DESCRIPTION

OF

H.R. 6056

AS PASSED BY THE HOUSE

AND

AS PASSED BY THE SENATE

Prepared for the Use of the
HOUSE AND SENATE CONFEREES
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INTRODUCTION

This document has been prepared by the staff of the Joint Committee on Taxation for the use of the House and Senate Conferees on H.R. 6056.

The document provides comparative descriptions of the provisions of H.R. 6056 as passed by the House on December 13, 1982, and of the provisions of the bill as passed by the Senate on September 30, 1982, together with summaries of present law and the revenue effects. Where the description of a provision does not specify a revenue effect, that provision does not affect revenues.

Numerous provisions of the House bill have been accepted by the Senate and numerous provisions of the Senate amendment have been accepted by the House. Only those provisions which have not been agreed to by both the House and Senate are in conference and are described in this document.

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COMPARATIVE DESCRIPTION
OF
DIFFERING PROVISIONS

1. Transitional Rule for Rehabilitation Tax Credits

Present law.--

Pre-ERTA 10-percent credit.--Prior to ERTA, there was a 10-percent credit for rehabilitation of both historic and nonhistoric buildings. However, a certified historic structure could qualify only if the rehabilitation was certified by the Interior Department to be of historic significance. To avoid having to obtain approval of the rehabilitation, taxpayers with buildings in registered historic districts could choose not to seek a designation of the building as a certified historic structure.

Three-tier credit under ERTA.--ERTA made a number of changes to the rehabilitation tax credit provisions. The 10-percent credit was replaced with a three-tier credit: (1) a 15-percent credit for 30-year old buildings, (2) a 20-percent credit for 40-year old buildings, and (3) a 25-percent credit for certified historic structures.

As under prior law, no credit is allowed for an uncertified rehabilitation of a certified historic structure. Contrary to prior law, no credit is allowed for an uncertified rehabilitation of a building in a registered historic district that is not a certified historic structure, unless the taxpayer obtains a certificate from the Interior Department that the property is not of historic significance to the district (decertification). The purpose of the rule is to ensure that a taxpayer with a building of historic significance cannot avoid having to obtain approval of the rehabilitation by choosing not to obtain a designation of the building as a certified historic structure. If the building is decertified, either the 15- or 20-percent, but not the 25-percent credit applies.

Transitional rule for ERTA changes.--Under a transitional rule, a rehabilitation begun before 1982 that does not qualify under ERTA for the new credits is entitled to the 10-percent credit if the rehabilitation qualifies under the pre-ERTA rules. For example, if before 1982 a taxpayer commences rehabilitation of a building in a registered historic district that is not a certified historic structure and that has not received a decertification, no credit is allowed under ERTA. However, under the transitional rule, the 10-percent credit would apply if the pre-ERTA requirements were met.

If a rehabilitation began before 1982 and did not meet either the ERTA requirements or the pre-ERTA requirements, no credit would be allowed. For example, if the taxpayer had done an uncertified rehabilitation of a certified historic structure, neither the ERTA credits nor the 10-percent credit would apply. Both the ERTA rules and the pre-ERTA rules deny credit for uncertified rehabilitations of certified historic structures.

House bill.--No provision.

Senate amendment.--Under the Senate amendment, certain uncertified rehabilitations of a certified historic structure begun before 1982 would qualify for the 10-percent credit under the ERTA if pre-ERTA requirements, other than the requirement that the rehabilitation of a certified historic structure must be certified, are met. Designation of the structure as a certified structure must have occurred as a result of a request filed by the taxpayer with the Interior Department after December 31, 1981, and before September 27, 1982, for a determination of whether the building is of historic significance to the district.

Revenue effect.--The provision will reduce budget receipts by less than $5 million in fiscal year 1983.

Conference agreement.--

2. Definition of Independent Producer

Present law.--An independent producer for depletion and windfall profit tax purposes is any person who is not a "refiner" or "retailer." In general, a "retailer" is any person who directly or through a related person retails in excess of $5 million of oil or natural gas (excluding bulk sales of oil or natural gas to commercial or industrial users), or oil or gas products, in any taxable year.

House bill.--No provision.

Senate amendment.--The Senate amendment provides that, in determining the value of oil or gas products sold in any year for purposes of determining whether a taxpayer is a "retailer" (for depletion and windfall profit tax purposes), bulk sales of aviation fuels to the Department of Defense are excluded. The provision will be effective on January 1, 1983.

Revenue effect.--The Senate provision will reduce budget receipts by less than $5 million annually.

Conference agreement.--

3. Qualified Royalty Production of Trusts

Present law.--Under present law, qualified royalty owners are exempt from the windfall profit tax on up to two barrels a day (three barrels a day after 1984) of production of qualified royalty oil. Only individuals, estates, and qualified family farm corporations are included in the definition of qualified royalty owners. Under this rule, neither a trust nor its beneficiaries are entitled to any royalty owner exemption with respect to the production of the trust.

House bill.--No provision.

Senate amendment.--Under the Senate amendment, each qualified beneficiary of a trust that has qualified royalty production ("allocable trust production") will be entitled to a refund of windfall profit tax paid on his or her allocable share of that production. There is a limit of two barrels a day (three barrels after 1984) on the total amount of qualified royalty production with respect to which any beneficiary may claim either a royalty oil exemption (under sec. 4991(b)(5)) or a refund under the new provision.

A beneficiary's allocable share of the tax paid with respect to allocable trust production is the portion of that production which bears the same ratio to all such production as the beneficiary's allocable depletion deduction bears to the entire depletion deduction allocable to the trust and its beneficiaries. All depletion deductions are taken into account for this purpose including depletion on hard mineral, gas, and crude oil that is not royalty production.

Revenue effect.--The Senate provision will reduce budget receipts by $42 million in fiscal year 1983, $51 million in 1984, $49 million in 1985, $49 million in 1986, and $48 million in 1987.

Conference agreement.--

4. Effect of Sale in Bankruptcy of Aircraft Subject to Safe-Harbor Lease

Present law.--In general, the regular investment credit applies to tangible personal property and other tangible property (generally not including a building or structural component) used in connection with manufacturing, production, or certain other activities. Property used predominantly outside the United States generally is not eligible.

Recapture of investment credit is required if the property either is disposed of or ceases to be used for a qualifying purpose prior to the end of the recovery period used for computing ACRS deductions. For example, recapture is required if 5-year recovery property is used predominantly outside the United States before the end of the 5-year recovery period.

The general rule requiring recapture upon sale of property does not apply when property subject to a safe-harbor lease is sold as a result of the bankruptcy of the lessee (who, under a safe-harbor lease, may have State law title to the property), if certain requirements are met (bankruptcy rule). Among the requirements that must be met is a requirement that the person who purchases the property use the property predominantly within the United States.

The safe-harbor lease rules were modified by the Tax Equity and Fiscal Responsibility Act of 1982. Those modifications do not affect either the general recapture rule or the special bankruptcy rule. The modifications do not apply to transitional safe-harbor lease property, including certain aircraft.

House bill.--No provision.

Senate amendment.--For aircraft covered by the safe-harbor lease transitional rules, the Senate amendment provides that no recapture will be required upon sale of the aircraft in a bankruptcy situation to a person who uses the property predominantly outside the United States if the other requirements of the bankruptcy rule (other than the prohibition against foreign use) are met.

Revenue effect.--The Senate provision will reduce budget receipts by less than $1 million annually.

Conference agreement.--

5. Effective Date for Registration of Tax-Exempt Obligations

Present.--The Tax Equity and Fiscal Responsibility Act of 1982 provides that certain obligations of the United States can be issued only in registered (or book-entry) form. A similar requirement is imposed through the imposition of tax-related sanctions on State, local, foreign and private obligations of a type offered to the U.S. public which are issued after December 31, 1982.

House bill.--The bill delays for one year, to December 31, 1983, the effective date of the registration provisions of TEFRA as they apply to obligations the interest on which is exempt from Federal income tax.

Senate amendment.--No provision.

Conference agreement.--

6. Transitional Safe-Harbor Lease Rule For Auto Manufacturing Property

Present law.--The safe harbor lease modifications made by the Tax Equity and Fiscal Responsibility Act of 1982 do not apply to transitional safe harbor lease property. In general, eligible property must be placed in service by January 1, 1983. However, manufacturers that produce a class of products in an industry dominated by 4 or fewer persons have until October 1, 1983, to place their property in service. This provision was intended to apply only to automobile manufacturers.

House bill.--The transitional safe harbor lease rule designed for automobile manufacturers is unclear and may be read to apply in some instances to property other than automobile manufactuirng property. The bill replaces the existing definition of eligible property with a definition that clarifies the intended scope and meaning of the provision.

The bill makes it clear that only manufacturers of finished automobiles and trucks qualify and that the property must be used directly in the taxpayer's trade or business of manufacturing automobiles or trucks. At least half of the motor vehicles produced by the taxpayer in 1981 must have been passenger cars and light-duty trucks.

The bill clarifies the type of property eligible under the provision by referring to equipment, machinery and tools of the type included in the former ADR classification for motor vehicles. In addition to property described under that classification, eligible property includes property owned by an automobile manufacturer and used by a vendor solely for the production of component parts to be sold to such manufacturer for inclusion in the finished automobiles or trucks.

Senate amendment.--No provision.

Conference agreement.--

7. Discount Obligations Issued in a Reorganization

Present law.--When obligations are issued at a discount, with certain exceptions the discount must be included in income by the holder and is deductible by the issuer over the life of the bond. If corporate obligations are issued for securities, original issue discount arises only if either the obligations or the securities are traded on an established securities market, and the original issue discount is the excess of the redemption price of the obligations over the value of the securities. Original issue discount does not arise with respect to bonds issued in recapitalizations and other corporate reorganizations. The Tax Equity and Fiscal Responsibility Act of 1982 amended the rules applicable to original issue discount to require the income inclusion and deduction in a manner that reflects the compounding of interest. Prior to TEFRA, discount was allocated on a pro rata basis to each month in the life of the bond, resulting in an overstatement of the portion allocable to the early months.

New obligations exchanged for a corporation's outstanding obligations in a recapitalization may provide for the deferral until maturity of payments exceeding both the issue price of the outstanding obligations and their fair market value at the time of the exchange. Such deferred payments are not within the definition of original issue discount and are not taxable to a holder under the original issue discount rules of section 1232A. Some issuers have claimed entitlement to deductions prior to payment and without regard to the limitations that would apply if such deferred amounts were original issue discount. Present law is unclear as to the treatment of such amounts.

House bill.--The bill removes the exclusion for obligations issued in a reorganization from the definition of original issue discount. Under the amendment, original issue discount will be limited to the excess of the redemption price of the obligations, when they are exchanged for outstanding obligations, over the issue price of such outstanding obligations increased for previously deducted discount. This limitation will apply where the issue price of the outstanding obligations so adjusted exceeds their fair market value. The amendment applies to obligations issued after December 13, 1982, other than obligations issued pursuant to a written commitment binding on that date.

Senate amendment.--No provision.

Conference agreement.--

8. Subchapter S

Present law.--The Subchapter S Revision Act of 1982 provides that a corporation making a subchapter S election must have either a taxable year ending on December 31 or other accounting period for which it establishes a business purpose. That Act applies to taxable years beginning after December 31, 1982.

The Act also revised the distribution rules to allow tax-free distributions of subchapter S income.

House bill.--The House bill provides that the taxable year requirements of the Subchapter S Act will apply to any Subchapter S election made after October 19, 1982. Thus, the corporation's year must end December 31, or other period for which it establishes a business purpose.

The House amendment provides that stock or securities transferred to a small business corporation after October 19, 1982, and before the enactment of this bill, will not trigger shareholder gain where the corporation is liquidated under section 333 before March 1, 1983.

The House bill also allows subchapter S corporations to elect to treat distributions as dividends. This will allow a corporation to distribute its earnings and profits to avoid the passive income restrictions, or to obtain a dividends paid deduction for the accumulated earnings tax or personal holding company tax for the year prior to becoming a subchapter S corporation. It will thus not be necessary to distribute the entire amount in the accumulated adjustment account at the end of the taxable year in order to pay a dividend. The procedures for electing dividend treatment will generally be similar to the procedures of prior law (Regulations §1.1375-4(c)) allowing distributions out of earnings and profits to be made prior to distributions of previously taxed income.

Senate amendment.--No provision.

Conference agreement.--

9. Treatment of Certain Corporate Stock Purchases

a. Seller's Consolidated Return Treatment

Present law.--The Tax Equity and Fiscal Responsibility Act of 1982 provided that certain stock purchases by a corporation could be treated as if the target corporation sold all its assets on the purchase date. Where the target corporation prior to the stock purchase was a member of an affiliated group of corporations filing a consolidated return, it is unclear whether recapture and other tax liability of the target corporation from the deemed sale of its assets was a consolidated return liability of the selling group or a separate liability of the target corporation.

House bill.--The bill provides that such liability will normally be a separate return liability of the target corporation. However, authority is provided pursuant to which it is contemplated that regulations will provide otherwise in those cases where consolidated return treatment achieves the appropriate result. With respect to purchase contracts entered into after TEFRA was enacted and prior to enactment of this bill, if the purchasing corporation establishes to the satisfaction of the Secretary of the Treasury that the contract was negotiated on the assumption that recapture taxes would be a liability on the seller's consolidated return, the transaction will be so treated under the bill. It is intended that this provision will apply only where the seller satisfies such requirement by clear and convincing evidence.

Because of uncertainty as to the application of the TEFRA rule, the bill extends the period during which asset sale treatment may be elected for prior stock purchases through February 28, 1983 and permits any election already made to be revoked by that date.

Conference agreement.--

B. Retroactive application

Present law.--As enacted by TEFRA, a transitional rule provided that the deemed asset sale treatment could be elected not later than November 15, 1982, with respect to stock purchases after August 31, 1980, and before September 1, 1982.

House bill.--The original House bill contained no provision.

Senate amendment.--The Senate amendment provides that the date the taxpayer makes the election, rather than the date of the stock purchase, will be the date of the deemed sale of assets for transactions qualifying under this transitional rule. Adjustments must be made for distributions and other items attributable to operations of the target corporation between the stock purchase date and the date of election. Certain rules requiring consistency of treatment when several acquisitions are made from the same affiliated group of corporations would not apply. Under the Senate amendment, an election made before September 28, 1982, under this transition rule could be revoked not later than November 15, 1982.

House amendment to Senate amendment.--The House provision modifies the Senate amendment to provide that the deemed asset sale with respect to these stock purchases will be effective for a date selected by the taxpayer which is after the later of June 30, 1982, or the stock purchase date and on or before the date of the election. The rule that would allow an election or revocation of an election to be made by February 28, 1983, would apply to these transitional rule elections under the House amendment.

The House amendment also clarifies that certain tax-free transfers of the target corporation's stock or assets within the purchasing corporation's affiliated group will not result in disqualification of a transitional rule election.

Conference agreement.--

10. Regulated Futures Contracts

a. Bank forward contracts

Present law.--Contracts providing for the future delivery of foreign currency may be entered into with certain commercial banks comprising an informal interbank market or as regulated futures contracts which are taxed under the mark-to-market rules. Contracts traded in the interbank market are not assignable without the consent of the bank, and therefore are not includible in inventory.

House bill.--The House bill places foreign currency contracts traded through the interbank market, including contracts between the taxpayer and a broker, under the mark-to-market rules applicable to regulated futures contracts. This treatment applies only to contracts involving those currencies which are also the subject of trading on the futures exchanges. The bill provides that these contracts must be entered into at arm's length at a price determined by reference to the price in the interbank market and authorizes the issuance of regulations necessary or appropriate to carry out the purposes of this provision of the bill, including regulations which would exclude from mark-to-market treatment contracts, or types of contracts, which are inconsistent with the purpose of the amendment. Thus, for example, terms which attempt to make the contracts transferable in such a way to allow them to be held as inventory (which would make them unlike futures contracts) could cause them to be ineligible for mark-to-market treatment.

Senate amendment.--The Senate amendment is the same as the House bill except that, in lieu of the limitations on qualifying contracts, the Secretary of the Treasury would be authorized to prescribe rules to determine the value of contracts and to disregard the terms of a contract which preclude the determination of readily ascertainable value.

Conference agreement.--

b. Cash settlement contracts

Present law.--Regulated futures contracts taxed under the mark-to-market rules are defined to include only contracts that require the delivery of personal property. Since the enactment of ERTA, trading has commenced in a number of mark-to-market futures contracts calling only for cash settlement. Some contracts provide for cash settlement as an alternative to the delivery of personal property.

Settlement or other termination of a contract results in capital gain or loss notwithstanding the absence of a sale or exchange only if the contract is with respect to personal property that would be a capital asset in the hands of the taxpayer.

House bill.--The House bill deletes the provision that a contract must require the delivery of personal property to be treated as a regulated futures contract subject to mark-to-market treatment. The bill also provides that capital gain or loss will result from termination of such a contract even though there is no sale or exchange, if the contract itself is a capital asset in the hands of the taxpayer.

Senate amendment.--The Senate amendment retains the present law definition of a regulated futures contract but provides that cash settlement contracts requiring the delivery of an amount of cash determined by reference to the value of any property or index based on that value will meet the delivery of personal property requirement.

Conference agreement.--

11. At-Risk Rule for Safe-Harbor Lessors

Present law.--The Tax Equity and Fiscal Responsibility Act of 1982 provides that the at-risk limitations on losses and credits do not apply to closely held corporations that buy tax benefits as a lessor in a safe-harbor lease. In general, the safe-harbor lease changes are effective for property placed in service or leases entered into after July 1, 1982 (general effective date). Two special effective date rules apply for the at-risk change. The at-risk change generally applies to property placed in service after September 3, 1982, the date of enactment of TEFRA (prospective rule). Subject to the general effective date rule, the change also applies to property placed in service before date of enactment where the lessor first becomes a closely held corporation after that date (retroactive rule).

House bill.--The House bill adds language to clarify that the TEFRA at-risk change under the retroactive rule may apply where the property is placed in service before July 1, 1982, the general effective date for the safe-harbor leasing changes.

Senate amendment.--No provision.

Conference agreement.--

12. Recapture of Expensing Deductions Where Property Used for Nonbusiness Purposes

Present law.--The Economic Recovery Tax Act of 1981 allowed taxpayers to elect to expense the cost of certain property acquired for use in a trade or business. For 1982, the maximum amount that may be expensed is $5,000.

House bill.--The House bill provides that, under regulations prescribed by the Secretary, the taxpayer must recapture the expensing deduction where the property is not predominantly used in a trade or business at any time before the close of the second taxable year following the year in which it is placed in service by the taxpayer. For this purpose, recapture means that, in the taxable year if it is determined that the property is not used predominantly in a trade or business, the taxpayer must include in income the excess tax benefit derived from the expensing deduction. In determining the excess tax benefit derived from the expensing deduction, it is intended, in general, that this recapture rule put the taxpayer in the same position as if he had claimed deductions under the ACRS system and no investment tax credit.

For example, assume the taxpayer expensed a $100 asset in year one. The asset is 5-year recovery property. The asset was used during the first year entirely for business. The asset was used entirely for personal purposes in year two. The taxpayer must include $85 in income in year two, which is the $100 expensing deduction minus the $15 ACRS deduction to which he or she would have been entitled in year one. If the property is later used in a trade or business or for the production of income, ACRS deductions would then be allowable.

The bill does not alter the present law rule under which no expensing deduction is allowed if the property is not acquired for use in a trade or business.

Senate amendment.--No provision.

Conference agreement.--

13. Credit for Withheld Interest, Dividends or Patronage Dividends

Present law.--The Tax Equity and Fiscal Responsibility Act of 1982 provides for withholding on interest, dividends and patronage dividends. Under the Act, any amount of tax withheld on the payment or credit of interest, dividends or patronage dividends is treated as a credit against the income tax of the recipient of the payment or credit for the recipient's taxable year beginning in the calendar year of the payment or credit.

House bill.--The House bill provides that the withholding credit is allowed in the same taxable year as the income is received. In the case of pass-thru entities, such as partnerships, the ultimate taxpayers (i.e., partners) will thus receive the credit in the same taxable year the interest or dividends are included in their income.

Senate amendment.--No provision.

Conference agreement.--

14. Foreign Oil Loss Recharacterization Transition Rule

Present law.--The Tax Equity and Fiscal Responsibility Act of 1982 changed the tax rules for U.S. taxpayers with foreign oil operations. Before the Act, the foreign tax credit was computed separately for oil income and non oil income. These separate computations were elminated by TEFRA. Both before and after the Act, taxpayers with an overall foreign loss in one year must recapture that loss in later years through an adjustment to the foreign tax credit. This rule prevents them from using foreign tax credits arising from foreign income after they have deducted foreign losses for U.S. tax purposes. Eliminating the separate computation of the foreign tax credit (including the recapture provision) for oil and non-oil income created an unintended problem for some taxpayers. For example, a taxpayer with a pre-TEFRA non-oil overall foreign loss and post-TEFRA foreign oil income would have to recapture that loss, possibly in the first post-TEFRA year. Likewise, a taxpayer with a pre-TEFRA overall foreign oil loss and post-TEFRA foreign non-oil income would have to recapture that loss, also possibly in the first post-TEFRA year. TEFRA alleviated this problem for pre-TEFRA foreign non-oil losses by spreading the recapture over an eight year period.

House amendment.--The House amendment provides an eight year period for spreading the recapture of pre-TEFRA foreign oil losses.

Senate amendment.--No provision.

Conference agreement.--

15. Alternative Minimum Tax

Present law.--Prior to amendments made by the Tax Equity and Fiscal Responsibility Act of 1982, an alternative minimum tax was imposed on the tax preference for capital gains and adjusted itemized deductions. The minimum tax rules were extensively revised by that Act.

House bill.--The House bill provides that in computing the adjusted itemized deduction preference, any itemized deduction which is not allowed against the alternative minimum tax base in the current year because it is carried over to another year shall also be excluded from the computation of the adjusted itemized deduction preference in the current year. This amendment applies to taxable years beginning after 1978 and before 1983.

The House bill also provides that in computing the alternative minimum tax for 1981, the special 20-percent capital gain maximum rate made applicable by ERTA to post-June 9 gains will be applied in certain cases by reducing the qualified net capital gain by losses for the taxable year. In these cases, the special tax base subject to the 20 percent rate will equal the taxpayer's alternative minimum taxable income.

Senate amendment.--No provision.

Conference agreement.--

16. Required Renegotiations of Outstanding Loans from Government Pension Plans

Present law.--Under income tax rules (sec. 72(p)) added by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), a loan made to an employee under an employer's tax qualified pension, profit-sharing, or stock bonus plan, or tax sheltered annuity program, generally is treated as a distribution from the plan unless certain requirements are met. All or a portion of the amount treated as distributed may be includible in gross income. Under the Act, a loan to an employee which is required to be repaid within 5 years generally is not treated as a taxable distribution when made if that loan, when added to the employee's outstanding loan balance under all plans of the employer, does not exceed the lesser of (1) one-half of the employee's vested plan benefits, or (2) $50,000.

The income tax provisions relating to plan loans generally apply to loans made from tax-qualified plans of private employers or from government plans after August 13, 1982. Amounts borrowed by an employee on or before that date generally are not treated as taxable distributions. However, if a loan outstanding on August 13, 1982, is thereafter renegotiated, those amounts subject to the renegotiation are treated as if borrowed on the date of the renegotiation and may be treated as taxable distributions.

House bill.--Under the bill, if (1) a taxpayer borrows from a governmental plan after August 13, 1982, and before January 1, 1983, and (2) under the applicable State law the loan requires the renegotiation of all outstanding prior loans made to the taxpayer from the plan, then the required renegotiation will not be considered a renegotiation under the income tax rules for plan loans. Thus, the amount of the prior outstanding loan balance of the employee under the plan will not be treated as a taxable distribution on account of the required renegotiation. The amendment will apply, however, only if the required renegotiation does not extend the duration of, or change the interest rate on, any outstanding prior loan from the plan.

The additional amount which is borrowed by the taxpayer after August 13, 1982, and before January 1, 1983, is taken into account under the income tax rules as a loan made on the date on which the amount is borrowed. The additional amount that is borrowed may, therefore, be treated as a distribution at the time it is borrowed.

Senate amendment.--No provision.

Conference agreement.--

17. Clerical and Conforming Amendments

The House bill contains a number of typographical, clerical and conforming amendments.