

ADDITIONAL ITEMS FOR COMMITTEE CONSIDERATION
ON H.R. 3805, THE TECHNICAL CORRECTIONS ACT OF 1983

Prepared by the staff of
the Joint Committee on Taxation
for use by
the Committee on Ways and Means

September 30, 1983

JCX-29-83

Item	Present law	H.R. 3805	Possible modifications ² to H.R. 3805
3. Acquisitions and Mergers.	a. TEFRA provided that a corporation acquiring the stock of another corporation could elect to treat the stock acquisition as an asset acquisition (sec. 338).	a. H.R. 3805 makes several technical amendments clarifying the operation of these rules.	a. Additional technical amendments would be made. Those include amendments to provide that where an election is made to treat a stock purchase as an asset purchase (1) no estimated tax penalty would apply to the tax resulting from the election, (2) post-acquisition adjustments could be taken into account in determining the value and basis of the assets deemed sold, (3) the collapsible corporation provisions could not be avoided by a minority shareholder disposing of its stock after the acquisition date, (4) the surrogate tax would not be imposed on the target corporation where an individual minority shareholder disposes of its stock in a redemption treated as a dividend, and (5) the present regulatory authority with respect to foreign corporations would be modified to provide that the regulations could clarify the manner in which earnings of a controlled foreign corporation generated by a section 338 election would be taken into account by U.S. shareholders.

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	b. TEFRA modified the rules relating to the use of commonly controlled corporations to avoid dividend treatment on property distributions.	b. H.R. 3805 provides a de minimis rule which ignores the holdings of persons with less than 5 percent of the stock in a corporation in determining whether the corporations are commonly controlled.	b. The de minimis rule would be amended to provide that the attribution of stock from a minority shareholder to a corporation would be on a proportional basis rather than in full as present law provides.

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4. Pensions			
a. Limitations on benefits and contributions under qualified plans	<p>a. TEFRA generally reduced the overall limits on contributions and benefits under qualified pension, etc., plans, tax-sheltered annuity programs, and simplified employee pensions (SEPs) of private and public employers.</p> <p>Special transition rules were applied in connection with the reduced limits. Under TEFRA, a participant's current accrued benefit under a defined benefit pension plan is not reduced merely because TEFRA reduced the dollar limits on benefits payable under the plan. An individual's current accrued benefit is the benefit accrued as of the close of the last year beginning before January 1, 1983.</p> <p>No changes in the terms and conditions of the plan after July 1, 1982, may be taken into account for the special transition rules.</p>	<p>a. In the case of participants in collectively bargained plans in existence on the date of enactment, the bill would provide that the current accrued benefit is the individual's accrued benefit as of the close of the last year beginning before the earlier of (1) the date on which the last of the collective bargaining agreements terminates or (2) January 1, 1986.</p>	<p>a. In the case of a collectively bargained plan, changes in the terms and conditions of the plan made pursuant to a collective bargaining agreement reached prior to July 1, 1982, and ratified prior to September 3, 1982, could be taken into account.</p>

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b. Repeal of special limitations on deduction for self-employed individuals and subchapter S corporations	b. TEFRA generally repealed most of the special deduction limits for contributions on behalf of a self-employed individual under a defined contribution H.R. 10 plan.		b. The effective date of repeal of the special deduction limits would be revised to prevent application of the limits to qualified defined benefit H.R. 10 plans.	
c. Required distributions for qualified plans	<p>c. If a participant or the participant's surviving spouse dies before the entire interest in the plan is distributed, amounts payable to a beneficiary who is not the participant's surviving spouse generally must be paid to the beneficiary within five years after the participant or surviving spouse dies.</p> <p>The required distribution rules generally apply for plan years beginning after December 31, 1983. A special transition rule, however, exempts certain distributions made pursuant to employee designations if the designation is made before January 1, 1984.</p>	<p>c. A special exception to the general rule requiring distributions to be paid within five years after the employee's or employee's surviving spouse's death would be provided. Thus, the general rule would not apply if the distribution is paid to a beneficiary who was a qualified dependent of the employee over a qualified period (in accordance with Treasury regulations).</p> <p>The bill would provide that a qualified dependent is any individual who was a dependent under age 22 or permanently and totally disabled. The qualified period over which the distribution may be paid is (1) in the case of a qualified dependent under age 22, a term certain not extending beyond the month in which the individual attains age 22 or (2) in the case of a qualified dependent who is permanently and totally disabled, the life of the</p>	c. Payments to beneficiaries who are dependents of the employee or surviving spouse for two of the five years preceding death would be permitted over the greater of (1) 5 years or (2) the life expectancy of the decedent (based on healthy lives) on the day before death. Payments to minor dependents need not commence prior to age 22. Distributions to any beneficiary who is permanently and totally disabled would be permitted to be made over the life expectancy of the beneficiary.	

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individual or a term
certain not extending
beyond the life expectancy
of the individual.

Under the bill, in the case
of a government plan, the
effective date is delayed
until plan years beginning
after December 31, 1984.
Corresponding changes are
made to the expiration date
of the special transition
rule.

The effective date for
government plans would
be delayed until plan
years beginning after
December 31, 1985.

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5. Partnership Audit.	a. TEFRA added provisions requiring partnership items to be determined at the partnership level rather than with each separate partner.	a. No provision.	a. A provision would be added to clarify that these provisions would apply where a partnership return is filed but the I.R.S. determines that the entity is not a partnership. Other clarifying amendments would be made.
6. Collection of excise tax on aviation gasoline.	a. Under TEFRA and the Highway Revenue Act, the 12-cents-per-gallon on aviation gasoline (noncommercial aviation) consists of a two-part tax: the current 9 cents-per-gallon manufacturers tax (sec. 4081) plus a current retail tax of 3 cents per gallon (sec. 4041(c)).	a. No provision.	a. Provide for collection of entire 12-cents-per-gallon tax at the retail level.
7. Clerical amendments.			Additional nonsubstantive clerical, conforming and clarifying amendments would be made.

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Subchapter S Revision Act			
1. Treatment of certain trusts.	a. Certain trusts which distribute or are required to distribute income currently may hold subchapter S stock.	a. The bill provides that only those trusts which are required to distribute income currently would qualify under this provision.	a. Present law would be retained, but the bill would clarify that the termination of a subchapter S election by reason of failing to distribute income currently would not be made retroactive.
2. Accounting treatment upon termination of election.	a. Where a subchapter S election is terminated, two taxable years are created and the items of income, etc., are pro-rated (on a daily basis) between the two years unless all persons who are shareholders during the year elect to "close the books" on the termination date.	a. No provision.	a. The provisions would be amended to require the consent only of those persons who are shareholders on or before the date that the subchapter S election terminates, in order to "close the books."
3. Treatment of discharge of indebtedness.	a. Present law requires a corporation to recognize income where a shareholder contributes its debt to the corporation. Income is realized to the extent the principal of the debt exceeds the shareholder's basis in the debt.	a. The bill makes this rule inapplicable to the extent the stock basis was reduced by reason of the pass-through of losses from a subchapter S corporation.	a. The bill would provide that the amendment applies to contributions to capital made after December 31, 1980, the date that the provision of present law became effective.

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SOCIAL SECURITY AMENDMENTS			
1. Effective date for treatment of nonqualified deferred compensation.	<p>Under the Social Security Amendments of 1983, remuneration paid after services are performed and after December 31, 1983, other than amounts paid under a qualified retirement plan, generally is taxable, for FICA and FUTA purposes, when paid. Nonqualified deferred compensation, however, is taxable when the services for which the amounts are payable are performed, or, if later, when there is a lapse of a substantial risk of forfeiture of the employee's right to those amounts. Instead of this rule, prior law applies to services performed before December 31, 1983 (December 31, 1984 for FUTA purposes) if performed under a nonqualified deferred compensation agreement in existence on March 24, 1983.</p> <p>Nonqualified deferred compensation payable under an agreement not in existence on March 23, 1983, is taxable for FICA and FUTA purposes, but the timing of FICA taxation for services performed, and for which substantial risk of forfeiture lapses, before January 1, 1984 (January 1, 1985 for FUTA taxation) is unclear.</p>	<p>No provision.</p> <p>These amounts would be taken into account when the remuneration is paid.</p>	<p>Prior law also could apply to amounts attributable to services performed before December 31, 1983 (December 31, 1984 for FUTA purposes) and paid under retirement or termination agreements in existence on March 23, 1983.</p> <p>Employers could elect, alternatively, to include these amounts in the FICA and FUTA bases when the services are performed, or, if later, when there is no substantial risk or forfeiture.</p>

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2. FICA and FUTA treatment of employer "pick-up" of employee contributions under State and local retirement plans	Prior to the Social Security Amendments of 1983, employer payments of employee contributions under a State and local retirement plan were subject to FICA and FUTA only if these payments were made under a salary reduction arrangement. Under the Amendments, all such employer payments would be subject to FICA and FUTA	No provision.	Employer payments of employee contributions under a State and local retirement plan could be subject to FICA and FUTA only if made under a salary reduction arrangement.
3. Effective date for sec. 101(d) of the Amendments	The current effective date for coverage of Federal employment is for "remuneration paid" after December 31, 1983.	No provision.	The effective date would be corrected to apply to "service performed" after December 31, 1983.
4. Clerical amendments			Amendments to correct spelling, punctuation, cross-reference and other clerical errors would be made.