January 1, 1972. As to the basis question, see the comment describing sec. 162 of the bill, above.

Sec. 173 (amends sec. 381 of code)—carryovers in certain corporate acquisitions.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Suggests that section 381(c)(10) of the code, which is amended by subsection (a) of the bill, be preserved so as to allow a transferee the right to deduct expenses deferred by the transferor under section 615(b) (relating to the deduction for pre-1970 exploration expenditures) prior to its repeal.

Comment: This section amends 381 of the code so as to eliminate references to section 615 (dealing with pre-1970 exploration expenditures). It has been suggested that this provision still might have application because the transferor corporation may

have elected under section 615(b) to deduct exploration expenditures on a deferred basis, and section 381(a)(10) allows the transferee to deduct the deferred expenditures.

After checking with a number of people well acquainted with the tax practices of the mining industry, we were unable to learn of a case where any taxpayer elected to defer the deduction of exploration expenditures under section 615. (The largest deduction allowed in any one year under section 615(a) was $100,000, and this amount could normally be utilized through the net operating loss provisions.) While the comment received was that the section might have future application, no one has come forward with an actual case.

Sec. 174 (repeals secs. 391 through 395 of code)—effective dates of subchapter C.

Member of American Bar Association, Section of Taxation. Suggests that it be made clear that the repeal of code sections 391–395 is not intended to make the provisions of subchapter C applicable in determining the tax treatment of pre-1954 transactions for purposes of these present determinations.

Comment: Sec. 384 of the bill makes this amendment applicable to taxable years beginning on or after January 1, 1972.

Sec. 185 (amends sec. 453 of code)—installment method.

Member of American Bar Association, Section of Taxation. Suggests that further consideration be given to the amendment of this section which prospectively removes from the code (but retains in the public laws) that portion of section 453(b)(2) which applies to the treatment of certain installment payments resulting from sales during a taxable year beginning before January 1, 1954. Questions what the rule is with respect to installment payments received after December 31, 1971, on account of a sale or other disposition made during a taxable year beginning before January 1, 1954.

Comment: The question has been asked what the rule would be with respect to payments received after December 31, 1971, on such installment sales.

The effective date of this section of the bill contains a savings clause which provides that the portion of section 453(b)(2) which applies to the treatment of certain installment payments resulting from sales during a taxable year beginning before January 1, 1954, will continue to apply so that those taxpayers will report in the same manner as they have in prior years.

Sec. 198 (amend sec. 542 of code)—definition of personal holding company.

Member of American Bar Association, Section of Taxation. Indicates that the subsection (a) amendment of code section 542 (relating to the definition of personal holding company) which strikes out a special provision concerning a trust or organization created before July 1, 1950, may be a substantive change in that there still may be some organizations within the exemption. Also, states that subsection (b), which amends code section 542(b)(2) (relating to an exception for an affiliated group of railroad corporations which would be eligible to file a consolidated return under sec. 141 of the 1939 Code prior to its amendment by the Revenue Act of 1942), is a substantive change because the provision may still benefit some affiliated railroad groups.

Comment: It is believed that the special situations for which these provisions were originally enacted are no longer present. While it has been suggested that the provisions might still be applicable to someone, no case has been presented where such is the situation.

Sec. 200 (amends sec. 545 of code)—undistributed personal holding company income.

Member of American Bar Association, Section of Taxation. Considers subsection (b)(4), which deletes code section 545(b)(9) (relating to deductions, in computing personal holding company income, on account of certain liens in favor of the United States), to be a substantive change.

Comment: This provision was originally enacted in 1951 to take care of a particular personal holding company (Hekor) which no longer is in existence.

Sec. 214 (amend sec. 593 of code)—reserves for losses on loans for mutual savings banks, etc.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Expresses a concern with subsection (b) of the bill, which strikes out paragraphs (2) through (5) of code section 593(c) (relating to reserves for mutual savings banks) and inserts in lieu thereof a new paragraph (2) dealing with certain pre-1963 reserves. States that since amounts can be allocated to the reserve for losses on qualified real property out of pre-1952 reserves and surplus by reasons other than the reserve realignment, the failure to limit the application of the new paragraph (2) in the same manner as the present paragraph (5) can conceivably cause certain technical problems.

Comment: This amendment deletes the obsolete portions of paragraphs (2) through (5) of code section 593(c), which deal with the required allocation of the bad debt reserves of mutual savings banks on December 31, 1962. It is not believed that the new paragraph (2) would cause significant technical problems.

Sec. 222 (repeals sec. 615 and amends sec. 703 of code)—pre-1970 exploration expenditures.

Member of American Bar Association, Section of Taxation. Suggests that it be made clear that this section is to be prospective only and does not affect substantive rights given with respect to such expenditures.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Suggests that code section 615 (relating to the deduction for pre-1970 exploration expenditures), which is repealed from the code by the bill, be retained in the public laws in order to assure deductions for taxpayers who have deferred them under section 615(b), which allows exploration expenditures to be deducted on a deferred basis so long as the mine is in production.

Comment: It is not believed that deductions are being taken on a deferred basis under section 615(b). See comment under sec. 173 of the bill, above.

Sec. 224 (repeals sec. 632 of code)—sale of oil or gas properties.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Recommends that this section be deleted from the bill. The provision would repeal section 632 of the code, which limits

the tax on the gain from a sale of oil or gas properties to 33 percent of the sales price. Indicates that before 1969 this section was seldom used because of the 25-percent alternative capital gains tax rate. Points out, though, that in view of the changes made by the Tax Reform Act of 1969 on the treatment of capital gains, the repeal of this section could adversely affect certain individual taxpayers. (Repeal of section 632 of the code is approved by a member of the American Bar Association, Section of Taxation.)

Comment: An objection is made to this repeal since the section gives a tax benefit when an oil or gas property has been held for less than 6 months, and will be of some small benefit when the capital gains tax on individuals reaches 35 percent (half of the 70-percent maximum rate on most ordinary income).

It is believed that the number of sales with a less than 6-month holding period are not significant. The Mid-Continent comment did not suggest that the provision should be retained for any such cases. If the sale is made after the property has been held 6 months, it would seem that the gain should not be treated more favorably than a long-term capital gain. Prior to the Tax Reform Act, the 33-percent maximum tax under section 632 was higher than the alternative capital gains rate of 25 percent. That is, long-term capital gain treatment was better than section 632. It is doubted that Congress intended, by increasing the tax on capital gains for individuals, to create a new preference under section 632 over the maximum capital gain rate.

Sec. 241 (repeals sec. 771 of code)—effective date of subchapter K.

Member of American Bar Association, Section of Taxation. Questions the repeal of this effective date section. States that some taxable years straddling the date of the 1954 code's enactment could well affect future years (in the determination of basis). Questions whether the effective dates will be preserved somewhere or somehow despite their elimination from the code.

Comment: This amendment repeals the obsolete effective date provisions (generally, December 31, 1954) of subchapter K (relating to partners and partnerships). If there should be a need to determine an effective date for a particular purpose in the future, the legislative history of the enactment of subchapter K would provide such dates. See comment (2) under "General Comments on the Bill", above. Also, as to the basis question, see the comment describing sec. 162 of the bill, above.

Sec. 246 (amends sec. 804 of code)—taxable investment income.

Member of American Bar Association, Section of Taxation. Questions whether subsection (d), which eliminates code section 804(a)(6) (relating to the special rule in the case of life insurance companies which provides for adjustments necessary to prevent such a company from being taxed on tax-exempt interest for dividends qualifying for a dividends received deduction), is a substantive change. Indicates that it is unclear whether the Supreme Court decision in *Atlas Life Insurance* v. *U.S.* (381 U.S. 233) makes this provision inapplicable in all cases.

American Life Convention, William B. Harman, Jr., General Counsel, and Life Insurance Association of America, Kenneth L. Kimble, Vice President and General Counsel. Believes that it would be preferable to

retain the code section 804(a)(6) exception clause in order to eliminate possible controversy as to the manner in which Congress intended the Life Insurance Company Income Tax Act of 1959 to apply to municipal bond interest and corporate dividends.

Comment: It is believed that the *Atlas Life* decision of the Supreme Court makes code section 804(a)(6) a deadwood provision for all practical purposes.

Sec. 247 (amends sec. 805 of code)—policy and other contract liability requirements.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Believes that the phrase "(determined without regard to fair market value on December 31, 1958)" should not be stricken from the code as provided in subsection (b). States that section 805(b)(4) of the code sets forth the rules for the determination of the denominator in a fraction used to compute an average earnings rate for each life insurance company subject to this tax. States that the phrase referred to above clarifies the fact that all assets included in the denominator should be included at the adjusted basis, except for real property and stock. Indicates that for purposes of determining gain, companies are permitted to use December 31, 1958, fair market value for all assets held as of that date. Points out that items such as redeemable bonds and warrants must be included in this formula at adjusted basis even though such assets may have a fair market value on December 31, 1958, different from basis. States that this fact would not be clear if the parenthetical phrase was deleted.

Comment: Section 805(b)(4) of the code deals with "adjusted basis" of certain assets. Although section 817(b)(1) of the code permits life insurance companies to use December 31, 1958, fair market value in determining gain on the sale of certain property, it does not change the adjusted basis of the property. Consequently, adjusted basis is determined under the normal rules and the reference in code section 805(b)(4) to December 31, 1958, fair market value is mere surplusage.

Sec. 248 (amends sec. 809 of code)—gain and loss from operations.

Member of American Bar Association, Section of Taxation. Questions whether subsection (b), which eliminates section code 809(b)(4) (relating to the special rule in the case of life insurance companies which provides for adjustments necessary to prevent such a company from being taxed on tax-exempt interest for dividends qualifying for a dividends received deduction), is a substantive change. Indicates that it is unclear whether the Supreme Court decision in *Atlas Life Insurance Company* v. *U.S.* (381 U.S. 233) makes this provision inapplicable in all cases.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. States that subsection (c), which substitutes a new subparagraph (B) in code sections 809(b)(1) and 809(b)(2), uses the newly defined income concept "net capital gains" and adds the new phrase "for the taxable year." Believes that the phrase "for the taxable year" is unnecessary and represents a difference from the parallel amendment to code section 804(a)(2) where the modification was made by substituting the words "of the net capital gain" for the longer phrase now included in that code section.

American Life Convention, William B. Harman, Jr., General Counsel, and Life Insurance Association of America, Kenneth L Kimble, Vice President and General Counsel. Believes that it would be preferable to retain the code section 809(b)(4) exception clause in order to eliminate possible controversy as to the manner in which Congress intended the Life Insurance Company Income Tax Act of 1959 to apply to municipal bond interest and corporate dividends. Also, questions the necessity of the phrase "for the taxable year" in subsection (c) of the bill.

Comment: This section amends section 809(b) of the code by striking out paragraph (4), which is the provision which was interpreted in the *Atlas Life Insurance Company* case. The objection to striking out section 804(a)(6) also applies to section 809(b)(4).

For the reasons stated in the comments on sec. 246 of the bill, above, it is believed that this provision is deadwood.

The amendments to code sections 809(b)(1) and 809(b)(2) are not parallel in language with the corresponding amendment to code section 804(a)(2) because the introductory language of the latter provision already refers to "the taxable investment income for any taxable year."

Section 251 (amends sec. 817 of code)—certain gains and losses.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Objects to deleting from the Internal Revenue Code (but retaining in the Public Laws) the application of the provision relating to the treatment under the life insurance company tax provisions of gains arising on sales or other dispositions of capital assets (and property which would be section 1231 assets) prior to 1959. Believes that it is undesirable to exclude from the Internal Revenue Code provisions that are still applicable and which, for this reason, are retained in the Public Laws by the bill.

Comment: It is unlikely that this provision has any current applicability since taxpayers are not likely to be currently receiving gains from pre-1959 sales, except in the limited area of installment sales. Even in such cases, the number of transactions to which it might apply is expected to decrease each year. For this reason, the provision is removed from the code but retained in the public laws.

Sec. 278 (amends sec. 901 of code)—foreign tax credit.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Recommends the deletion from the bill of subsection (a), which deletes a reference to code section 1333 in section 901(a) of the code. Indicates that the bill has the effect of disallowing the foreign tax credit against the additional tax imposed under section 1333 relating to the taxation of recoveries of war losses which were deducted under the 1939 code. Recommends the retention of this provision because of a later recommendation to delete sec. 354 of the bill which repeals sections 1331 to 1337 of the code (relating to such war loss recoveries).

Comment: See comments under sec. 354 of the bill, below.

Sec. 280 (amends sec. 905 of code)—proof of foreign tax credits.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. States that although the current United Kingdom-

United States tax treaty exempts royalties derived by a U.S. resident who is not engaged in a trade or business in the United Kingdom or who has a permanent establishment in the United Kingdom (provided the royalties are not related to the business carried on by that establishment), code section 905(b) (relating to the treatment of certain royalty payments for foreign tax credit purposes) could still be used if the royalties are connected with the permanent establishment in the United Kingdom.

Comment: The treatment of these items for foreign tax credit purposes, including their treatment in the situation where they are connected with a United Kingdom permanent establishment, is dealt with in the United Kingdom income tax convention and the code provision is no longer necessary.

Sec. 283 (amends sec. 931 of code)—income from possessions.

Member of American Bar Association, Section of Taxation. Notes that this section, which strikes code section 931(b) (relating to income from possessions) appears to involve a policy decision of not withdrawing the tax exemption provided by code section 931 with respect to amounts received "within the United States, whether derived from sources within or without the United States."

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Maintains that it would not be fair to delete code section 931(b) without appropriate hearings. Believes that this change is substantive and may have considerable ramifications beyond pure simplification.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Recommends that code section 931(b) (relating to amounts of income received in the United States from sources within U.S. possessions) not be deleted. Considers the provision to give certainty to particular transactions. States that corporations which have operational Possessions Corporations have relied since 1958 upon code section 931(b) as interpreted by Rev. Rul. 58–486, and expresses concern that the elimination would result in uncertainty in such cases.

Department of Health, Education, and Welfare, Social Security Administration. States that striking code section 931(b) could result in some loss of social security coverage in the case of any person self employed in a possession who lives in the United States or who is in the United States temporarily when he receives income from his business outside the United States; and while this change would affect very few people, considers it undesirable to remove this provision.

Comment: The earliest corresponding provision of section 931 was intended to be merely a tax deferral provision and not a tax exemption provision. The rule that amounts received in the United States would be subject to tax was intended to merely carry out the tax deferral policy. But the Treasury initially interpreted the earlier provision as granting a tax exemption except when payments were received in the United States. Since Treasury still treats section 931(a) as a tax exemption provision, section 931(b) provides a rule completely contrary with tax exemption. So far as social security coverage is concerned, it is not believed that a person who is self-employed in a possession should be allowed to have a small part of his income received in the

United States in order to gain coverage which he would not have obtained if he had collected the income where he earned it.

Sec. 285 (repeals secs. 941, 942, and 943 of code)—China Trade Act Corporations.

Members of American Bar Association, Section of Taxation. States that the repeal of the China Trade Act Corporation provisions is a substantive change. Points out that Formosa and Hong Kong are considered part of China for purposes of section 941 of the code. Furthermore, believes that subsection (b) (which allows a qualified China Trade Act Corporation to transfer its assets to a foreign corporation under certain circumstances without the necessity of a prior ruling under section 367 if the transfer would qualify as a reorganization as defined in section 368(a) had the assets been transferred to a domestic corporation) should be broadened to refer not only to reorganizations under section 368(a) but also to transfers described in section 351 (transfers to corporations controlled by transferor). Indicates that although most transactions contemplated by the provision would qualify as a reorganization under section 368(a)(1)(D), there may be situations which would not meet all the technical requirements of that provision but would qualify under section 351.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Indicates that the China Trade Act provisions might still be useful if a U.S. corporation is needed in Hong Kong or Formosa.

International Engineers Federal Inc., U.S.A., Warren R. Sprague, Jr., Vice President. States that the incentives offered China Trade Act Corporations should be extended to promote the sale of U.S. goods not only in Hong Kong and Taiwan but in other Asian areas as well, and should be made available to other American companies.

Comment: It is understood there are only four active China Trade Corporations still carrying on business. The bill, by permitting these corporations to reorganize as foreign corporations without obtaining section 367 rulings, maintains essentially the same treatment for these corporations as the present provisions for China Trade Act Corporations.

Sec. 288 (repeals sec. 972 of code)—consolidation of group of export trade corporations.

Member of American Bar Association, Section of Taxation. States that the consolidation privilege for export trade corporations under code section 972 had been specifically requested by some companies at the time subpart G was first enacted. Indicates that while one company which has been using this consolidation option does not intend to do so in the future, it is not clear whether there are other companies which have relied upon their ability to qualify under subpart G on this basis.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. States that this provision would eliminate the privilege of consolidation of export trade corporations and could remove rights of certain taxpayers. Contends that it would not be fair to delete the code provision without first having some hearings.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Questions the reason for the elimination of section 972 of the code which allows the consolidation of export trade corporations

for purposes of the exception from subpart F treatment, which is provided for certain export-related income of these corporations.

Comment: Section 972 has been little used in the past, and our information is that no one is using it currently. It is stricken as an unimportant and rarely used provision of the code.

Sec. 289 (amends sec. 981 of code)—foreign community property laws.

Member of American Bar Association, Section of Taxation. States that subsection (b), which strikes code section 981(c) (relating to the election for pre-1967 years with respect to income subject to foreign community property laws), may be premature, since some taxpayers may have open tax years to which the pre-1967 election is applicable.

Comment: The repeal of section 981(c) has no effect on taxes imposed for past years, since the repeal is effective only with respect to taxable years beginning on or after January 1, 1972.

Sec. 301 (repeals sec. 1021 of code)—basis of annuity contract.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Suggests that the proposed repeal of section 1021 of the code (which provides that the adjusted basis of an annuity contract shall in no case be less than zero) be deferred pending reconsideration of the taxation of annuities.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Objects to repeal of code section 1021 (which provides that the adjusted basis of an annuity contract shall in no case be less than zero), as it constitutes a substantive change.

Comment: The repeal does not make a substantive change. The presence of section 1021 only casts doubt on the implicit rule (not set forth in the code) against a negative basis for property. For example, there is nothing in the code that says the adjusted basis of an oil lease shall not be reduced below zero by percentage depletion deductions. But it is clear that if an oil lease is sold after percentage depletion deductions have exceeded the cost of the oil lease, the basis of the oil lease is treated as simply zero.

Sec. 302 (repeals sec. 1022 of code)—basis of certain foreign personal holding company stock.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Suggests that the proposed repeal of code section 1022 be conditioned upon a repeal of code section 1014(b)(5). Suggests, further, that research tracing consequences of this proposed amendment should be carefully considered.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. States that there appears to be no reason for the elimination of code section 1022 (which increases the basis of stock in a foreign holding company by its share of Federal estate tax imposed on the net appreciation in value of all such shares).

Josiah Willard, Attorney, New York City. Considers the repeal of code section 1022 to be a substantive change and not appropriate for this bill. States that the repeal would effect a reduction in basis of the foreign personal holding company stock.

Comment: This repeal is justified on the ground that it is an unimportant and rarely used provision. It was added to the code

in 1964 to cover a particular case, and in that case the holding company was liquidated before the owner died.

The predecessor of code section 1014(b)(5) was enacted in the Revenue Act of 1937 as general legislation, which apparently continues to be of significance, unlike code section 1022.

Sec. 309 (repeals secs. 1101, 1102, and 1103 of code)—Bank Holding Company Act distributions.

Member of American Bar Association, Section of Taxation. Feels that the repeal of code sections 1101, 1102, and 1103 (under which certain distributions that are necessary or appropriate because of the Bank Holding Company Act of 1956, as amended in 1966, are made tax free) may be premature. Believes that these three sections should be keyed into the one bank holding company concept and left in the law because of the 1966 Act.

Comment: A savings provision takes care of Financial General Corporation, the only taxpayer now interested in these provisions. The Treasury has recommended that these provisions be left in the code since it believes they should be expanded to cover cases of divestiture which will be made pursuant to the bank holding company amendments of 1970.

It would appear that if it is decided, on account of the bank holding company amendments of 1970, to provide special tax treatment for spin-off of subsidiaries, it would be better to have a clean slate on which to write the applicable rules. Any departure from the old rules would be more difficult if the old rules are still in the code when new rules are being considered.

Sec. 320 (amends sec. 1201 of code)—alternative tax on capital gains.

Member of American Bar Association, Section of Taxation. Indicates that this section may result in confusion from giving the old term "net capital gain" a new meaning and giving the new term "capital gain net income" the old meaning of "net capital gain." Suggests that the term "capital gain net income" could be eliminated and replaced with its definition in the few places it appears in the code.

Comment: The term is used 9 places in the code (apart from the provision in which it is defined); this appears to be sufficient to justify the use of a defined 4-word term rather than repetition of a 20-word definition in each of those 9 places.

Sec. 323 (amends sec. 1222 of code)—definitions.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Believes that the existing terminology in code section 1222 should be retained, as the distinction between the proposed new terms ("capital gain net income" and "net capital gain") do not appear to be clear enough.

Comment: "Net capital gain" is only "long-term capital gain", while "capital gain net income" could be "short-term capital gain" in whole or in part.

Sec. 325 (amends sec. 1231 of code)—property used in a trade or business.

Member of American Bar Association, Section of Taxation. States that subsection (b), which amends code section 1231(a) (relating to gains on sales or exchanges of property used in a trade or business), seems to be incomplete in its listing of other code sections requiring

ordinary income treatment of certain gains in that it fails to mention code sections 735(a) (1) and (2), 871(a)(1)(C), and 881(a)(3). Believes that the absence of a complete listing could cause unfortunate inferences that some difference in result was intended.

Comment: Since section 1231 does not deal with the ordinary income items covered by the three sections referred to, it would be improper to list them.

Sec. 330 (amends sec. 1238 of code)—amortization in excess of depreciation.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Recommends that sec. 330 of the bill (which amends section 1238 of the code by deleting a reference to sec. 168) be deleted in view of their previous recommendation to delete section 140 from the bill, which would have the effect of retaining section 168 in the code.

Comment: This amendment is a clerical amendment to reflect the repeal of section 168 by sec. 140 of the bill. See comment under sec. 140 of the bill, above.

Sec. 335 (amends sec. 1245 of code)—recapture of depreciation on personal property.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Recommends the deletion of sec. 335(b) of the bill (which amends section 1245 of the code by deleting a reference to section 168) in view of their previous recommendation to delete sec. 140 of the bill, which would have the effect of retaining section 168 in the code.

Comment: This amendment is a clerical amendment to reflect the repeal of section 168 by sec. 140 of the bill. See comment under sec. 140 of the bill, above.

Sec. 338 (amends sec. 1250 of code)—recapture of depreciation on real property; and sec. 339 (amends sec. 1251 of code)—disposition of farm recapture property.

Member of American Bar Association, Section of Taxation. Notes that subsection (b), which amends code section 1250(b)(3) (relating to depreciation adjustments), may be interpreted as accomplishing more than the ministerial simplification contemplated by the bill because this change could possibly be read to cover any new or old provision in the code that provides for "amortization based on a 60-month period" (unless the new provision would specifically negate that result).

Further, suggests that the amendments to code section 1250 be made consistent in the use of one or the other of the terms "a gain constituting ordinary income" or "as ordinary income."

Mid-Continent Oil and Gas Association, Thomas A. Martin, Executive Vice-President. Recommends the deletion of sec. 338(b) of the bill (which would amend section 1250 of the code by deleting a reference to section 168) in view of their previous recommendations to delete sec. 140 of the bill which would retain section 168 in the code.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Recommends that bill secs. 338(a) and 339(b) refer to the term "ordinary income" rather than to the term "as *gain constituting* ordinary income" for existing code sections 1250(a) (1) and (2) and 1251(c)(1).

Comment: This section amends section 1250 of the code to make use of the new term "ordinary income". Section 1250 taxes as gain amounts which in some cases would not otherwise be treated as a gain—for example, a corporation may be taxed under section 1250 when it distributes real estate in liquidation of the corporation. For that reason section 1250 provides "such gain shall be recognized notwithstanding any other provision". It is clearly preferable to state "such gain shall be recognized" than "such ordinary income shall be recognized".

The existing 60-month amortization provisions all have special recapture rules or are otherwise specifically dealt with in section 1245 or 1250 of the code. It is thought simpler to provide the general rule (see also sec. 335 of the bill, amending sec. 1245 of the code) than to amend either section 1245 or 1250 each time a new 60-month amortization rule is provided.

As to the cross reference to section 168 of the code, see the comment under sec. 140 of the bill.

Sec. 354 (repeals secs. 1331 through 1337 of code)—war loss recoveries.

Members of American Bar Association, Section of Taxation. Suggest further study of this section. Question whether there may be claims filed for war loss recoveries which might be received subsequent to date of enactment.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. States that certain taxpayers still have claims pending and the bill should preserve the tax treatment under current law for these claims.

Comment: An objection has been made to this repeal since it is claimed that there may be World War II war loss recoveries in the future. If there are such recoveries, the recoveries will be taxed in accordance with the general tax benefit rules applicable to the recovery of losses previously deducted. Since a general rule is available, the few cases, if any, which may arise in the future hardly justify retention in the code of seven sections of special provisions, containing more than 2500 words.

Sec. 355 (amends sec. 1341 of code)—claim of right.

Member of American Bar Association, Section of Taxation. Suggests that further study be made of this section to determine if there is a possibility of further application for taxpayers.

Comment: This section amends section 1341, relating to claim of right, by striking out a sentence which deals with a particular contract entered into before January 1, 1958. It has been suggested that there might be some application of this provision in the future. Since this provision was limited to a contract entered into before 1958, it is unlikely that the contract is still outstanding. Our attention has not been brought to any actual case where the sentence will continue to have application.

Sec. 356 (repeals sec. 1342 of code)—computation of tax on certain amounts recovered as a result of a patent infringement suit.

Member of American Bar Association, Section of Taxation. States that section 1342 of the code (relating to the computation of tax on certain amounts recovered as a result of a patent infringement suit)

should not be repealed unless it is clear that any case which would arise in the future is adequately covered under section 1341 of the code.

Mid-Continent Oil & Gas Association, Thomas A. Martin, Executive Vice-President. Questions whether there is any reason for the repeal of section 1342 from the code.

Comment: This section was added to the code in 1956 to cover a specific case. The taxpayer in that case is not interested in the future application of the section, and it is stricken as an unimportant and rarely used section.

Sec. 357 (repeals secs. 1346 and 1347 of code)—recovery of unconstitutional Federal taxes and certain claims filed against the United States.

Member of American Bar Association, Section of Taxation. Opposes the repeal of section 1346 (relating to recovery of unconstitutional Federal taxes) unless it can be assumed that the Supreme Court will no longer declare a Federal tax unconstitutional.

Comment: This section removes from the code provisions relating to recovery of unconstitutional Federal taxes (section 1346). It is believed that section 1346 has served its purpose.

Sec. 365 (amends sec. 1372 of code)—election by small business corporation.

Member of American Bar Association, Section of Taxation. Expresses a concern with subsection (b) (which strikes out the transitional rule for the election by a small business corporation for its first taxable year which began before the 1958 enactment of the subchapter S provisions) and subsection (c) (which strikes out the provision providing for the consent to election in certain cases for years before 1961). Indicates that since the election could well be continued, the old rule regarding the time when the first election should be made might be considered conclusive as to the validity of a continuing election.

Comment: Since the amendment does not affect past years, the provision as to 1958 elections qualifies as deadwood.

Sec. 376 (amends sec. 1402 of code)—definitions applicable to the tax on self-employment income.

Department of Health, Education, and Welfare, Social Security Administration. States that subsection (d), which amends code section 1402(h)(2) (relating to exemption from the self-employment tax of members of certain religious sects), may result in a substantive change which could have the effect of extending the period for claiming the exemption for members of the religious faiths.

Points out that the bill eliminates the language requiring anyone with self-employment income in a taxable year ending before December 31, 1967, who desires an exemption, to file an application for exemption by December 31, 1968. Notes that this might be interpreted to permit any such person who has not already filed an application for an exemption to do so in the future within 3 months after written notification by the Internal Revenue Service that he has not filed a timely application. Believes that this effect would be undesirable.

Comment: Since the amendment applies only to taxable years beginning after 1971, the amendment cannot affect the treatment of a taxable year ending before 1968.

Sec. 378 (repeals sec. 1471 of code)—recovery of excessive profits on contracts subject to the Vinson-Trammel Act.

Member of American Bar Association, Section of Taxation. Opposes the repeal of section 1471 (relating to recovery of excessive profits subject to the Vinson-Trammel Act). States that subsection (b) of the bill continues the application of the provision if the tax is voluntarily paid, believes that there is little reason to make the proposed change since this savings clause is not substantially shorter than the present code provision.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Objects to the removal from the code of the provisions relating to the recovery of excessive profits on contracts subject to the Vinson-Trammel Act (which are to be retained in the public laws). Believes that it is not desirable to exclude from the Internal Revenue Code provisions which are to be retained in the public laws.

Comment: At the present time section 1471 does not have any application because renegotiation applies in lieu of the Vinson-Trammel Act. It is possible that the Act will never again come into operation, but if it does the public law provision in sec. 378 of the bill will take care of the situation. Also see comment (2) under *General Comments*, above.

Sec. 379 (amends sec. 1481 of code)—mitigation of effect of renegotiation of government contracts.

Member of American Bar Association, Section of Taxation. Opposes the amendment made in subsection (a) to section 1481(a)(1)(A) of the code (relating to mitigation of effect of renegotiation of Government contracts). States that this change does not appear to accomplish the purposes of simplification or elimination of obsolete provisions. States that subsection (c) makes unnecessary conforming changes. Objects to subsection (d) (relating to renegotiation of years prior to 1954), and states that the savings provision is approximately as long as the present code provision.

American Institute of Certified Public Accountants, William T. Barnes, Chairman, Division of Federal Taxation. Objects to the removal from the Internal Revenue Code of the provision relating to renegotiation of years prior to 1954 (which are retained in the public laws). Believes that it is undesirable to exclude provisions from the Internal Revenue Code which are still applicable and which are to be retained in the public laws.

Comment: This section removes from code section 1481, but retains in the public law, the rule that recovery of excessive profits for years prior to 1954 shall be adjusted as provided in section 3806 of the 1939 code. The rule has not been changed by the bill, but the code has been shortened by the deletion of a provision which will have little, if any, application in the future. Also see comment (2) under *General Comments*, above.

Sec. 404 (amends sec. 2038 of code)—revocable trusts.

Member of American Bar Association, Section of Taxation. Indicates that this section, which strikes code section 2038(c) (relating to the effect of disability in certain cases with respect to revocable transfers for estate tax purposes) may be substantive since there could be persons living today who have been mentally disabled since 1947.

Comment: This amendment strikes out a subsection of limited application. It is believed that with the passage of time this provision has become deadwood. At least we have heard from no one with a case where it would have continuing application.

Sec. 521 (repeals secs. 4591 through 4597 of code)—import taxes.

National Milk Producers Federation, Patrick B. Healy, Secretary. Opposes the repeal of subchapter F of chapter 38 of the code, which would eliminate the import tax of 15 cents per pound on imported oleomargarine. Alternatively, suggests that either (1) the tax on imported oleomargarine be transferred to the tariff schedules of the United States, item 116.30, by increasing the present tariff of 7 cents per pound to 22 cents per pound; or (2) all of subchapter F be repealed except the first sentence of section 4591 which imposes the tax, and add a new sentence authorizing the Secretary of the Treasury to establish rules and regulations he deems necessary for the collection of the tax.

Comment: This section of the bill repeals sections 4591 through 4597 of the code, dealing with the import tax on oleomargarine. Sections 4593 through 4597 and much of section 4592 became obsolete when the tax on domestic oleomargarine was repealed in 1950. All the other import taxes in this chapter of the code (relating to petroleum products, coal, copper, lumber, and animal and vegetable oil and seeds) were repealed in 1962. Section 4591 and part of section 4592, relating to the import tax on oleomargarine, produce no tax revenue.

Since repeal of section 4591 and part of section 4592 probably would make a substantive change of continuing significance in present law, those provisions should not be removed by this bill; however, the remaining provisions (sections 4593 through 4597, and much of section 4592) are obsolete and may be repealed by this bill.

Sec. 522 (amends ch. 39 of code)—regulatory taxes.

Land O'Lakes Creameries, Inc., D. H. Henry, General Manager. Opposes the subsection (b) repeal of subchapter C of chapter 39 of the code (relating to the tax on adulterated butter and filled cheese).

States that repeal of the Adulterated and Processed or Renovated Butter Act (1902) would be contrary to the current emphasis on consumer protection. Recommends, instead, that these products be done away with by prohibiting their transportation or sale in interstate commerce. If the products are to be permitted to be sold, maintains that the tax should be retained to cover the cost of inspection and supervision.

Indicates that the retention of the tax on filled cheese has the effect of protecting the public from deception. Suggests that the whole question of imitation dairy products be considered before any action is taken on the proposed repeal of the tax, including appropriate safeguards against unfair advertising, packaging, and imitation of genuine dairy products.

National Milk Producers Federation, Patrick B. Healy, Secretary. Objects to the repeal of subchapter C of chapter 39 of the code, as constituting a substantive change.

Recommends that adulterated butter and process or renovated butter be done away with by prohibiting their transportation or sale in interstate commerce. States that if the products are to be permitted

to be sold, then the tax should be retained to cover the cost of inspection and supervision.

Indicates that the tax on filled cheese is important to protect genuine dairy products, and that the relatively little use of the tax shows that it is effective. Recommends that the whole question of imitation dairy products should be considered at the same time, including appropriate safeguards against unfair trade practices.

Comment: This section of the bill repeals code sections 4801 through 4806 (relating to white phosphorus matches), 4811 through 4846 (relating to adulterated butter and filled cheese), and 4881 through 4886 (relating to circulation other than of national banks). Suggestions have been made that the butter and cheese provisions be retained.

Section 4811 imposes taxes of 10 cents per pound on domestic adulterated butter and ¼ cent per pound on process or renovated butter. Section 4812 imposes a tax of 15 cents per pound on imported adulterated butter. Section 4821 imposes occupational taxes on manufacturers of adulterated butter or of process or renovated butter, and on wholesalers and retailers of adulterated butter. No revenue is produced by these provisions.

The staff has been informed by the Department of Health, Education, and Welfare that renovated butter cannot comply with Federal Food, Drug, and Cosmetic Act; even if the Internal Revenue Code provisions were repealed, renovated butter "could not be legally marketed under any circumstances today."

Articles which come within the Internal Revenue Code definition of adulterated butter are not necessarily prohibited by the food and drug laws, because they may be edible and nutritious. Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(c)), such articles would have to be labeled "imitation butter". The code provisions impose significant packaging and labeling restrictions, in addition to the occupational taxes and the taxes on imported and domestic articles.

Section 4831 imposes taxes of 1 cent per pound on domestic filled cheese and 8 cents per pound on imported filled cheese. Section 4841 imposes occupational taxes on manufacturers, wholesalers, and retailers of filled cheese. Those provisions produce annual revenue of 2 to 5 thousand dollars. Filled cheese which is edible and nutritious may be sold but, under the food and drug laws, it must be labeled imitation cheese and the label also must contain statements as to quantity, ingredients, and place of manufacture. The code provisions impose other significant packaging and labeling restrictions in addition to the occupational taxes and the taxes on imported and domestic articles;

Since repeal of the butter and cheese provisions probably would make a substantive change of continuing significance in present law, those provisions should not be removed by this bill; however, the provisions relating to renovated have no present effect and so may be repealed by this bill.